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Ad libitum

Ad libitum is Latin for "at [one's] pleasure"; it is often shortened to "ad lib" (as an adjective or adverb) or "ad-lib" (as a verb or noun). The roughly synonymous phrase *a bene placito* ("at [one's] good pleasure") is less common but, in its Italian form *a piacere*, entered the musical *lingua franca* (see below).

Music

As a direction in sheet music, *ad libitum* indicates that the performer or conductor has one of a variety of types of discretion with respect to a given passage:

- to play the passage in free time rather than in strict or "metronomic" tempo (a practice known as *rubato* when not expressly indicated by the composer);
- to improvise a melodic line fitting the general structure prescribed by the passage's written notes or chords;
- to omit an instrument part, such as a nonessential accompaniment, for the duration of the passage; or
- in the phrase "repeat *ad libitum*," to play the passage an arbitrary number of times (*cf.* vamp).

Note that the direction *a piacere* (see above) has a more restricted meaning, generally referring to only the first two types of discretion. Baroque music, especially, has a written or implied *ad libitum*, with most composers intimating the freedom the performer and conductor have.

Biology

Ad libitum is also used in psychology and biology to refer to the "free-feeding" weight of an animal, as opposed, for example, to the weight after a restricted diet. For example, "The rat's *ad libitum* weight was about 320 grams." In nutritional studies, this phrase denotes providing an animal free access to feed or water thereby allowing the animal to self-regulate intake according to its biological needs. For example, "Rats were given *ad libitum* access to food and water."

In biological field studies it can also mean that information or data were obtained spontaneously without a specific method.

Medical prescriptions may use the abbreviation *ad lib.* to indicate "freely" or that as much as one desires should be used.

Drama

In action, the quick-witted invention of dialogue to cover a performer's memory lapse would be described as an ad-lib. Or, a director might encourage performers to ad-lib in a particular show. The term *ad-lib* usually refers to the interpolation of unscripted material in an otherwise scripted performance. When the entire performance is predicated on spontaneous creation, the process is usually called improvisation, such as in the show *Whose Line Is It Anyway?*

Live performers such as television talk-show hosts (e.g., Jay Leno, David Letterman, etc.) sometimes enhance their reputation for wit by the delivery of material that sounds ad-libbed but is actually scripted, and may employ *ad-lib writers* to prepare such material. Some actors are also known for their ability or tendency to ad-lib, such as Peter Falk (of the series *Columbo*), who would ad-lib such mannerisms as absent-mindedness while in character.

It is a common misconception that "ad lib" stands for "adding liberally". Although it may hold the same meaning, the origin is not true.

See also

- List of Latin phrases
- Ad infinitum
- Ad nauseam

Anserinus

Anserinus may refer to:

- A biological word meaning 'goose-like'
- pes anserinus, anatomical term meaning "goose footed",

Ex vivo

Ex vivo (Latin: out of the living) means that which takes place outside an organism. In science, *ex vivo* refers to experimentation or measurements done in or on tissue in an artificial environment outside the organism with the minimum alteration of natural conditions. Ex vivo conditions allow experimentation under more controlled conditions than possible in the intact organism, at the expense of altering the "natural" environment.

A primary advantage of using *ex vivo* tissues is the ability to perform tests or measurements that would otherwise not be possible or ethical in living subjects. Tissues may be removed in many ways, including in part, as whole organs, or as larger organ systems.

Examples of *ex vivo* specimen use include:

- assays;
- measurements of physical, thermal, electrical, mechanical, optical and other tissue properties, especially in various environments that may not be life-sustaining (for example, at extreme pressures or temperatures);
- realistic models for surgical procedure development;
- investigations into the interaction of different energy types with tissues;
- or as phantoms in imaging technique development.

The term *ex vivo* is often differentiated from the term *in vitro* in that the tissue or cells need not be in culture; these two terms are not necessarily synonymous.

In cell biology, *ex vivo* procedures often involve living cells or tissues taken from an organism and cultured in a laboratory apparatus, usually under sterile conditions with no alterations for up to 24 hours. Experiments lasting longer than this using living cells or tissue are typically considered to be *in vitro*. One widely performed *ex vivo* study is the chick chorioallantoic membrane (CAM) assay. In this assay, angiogenesis is promoted on the CAM membrane of a chicken embryo outside the organism (chicken).

See also

- Animal testing
- *in situ*
- *in utero*
- *in vitro*
- *in vivo*
- *in silico*

Hibernaculum (zoology)

A potential hibernaculum

Hibernaculum *plural form: hibernacula* (Latin, "tent for winter quarters") is a word used in zoology to refer to a place of abode in which a creature seeks refuge, such as a bear using a cave to overwinter.[1] [2] Insects may hibernate to survive the winter. The word can be used to describe a variety of shelters made by various animals, for instance, bats and snakes. A related word used in English is hibernation, which is a form of dormancy that is a mechanism used by animals to escape the cold weather and food shortage of the winter. Hibernation can be predictive or consequential in form. The animal begins to prepare for hibernation by building up thick layer of body fat during late summer and autumn which will provide it with energy during the dormant period. The animal undergoes many physiological changes, including decreased heart rate (by as much as 95%) and decreased body temperature. Some examples of animals that hibernate include: bats, ground squirrels and other rodents, mouse lemurs, hedgehogs, and other insectivores (including frogs, some spiders, hornets, swallows, anteaters), marsupials (mammals that give birth to live young), and monotremes (mammals that lay eggs).

References

[1] http://www.wildaboutgardening.org/en/dig_dwell_den/section2/index.htm
[2] http://lllreptile.com/info/library/care-and-husbandry-articles/-/reptilian-brumation

In silico

In silico is an expression used to mean "performed on computer or via computer simulation." The phrase was coined in 1989 as an analogy to the Latin phrases *in vivo* and *in vitro* which are commonly used in biology (see also systems biology) and refer to experiments done in living organisms and outside of living organisms, respectively.

Drug discovery with virtual screening

In silico research in medicine is thought to have the potential to speed the rate of discovery while reducing the need for expensive lab work and clinical trials. One way to achieve this is by producing and screening drug candidates more effectively. In 2010, for example, using the protein docking algorithm EADock (see Protein-ligand docking), researchers found potential inhibitors to an enzyme associated with cancer activity *in silico*. Fifty percent of the molecules were later shown to be active inhibitors *in vitro*.[1] [2] This approach differs from use of expensive high-throughput screening (HTS) robotic labs to physically test thousands of diverse compounds a day often with an expected hit rate on the order of 1% or less with still fewer expected to be real leads following further testing (see drug discovery).

Cell models

Efforts have been made to establish computer models of cellular behavior. For example, in 2007 researchers developed an *in silico* model of tuberculosis to aid in drug discovery with a prime benefit cited as being faster than real time simulated growth rates allowing phenomena of interest to be observed in minutes rather than months.[3] More work can be found that focus on modeling a particular cellular process like, for example, the growth cycle of Caulobacter crescentus.[4]

These efforts fall far short of an exact, fully predictive, computer model of a cell's entire behavior. Limitations in the understanding of molecular dynamics and cell biology as well as the absence of available computer processing power force large simplifying assumptions that constrain the usefulness of present *in silico* models.

Other examples

In silico computer-based modeling technologies have also been applied in:

- Whole cell analysis of prokaryotic and eukaryotic hosts e.g. E. coli, B. subtilis, yeast, CHO- or human cell lines
- Bioprocess development and optimization e.g. optimization of product yields
- Analysis, interpretation and visualization of heterologous data sets from various sources e.g. genome, transcriptome or proteome data

History

The expression *in silico* was first used in public in 1989 in the workshop "Cellular Automata: Theory and Applications" in Los Alamos, New Mexico. Pedro Miramontes, a mathematician from National Autonomous University of Mexico (UNAM) presented the report "DNA and RNA Physicochemical Constraints, Cellular Automata and Molecular Evolution". In his talk, Miramontes used the term "*in silico*" to characterize biological experiments carried out entirely in a computer. The work was later presented by Miramontes as his PhD dissertation.[5]

In silico has been used in white papers written to support the creation of bacterial genome programs by the Commission of the European Community. The first referenced paper where "*in silico*" appears was written by a French team in 1991.[6] The first referenced book chapter where "*in silico*" appears was written by Hans B. Sieburg in 1990 and presented during a Summer School on Complex Systems at the Santa Fe Institute.[7]

The phrase "*in silico*" originally applied only to computer simulations that modeled natural or laboratory processes (in all the natural sciences), and did not refer to calculations done by computer generically.

In silico versus *in silicio*

"*In silico*" was briefly challenged by "*in silicio*," which is correct Latin for "in silicon" (the Latin term for silicon, *silicium*, was created at the beginning of the 19th century by Berzelius. Silex is also a correct latin word). But the phrase "in silice" means "in flint" in Latin. "*In silico*" was perceived as catchier, possibly through similarity to the words "vivo" and "vitro" "*In silico*" is now almost universal; it even occurs in a journal title (*In Silico* Biology: http://www.bioinfo.de/isb/).

In silico is reasonable from the viewpoint of (ancient) Greek case endings; the "-on" ending for certain elements is from Greek. In Greek, "*silicon*" would take the form "*silico*" in such a phrase. Latin typically uses the correct Greek forms for Greek words when they are used in Latin.

See also

- Virtual screening
- Computational biology
- Computational biomodeling
- Cellular model
- Nonclinical studies
- *In silico* molecular design programs
- List of Latin phrases
- *ex vivo*
- *in situ*
- *in utero*
- *in vitro*
- *in vivo*
- *in papyro*

External links

- World Wide Words: *In silico* [8]
- CADASTER [9] Seventh Framework Programme project aimed to develop in silico computational methods to minimize experimental tests for REACH Registration, Evaluation, Authorisation and Restriction of Chemicals
- Journal of In Silico Biology [10]

References

[1] Ludwig Institute for Cancer Research (2010) Rational Design of Indoleamine 2,3-Dioxygenase Inhibitors. Journal of Medicinal Chemistry, 2010, 53 (3), pp 1172–1189 DOI: 10.1021/jm9014718

[2] Ludwig Institute for Cancer Research (2010, February 4). New computational tool for cancer treatment. ScienceDaily. Retrieved February 12, 2010, from http://www.sciencedaily.com/releases/2010/01/100129151756.htm

[3] University Of Surrey (2007, June 25). In Silico Cell For TB Drug Discovery. ScienceDaily. Retrieved February 12, 2010, from http://www.sciencedaily.com/releases/2007/06/070624135714.htm

[4] Li S, Brazhnik P, Sobral B, Tyson JJ, 2009 Temporal Controls of the Asymmetric Cell Division Cycle in Caulobacter crescentus. PLoS Comput Biol 5(8): e1000463. doi:10.1371/journal.pcbi.1000463

[5] Miramontes P. Un modelo de autómata celular para la evolución de los ácidos nucleicos [A cellular automaton model for the evolution of nucleic acids]. Tesis de doctorado en matemáticas. UNAM. 1992.

[6] Danchin A, Medigue C, Gascuel O, Soldano H, Henaut A. From data banks to data bases. Res Microbiol. 1991 Sep-Oct;142(7-8):913-6. PMID 1784830.

[7] Sieburg, H.B. (1990). Physiological Studies *in silico*. Studies in the Sciences of Complexity 12, 321-342.

[8] http://www.worldwidewords.org/weirdwords/ww-ins1.htm
[9] http://www.cadaster.eu
[10] http://www.bioinfo.de/isb/

"In situ"

In situ (pronounced /ɪn ˈsaɪtjuː/) is a Latin phrase meaning *in the place*. It is used in many different contexts. It is rendered in italics because it is a Latin phrase.

Aerospace

In the aerospace industry, equipment on board aircraft must be tested *in situ*, or in place, to confirm everything functions properly as a system. Individually, each piece may work but interference from nearby equipment may create unanticipated problems. Special test equipment is available for this *in situ* testing.

Archaeology

In archaeology, *in situ* refers to an artifact that has not been moved from its original place of deposition. In other words, it is stationary, meaning "Still". An artifact being *in situ* is critical to the interpretation of that artifact and, consequently, to the culture which formed it. Once an artifact's 'find-site' has been recorded, the artifact can then be moved for conservation, further interpretation and display. An artifact that is not discovered *in situ* is considered out of context and will not provide an accurate picture of the associated culture. However, the out of context artifact can provide scientists with an example of types and locations of *in situ* artifacts yet to be discovered.

In situ only expresses that the object has not been "newly" moved. Thus, an archaeological in-situ-find may be an object that was historically looted from another place, an item of "booty" of a past war, a traded item, or otherwise of foreign origin. Consequently, the *in situ* find site may still not reveal its provenance but with further detective work may help uncover links that otherwise would remain unknown. It is also possible for archaeological layers to be reworked on purpose or by accident (by humans, natural forces or animals). For example, in a "tell-tell mound", where layers are not typically uniform or horizontal, or in land cleared or tilled for farming.

The term *In situ* is often used to describe ancient sculpture that was carved in place such as the Sphinx or Petra. This distinguishes it from statues that were carved and moved like the Colossi of Memnon which was moved in ancient times.

Architecture

In architecture and building, *in situ* refers to construction which is carried out at the building site using raw materials. Compare that with *prefabricated* construction, in which building components are made in a factory and then transported to the building site for assembly. For example, concrete slabs may be *in situ* or *prefabricated*.

In situ techniques are often more labour-intensive, and take longer, but the materials are cheaper, and the work is versatile and adaptable. *Prefabricated* techniques are usually much quicker, therefore saving money, but factory-made parts can be expensive. They are also inflexible, and must often be designed on a grid, with all details fully calculated in advance. Finished units may require special handling due to excessive dimensions.

Art

In art, *in situ* refers to a work of art made specifically for a host site, or that a work of art takes into account the site in which it is installed or exhibited. For a more detailed account see: Site-specific art.

- in situ/ live art creation [1]

Astronomy

A fraction of the globular star clusters in our Galaxy, as well as those in other massive galaxies, might have formed *in situ*. The rest might have been accreted from now defunct dwarf galaxies.

Biology

In biology, *in situ* means to examine the phenomenon exactly in place where it occurs (i.e. without moving it to some special medium).

In the case of observations or photographs of living animals, it means that the organism was observed (and photographed) in the wild, exactly as it was found and exactly where it was found. The organism had not been not moved to another (perhaps more convenient) location such as an aquarium.

This phrase *in situ* when used in laboratory science such as cell science can mean something intermediate between *in vivo* and *in vitro*. For example, examining a cell within a whole organ intact and under perfusion may be *in situ* investigation. This would not be *in vivo* as the donor is sacrificed before experimentation, but it would not be the same as working with the cell alone (a common scenario for *in vitro* experiments).

Live individual of the sea snail *Natica hebraea* photographed *in situ*

In vitro was among the first attempts to qualitatively and quantitatively analyze natural occurrences in the lab. Eventually, the limitation of *in vitro* experimentation was that they were not conducted in natural environments. To compensate for this problem, *in vivo* experimentation allowed testing to occur in the originate organism or environment. To bridge the dichotomy of benefits associated with both methodologies, *in situ* experimentation allowed the controlled aspects of *in vitro* to become coalesced with the natural environmental compositions of *in vivo* experimentation.

In conservation of genetic resources, "*in situ* conservation" (also "on-site conservation") is the process of protecting an endangered plant or animal species in its natural habitat, as opposed to *ex situ* conservation (also "off-site conservation").

Chemistry and chemical engineering

In chemistry, *in situ* typically means "in the reaction mixture."

There are numerous situations in which chemical intermediates are synthesized *in situ* in various processes. This may be done because the species is unstable, and cannot be isolated, or simply out of convenience. Examples of the former include the Corey-Chaykovsky reagent and adrenochrome.

In chemical engineering, *in situ* often refers to industrial plant "operations or procedures that are performed in place". For example, aged catalysts in industrial reactors may be regenerated in place (*in situ*) without being removed from the reactors.

Computer science

In computer science an *in situ* operation is one that occurs without interrupting the normal state of a system. For example, a file backup may be restored over a running system, without needing to take the system down to perform the restore. In the context of a database, a restore would allow the database system to continue to be available to users while a restore happened. An *in situ* upgrade would allow an operating system, firmware or application to be upgraded while the system was still running, perhaps without the need to reboot it, depending on the sophistication of the system.

An algorithm is said to be an *in situ* algorithm, or in-place algorithm, if the amount of memory required to execute the algorithm is O(1), that is, does not exceed a constant no matter how large the input. For example, heapsort is an *in situ* sorting algorithm.

In designing user interfaces, the term *in situ* means that a particular user action can be performed without going to another window, for example, if a word processor displays an image and allows you to edit the image without launching a separate image editor, this is called *in situ editing*.

Earth and atmospheric sciences

In physical geography and the Earth sciences, *in situ* typically describes natural material or processes prior to transport. For example, *in situ* is used in relation to the distinction between weathering and erosion, the difference being that erosion requires a transport medium (such as wind, ice, or water), whereas weathering occurs *in situ*. Geochemical processes are also often described as occurring to material *in situ*.

In the atmospheric sciences, *in situ* refers to obtained through direct contact with the respective subject, such as a radiosonde measuring a parcel of air or an anemometer measuring wind, as opposed to remote sensing such as weather radar or satellites.

Electrochemistry

In electrochemistry, the phrase in situ refers to performing electrochemical experiments under operating conditions of the electrochemical cell, i.e., under potential control. This is opposed to doing ex situ experiments that are performed under the absence of potential control. Potential control preserves the electrochemical environment essential to maintain the double layer structure intact and the electron transfer reactions occurring at that particular potential in the electrode/electrolyte interphasial region.

Environmental engineering

In situ can refer to where a clean up or remediation of a polluted site is performed using and simulating the natural processes in the soil, contrary to *ex situ* where contaminated soil is excavated and cleaned elsewhere, off site.

Gastronomy

In Gastronomy, "In Situ" or "In Situs" refers to the art of cooking with the different resources that are available on the site of the event. Here you are not going to the restaurant, but the restaurant comes to your home.

Law

In legal contexts, *in situ* is often used for its literal meaning. For example, in Hong Kong, "*in situ* land exchange" involves the government exchanging the original or expired lease of a piece of land with a new grant or re-grant with the same piece of land or a portion of that.

Linguistics

In linguistics, specifically syntax, an element may be said to be *in situ* if it is pronounced in the position where it is interpreted. For example, questions in languages such as Chinese have *in situ* wh-elements, with structures comparable to "John bought what?" while English wh-elements are not *in situ* (see wh-movement): "What did John buy?"

Literature

In literature *in situ* is used to describe a condition. The Rosetta Stone, for example, was originally erected in a courtyard, for public viewing. Most pictures of the famous stone are not *in situ* pictures of it erected, as it would have been originally. The stone was uncovered as part of building material, within a wall. Its **in situ** condition today is that it is erected, vertically, on public display at the British Museum in London, England.

Medicine

In oncology: for a carcinoma, *in situ* means that malignant cells are present as a tumor but has not metastasized, or invaded, beyond the original site where the tumor was discovered. This can happen anywhere in the body, such as the skin, breast tissue, or lung. This type of tumor can often, depending on where it is located, be removed by surgery.

In medicine in-situ means that cancer cells have not passed through the basal lamina. Basically it means the tumor has not invaded lamina propria or the deeper portions of the tissue. Because metastasis generally requires a carcinoma to 'break through' the basement membrane, chances for metastasis is very low.

Petroleum production

In situ refers to recovery techniques which apply heat or solvents to heavy oil or bitumen reservoirs beneath the earth. There are several varieties of *in situ* technique, but the ones which work best in the oil sands use heat.

RF transmission

In radio frequency (RF) transmission systems, *in situ* is often used to describe the location of various components while the system is in its standard transmission mode, rather than operation in a test mode. For example, if an *in situ* wattmeter is used in a commercial broadcast transmission system, the wattmeter can accurately measure power while the station is "on the air".

Space-related

Future space exploration or terraforming may rely on obtaining supplies *in situ*, such as previous plans to power the Orion space vehicle with fuel minable on the moon. The Mars Direct mission concept is based primarily on the *in situ* fuel production using Sabatier reaction.

In the space sciences, *in situ* refers to measurements of the particle and field environment that the satellite is embedded in, such as the detection of energetic particles in the solar wind, or magnetic field measurements from a magnetometer.

See also

- *carcinoma in situ*
- *ex vivo*
- *in silico*
- *in utero*
- *in vitro*
- *in vivo*
- In-situ conservation
- Ex-situ conservation
- List of Latin phrases
- List Of Colossal Sculpture In Situ

References

[1] http://houseoftola.com

In utero

In utero is a Latin term literally meaning "in the uterus". It is used in biology to describe the state of an embryo or fetus.

See also

- *ex vivo*
- *in silico*
- *in situ*
- *in vitro*
- *in vivo*

In vitro

A procedure performed ***in vitro*** (Latin: *within the glass*) is performed not in a living organism but in a controlled environment, such as in a test tube or Petri dish.[1] Many experiments in cellular biology are conducted outside of organisms or cells; because the test conditions may not correspond to the conditions inside of the organism, this may lead to results that do not correspond to the situation that arises in a living organism. Consequently, such experimental results are often annotated with *in vitro*, in contradistinction with *in vivo*.

In vitro research

This type of research aims at describing the effects of an experimental variable on a subset of an organism's constituent parts. It tends to focus on organs, tissues, cells, cellular components, proteins, and/or biomolecules. In vitro research is better suited than in vivo research for deducing biological mechanisms of action. With fewer variables and perceptually amplified reactions to subtle causes, results are generally more discernible.

The massive adoption of low-cost *in vitro* molecular biology techniques has caused a shift away from *in vivo* research which is more idiosyncratic and expensive in comparison to its molecular counterpart. Currently, *in vitro* research is vital and highly productive.

However, the controlled conditions present in the *in vitro* system differ significantly from those *in vivo*, and may give misleading results. Therefore, *in vitro* studies are usually followed by *in vivo* studies. Examples include:

- In biochemistry, non-physiological stoichiometric concentration may result in enzymatic active in a reverse direction, for example several enzymes in the Krebs cycle may appear to have incorrect nomenclature.
- DNA may adopt other configurations, such as A-DNA.
- Protein folding may differ as in a cell there is a high density of other protein and there are systems to aid in the folding, while in vitro, conditions are less clustered and not aided.

It should be pointed out that the term is historical, as currently most lab ware is disposable and made out of polypropylene (sterilizable by autoclaving, ex: microcentrifuge tubes) or clear polystyrene (ex: serological pipettes) rather than glass to ease labwork, ensure sterility, and minimize the possibility of cuts from broken glass.

See also

- Animal testing
- Ex vivo
- In situ
- In utero
- In vivo
- In silico
- In papyro
- In vitro fertilization
- In Vitro Cellular & Developmental Biology - Animal
- In Vitro Cellular & Developmental Biology - Plant

References

[1] Kail, Robert V.; John C. Cavanaugh (2006). *Human Development: A Life-span View* (4, illustrated ed.). Cengage Learning. pp. 58. ISBN 0495093041, 9780495093046.

In vivo

In vivo (Latin for "within the living") is experimentation using a whole, living organism as opposed to a partial or dead organism, or an *in vitro* controlled environment. Animal testing and clinical trials are two forms of *in vivo* research. *In vivo* testing is often employed over *in vitro* because it is better suited for observing the overall effects of an experiment on a living subject. This is often described by the maxim *in vivo veritas*.[1]

In vivo vs. *ex vivo* research

In molecular biology *in vivo* is often used to refer to experimentation done in live isolated cells rather than in a whole organism, for example, cultured cells derived from biopsies. In this situation, the more specific term is *ex vivo*. Once cells are disrupted and individual parts are tested or analyzed, this is known as *in vitro*.

Methods of use

According to Christopher Lipinski and Andrew Hopkins, "Whether the aim is to discover drugs or to gain knowledge of biological systems, the nature and properties of a chemical tool cannot be considered independently of the system it is to be tested in. Compounds that bind to isolated recombinant proteins are one thing; chemical tools that can perturb cell function another; and pharmacological agents that can be tolerated by a live organism and perturb its systems are yet another. If it were simple to ascertain the properties required to develop a lead discovered *in vitro* to one that is active *in vivo*, drug discovery would be as reliable as drug manufacturing."[2]

In the past, the guinea pig was such a commonly used *in vivo* experimental subject that they became part of idiomatic English: to be a guinea pig. However, they have largely been replaced by their smaller, cheaper, and faster-breeding cousins, rats and mice.

In vivo imaging provides a noninvasive method for imaging biological processes in live animals in order to understand metabolic processes, effects of drugs and disease progression. Near-infrared (NIR) fluorescent detection has proven useful for *in vivo* imaging in small animals. Low tissue autofluorescence at 800 nm makes it possible to use probes with NIR labels to image tumors and organs.[3] *In vivo* imaging is an important tool for any research that uses animal models to study diseases, such as Alzheimer's disease.[4]

See also

- animal testing
- ex vivo
- in situ
- in utero
- in vitro
- in silico
- in papyro
- in planta

gf:In vivo

References

[1] http://www.sciencemag.org/products/lst_20070622.dtl Life Science Technologies Cell Signaling: In Vivo Veritas--Science Magazine, 2007

[2] Lipinski C, Hopkins A (2004). "Navigating chemical space for biology and medicine". *Nature* **432** (7019): 855–61. doi:10.1038/nature03193. PMID 15602551.

[3] Houston K. et al. (2005). "Quality analysis of near-infrared fluorescence and conventional gamma images acquired using a dual labeled tumor targeting probe." *J. Biomed. Optics.*10:054010-1-11.

[4] Skoch J. and Bacskai, B.,"The LI-COR Odyssey as a near-infrared imaging platform for animal models of Alzheimer's disease. http://www.licor.com/bio/PDF/MassGen.pdf (25Jul2006).

"Incertae sedis"

Incertae sedis (Latin for "of uncertain placement"), abbreviated "inc. sed.", is a term used to define a taxonomic group where its broader relationships are unknown or undefined.[1]

Examples

The taxonomy for humans is usually recognized as follows:

- Kingdom Animalia - along with all other animals
  - Phylum Chordata - along with all other vertebrates and the invertebrate chordates
    - Class Mammalia - along with all other mammals
      - Order Primates - along with all other primates
        - Family Hominidae - along with all other great apes
          - Genus *Homo* - along with *Homo erectus* and other prehistoric humans
            - Species *H. sapiens* - humans

If modern humans were newly discovered or considered to be a taxonomic enigma, they might be given the rank of *incertae sedis*. For example, if it were uncertain how *Homo* related to other members of the family Hominidae, a list of the great apes would look like this:

- Kingdom Animalia
  - Phylum Chordata
    - Class Mammalia
      - Order Primates
        - Family Hominidae

- Genus *Homo incertae sedis*
- Subfamily Ponginae - orangutan
- Subfamily Homininae - gorilla and chimpanzees

Likewise, if humans were known to be primates, but no other relationships were clear, a taxonomy of the primates would look like this:

- Kingdom Animalia
  - Phylum Chordata
    - Class Mammalia
      - Order Primates
        - Genus *Homo incertae sedis*
        - Suborder Strepsirrhini - non-tarsier prosimians
        - Suborder Haplorrhini - tarsiers, monkeys and apes

Reasons a group might be considered *incertae sedis*

Poor description

This excerpt from a 2007 scientific paper about crustaceans of the Kuril-Kamchatka Trench and the Japan Trench describes typical circumstances through which this category is applied in discussing:

> ...the removal of many genera from new and existing families into a state of incertae cedis. Their reduced status was attributed largely to poor or inadequate descriptions but it was accepted that some of the vagueness in the analysis was due to insufficient character states. It is also evident that a proportion of the characters used in the analysis, or their given states for particular taxa, were inappropriate or invalid. Additional complexity, and factors that have misled earlier authorities, are intrusion by extensive homoplasies, apparent character, state reversals and convergent evolution.[2]

Elder Whitewash (Hyphodontia sambuci) on Sambucus nigraElder as an example of a little researched incertae sedis organism.

Not included in an analysis

If a formal phylogenetic analysis is conducted that does not include a certain taxon, the authors might choose to label the taxon *incertae sedis* instead of guessing as to its placement. This is particularly common when molecular phylogenies are generated since tissue for many rare organisms is hard to obtain. It is also a common scenario when fossil taxa are included since many fossils are defined based on partial information. For example, if the phylogeny was constructed using soft tissue and vertebrae as principal characters and the taxon in question is only known from a single tooth, it would be necessary to label it *incertae sedis*.

Controversy

If conflicting results exist or if there is not a consensus among researchers as to how a taxon relates to other organisms, it may be listed as *incertae sedis* until the conflict is resolved.

Basal taxa

There is a growing trend (see phylogenetic taxonomy) among taxonomists to place a basal taxon in the clade that contains its ancestors, but to refrain from giving it any more specific taxonomic ranks. For example, the ancestor to all primates would be placed in the Order Primates, but would not be placed in a family at all. Placing it in an individual family (such as Lemuridae) would suggest that it is more closely related to members of that family (lemurs) than to other primates when, in fact, it is equally related to all primates.

References

[1] (http://plants.usda.gov/faq.html) United States Department of Agriculture

[2] (http://www.mapress.com/zootaxa/2007f/zt01599p149.pdf) Family incertae cedis: Larsen, K. & Shimomura, M. (Eds.) (2007) Tanaidacea (Crustacea: Peracarida) from Japan III. The deep trenches; the Kurile-Kamchatka Trench and Japan Trench. Zootaxa, 1599, 1–149.

Sensu

Sensu is a Latin term meaning "in the sense of". It is used in a number of fields including biology, geology and law as part of the phrases ***sensu stricto*** or ***stricto sensu*** ("in the stricter sense") (abbr.: s.s.), [1] and ***sensu lato*** or ***lato sensu*** ("in the wider sense") (abbr.: s.l.).[2] .

In rare cases the superlatives ***sensu strictissimo*** ("in the strictest sense") and ***sensu latissimo*** ("in the widest sense") may be used. Another common usage is in conjunction with an author citation, indicating that the intended meaning is the one defined by that author.

In taxonomy

Sensu is used in taxonomy, in order to specify which circumscription of a given taxon is meant, where more than one circumscription has been defined.

Examples:

> The family Malvaceae *s.s.* is cladistically monophyletic.
>
> In the broader APG circumscription the family Malvaceae *s.l.* includes Malvaceae *s.s.* and also the families Bombacaceae, Sterculiaceae and Tiliaceae.
>
> "*Banksia* subgenus *Banksia sensu* A. S. George"

This specifies Alex George's circumscription of *B.* subg. *Banksia*.

References

[1] "*Sensu stricto*" (http://www.fishbase.org/Glossary/Glossary.php?q=sensu+stricto&language=english&sc=is). FishBase. .

[2] W. Greuter, J. McNeill, F. R. Barrie *et al.*. *Regnum Vegetabile Volume 138* (http://www.bgbm.fu-berlin.de/iapt/nomenclature/code/SaintLouis/0051Ch4Sec3a047.htm). International Code of Botanical Nomenclature (St Louis Code). Koeltz Scientific Books, Königstein. ISBN 3-904144-22-7. .

List of legal Latin terms

A number of Latin terms are used in legal terminology and legal maxims. This is a partial list of these "legal Latin" terms, which are wholly or substantially drawn from Latin.

A

a fortiori – *a posteriori* – *a priori* – *a priori assumption* – *ab extra* – *Ab initio* – *actus reus* – *ad coelum* – *ad colligenda bona* – *ad hoc* – *ad hominem* – *ad idem* – *ad infinitum* – *ad litem* – *ad quod damnum* – *ad valorem* – *adjournment sine die* – *affidavit* – *agency* – *alter ego* – *a mensa et thoro* – *amicus curiae* – *animus nocendi* – *ante* – *arguendo*

B

bona fide/bona fides – *bona vacantia*

C

cadit quaestio – *capital* – *casus belli* – *caveat* – *caveat emptor* – *certiorari* – *ceteris paribus* – *cogitationis poenam nemo patitur* – *compos mentis* – *conditio sine qua non* – *consensus facit legem* – *consuetudo pro lege servatur* – *contra* – *contra bonos mores* – *contra legem* – *Contradictio in adjecto* – *contra proferentem* – *coram non judice* – *corpus* – *corpus delicti* – *corpus juris* – *corpus juris civilis* – *corpus juris gentium* – *corpus juris secundum* – *crimen falsi* – *cui bono* – *cuius est solum eius est usque ad coelum et ad inferos* – *crimen injuria* – *cuius regio, eius religio* – *curia advisari vult* – *custos morum*

D

de bonis asportatis – *debellatio* – *de bonis non administratis* – *de die in diem* – *de facto* – *de futuro* – *de integro* – *de jure* – *de lege ferenda* – *de lege lata* – *delegatus non potest delegare* – *de minimis* – *de minimis non curat lex* – *de mortuis nil nisi bonum* – *de novo* – *defalcation* – *dicta* – *dictum* – *doli incapax* – *dolus specialis* – *dubia in meliora partem interpretari debent* – *duces tecum*

E

ei incumbit probatio qui dicit – *ejusdem generis* – *eo nomine* – *erga omnes* – *ergo* – *erratum* – *esse* – *et al.* – *et cetera* – *et seq* – *et uxor* – *et vir* – *ex aequo et bono* – *ex ante* – *ex cathedra* – *ex concessis* – *ex delicto* – *ex facie* – *ex gratia* – *ex injuria jus non oritur* – ex officio – ex parte – ex post – ex post facto – ex post facto law – expressio unis est exclusio alterius – ex proprio motu – ex rel – ex turpi causa non oritur actio – exempli gratia – *ex tunc* – *ex nunc* – *extant*

F

facio ut facias – favor contractus – felo de se – ferae naturae – fiat – Fiat justitia et pereat mundus – fiat justitia ruat caelum – fiduciary – fieri facias – flagrante delicto – forum conveniens – forum non conveniens – functus officio

G

gravamen – guardian ad litem

H

habeas corpus – hostis humani generis

I

i.e. – ibid – id est – idem – ignorantia juris non excusat – imprimatur – in absentia – in camera – in curia – in esse – in extenso – in extremis – in flagrante delicto – in forma pauperis – in futuro – in haec verba – in limine – in loco parentis – in mitius – in omnibus – in pari delicto – in pari materia – in personam – in pleno – in prope persona – in propria persona – in re – in rem – in situ – in solidum – in terrorem – in terrorem clause – in toto – indicia – infra – innuendo – inter alia – inter arma enim silent leges – inter rusticos – inter se – inter vivos – intra – intra fauces terra – intra legem – intra vires – ipse dixit – ipsissima verba – ipso facto

J

jura novit curia – jurat – juris et de jure – jus – jus ad bellum – jus civile – jus cogens – jus commune – jus gentium – jus in bello – jus inter gentes – jus naturale – jus primae noctis – jus sanguines – jus sanguinis – jus soli – jus tertii

L

lacunae – leges humanae nascuntur, vivunt, moriuntur – legitime – lex communis – lex lata – lex posterior derogat priori – lex retro non agit – lex scripta – lex specialis derogat legi generali – liberum veto – lingua franca – lis alibi pendens – lis pendens – locus – locus delicti – locus in quo – locus poenitentiae

M

magna carta – male fide – malum in se – malum prohibitum – mandamus – mare clausum – mare liberum – mens rea – modus operandi – mos pro lege – motion in limine – mutatis mutandis

N

ne exeat – ne bis in idem – nemo dat quod non habet – nemo debet esse iudex in propria – nemo judex in sua causa – nemo plus iuris ad alium transferre potest quam ipse habet – nemo sibi titulum adscribit – nexus – nihil – nihil dicit – nil – nisi – nisi prius – nolle prosequi – nolo contendere – non adimpleti contractus – non bis in idem – non compos mentis – non constat – non est factum – non faciat malum, ut inde veniat bonum – non liquet – non obstante verdicto – non sequitur – nota bene – nudum pactum - nulla bona – nulla poena sine lege – nullum crimen, nulla poena sine praevia lege poenali – nunc pro tunc

O

obiter dicta is plural; see the singular *obiter dictum* – *onus probandi* – *opinio juris sive necessitatis*

P

pacta sunt servanda – *par delictum* – *parens patriae* – *pater familias* – *pendente lite* – *per* – *per capita* – *per contra* – *per curiam* – *per diem* – *per minas* – *per pro* – *per quod* – *per se* – *per stirpes* – *persona non grata* – *posse comitatus* – *post mortem* – *post mortem auctoris* – *praetor peregrinus* – *prima facie* – *primogeniture* – *prius quam exaudias ne iudices* – *probatio vincit praesumptionem* – *pro bono* – *pro bono publico* – *pro forma* – *pro hac vice* – *pro per* – *pro rata* – *pro se* – *pro tanto* – *pro tem* – *pro tempore* – *propria persona* – *prout patet per recordum*

Q

quaeitur – *quaere* – *quantum* – *quantum meruit* – *quasi* – "qui facit per alium facit per se" – *qui tam action* – *quid pro quo* – *quid pro quo sexual harassment* – *quo ante* – *quo warranto* – *quoad hoc*

R

ratio decidendi – *ratio scripta* – *rebus sic stantibus* – *res* – *res gestae* – *res ipsa loquitur* – *res judicata* – *res nullius* – *res publica* – *res publica christiana* – *respondeat superior* – *restitutio in integrum*

S

salus populi est suprema lex – *scandalum magnatum* – *scandalum magnum* – *scienter* – *scintilla* – *scire facias* – *scire feci* – *se defendendo* – *seriatim* – *sine die* – *sine qua non* – *situs* – *stare decisis* – *sua sponte* – *sub judice* – *sub modo* – *sub nomine* – *sub silentio* – *subpoena* – *subpoena ad testificandum* – *subpoena duces tecum* – *suggestio falsi* – *sui generis* – *sui iuris* – *sui juris* – *suo moto* – *supersedeas* – *suppressio veri* – *supra*

T

terra nullius – *trial de novo* – *trinoda necessitas* – *tabula rasa*

U

uberrima fides – *ultra posse nemo obligatur* – *ultra vires* – *uno flatu* – *uti possidetis* – *uxor*

V

vel non – *veto* – *vice versa* – *vide* – *videlicet* – *vinculum juris* – *vis major* – *viz.* – *volenti non fit injuria* – *vigilantibus non dormientibus aequitas subvenit*

External links

- Legal Latin phrases, maxims and writs [1]

References

[1] http://www.inrebus.com/legalmaxims_a.php

Ab extra

Ab extra is a legal Latin term, approximately translating to "from without" or "from outside."

Concerning a case, a person may have received some funding from a 3rd party. This funding may have been considered **Ab extra**.

ab initio

ab initio (pronounced /ˌæbɨˈnɪʃi.oʊ/ *AB-i-NISH-ee-oh*)[1] is a Latin term meaning "from the beginning" and is derived from the Latin *ab* ("from") + *initio*, ablative singular of *initium* ("beginning").

Etymology

c.1600, from L., lit. "from the beginning", from ablative case of *initium* "entrance, beginning", related to verb *inire* "to go into, enter upon, begin".[2]

Uses

Ab initio is used in several contexts:

- when describing literature: told from the beginning as opposed to *in medias res* (meaning starting in the middle of the story)
- when describing a subject or a module, say when a person is learning French from the beginning, he is said to be a student of French Ab initio
- as a legal term: refers to something being the case from the start or from the instant of the act, rather than from when the court declared it so. A judicial declaration of the invalidity of a marriage *ab initio* is a nullity.
- in science: A calculation is said to be *ab initio* (or "from first principles") if it relies on basic and established laws of nature without additional assumptions or special models. For example, an *ab initio* calculation of the properties of liquid water might start with the properties of the constituent hydrogen and oxygen atoms and the laws of electrodynamics. From these basics, the properties of isolated individual water molecules would be derived, followed by computations of the interactions of larger and larger groups of water molecules, until the bulk properties of water had been determined.
- in chemistry: an abbreviation referring to *ab initio* quantum chemistry methods.
- in biophysics: a method for the prediction of protein structures in protein folding
- in aviation: The very first stage of flight training.
- as part of some educational qualifications: foreign languages may be taken *ab initio* (for beginners, of a language) during the two year IB period. This as compared to level B which assumes some level of proficiency.
- in computing: *ab initio* is an extract, transform, load tool used to manipulate data.
- in bioinformatics: *ab initio* is a term used to define methods for making predictions about biological features using only a computational model without extrinsic comparison to existing data. In this context, it may be sometimes interchangeable with the Latin term *de novo*.

Ab initio (law)

In law, void means of no legal effect. An action, document or transaction which is void is of no legal effect whatsoever: an absolute nullity - the law treats it as if it had never existed or happened.

The term "void *ab initio*", which means "to be treated as invalid from the outset", comes from adding the Latin phrase "*ab initio*" as a qualifier. For example, in many jurisdictions where a person signs a contract under duress, that contract is treated as being "void *ab initio*".

A proposition in law that a court's jurisdiction, a certain document which purports to affect legal rights, or an act which purports to affect legal rights, is or was null and void from the start, from its beginning, because of some vitiating element.

Typically, documents or acts which are void *ab initio* cannot be fixed and where a jurisdiction, a document or an act is so declared at law to be void *ab initio*, the parties are returned to their respective positions at the beginning of the event.

"Void *ab initio*" is often contrasted with "voidable", such documents which become void only as of the date of the judicial declaration to this effect and not, as with void *ab initio*, as if they never existed.

An insurer facing a claim from an insured who had deceived the insurer on a material fact, would claim that the insurance contract was void *ab initio*; that it was null and void from the beginning and that since there was no legally enforceable contract, the insurer ought not to have to pay.[3]

See also

- List of legal Latin terms
- Void (law)

External links

- Definition at Dictionary.com [4]

References

[1] Merriam-Webster's Collegiate Dictionary

[2] "Etymology for ab initio" (http://www.etymonline.com/index.php?term=ab+initio). "etymonline.com". . Retrieved 07 February 2010.

[3] "Legal definition at Duhaime.org" (http://duhaime.org/legaldictionary/a/abinitio.aspx). "duhaime.org". . Retrieved 07 February 2010.

[4] http://dictionary.reference.com/cite.html?qh=ab+initio&ia=mwlaw

Abjuration

Abjuration is the solemn repudiation, abandonment, or renunciation by or upon oath, often the renunciation of citizenship or some other right or privilege. It comes from the Latin *abjurare*, "to forswear").

Abjuration of the realm

Abjuration of the realm was a type of abjuration in ancient English law. The person taking the oath swore to leave the county directly and promptly never to return to the kingdom unless by permission of the sovereign. This was often taken by fugitives who had taken sanctuary:

> I swear on the Holy Book that I will leave the realm of England and never return without the express permission of my Lord the King or his heirs. I will hasten by the direct road to the port allotted to me and not leave the King's highway under pain of arrest or execution. I will not stay at one place more than one night and will seek diligently for a passage across the sea as soon as I arrive, delaying only one tide if possible. If I cannot secure such passage, I will walk into the sea up to my knees every day as a token of my desire to cross. And if I fail in all this, then peril shall be my lot.

English Commonwealth

Near the start of the English Civil War, on 18 August 1643 Parliament passed an "An Ordinance for Explanation of a former Ordinance for Sequestration of Delinquents Estates with some Enlargements." The enlargements included an oath which became known as the "Oath of Abjuration":

> I ..; Do abjure and renounce the Popes Supremacy and Authority over the Catholick Church in General, and over my self in Particular; And I do believe that there is not any Transubstantiation in the Sacrament of the Lords Supper, or in the Elements of Bread and Wine after Consecration thereof, by any Person whatsoever; And I do also believe, that there is not any Purgatory, Or that the consecrated Hoast, Crucifixes, or Images, ought to be worshipped, or that any worship is due unto any of them; And I also believe that Salvation cannot be Merited by Works, and all Doctrines in affirmation of the said Points; I do abjure and renounce, without any Equivocation, Mental Reservation, or secret Evasion whatsoever, taking the words by me spoken, according to the common and usual meaning of them. So help me God.
>
> __ [1]

In 1656, it was reissued in what was for Catholics an even more objectionable form. Everyone was to be "adjudged a Papist" who refused this oath, and the consequent penalties began with the confiscation of two thirds of the recusant's goods, and went on to deprive him of almost every civic right.[2]

The Catholic Encyclopaedia make the point that the oath and the penalties were so sever that it stopped the efforts of the gallicanizing party among the English Catholics, who had been ready to offer forms of submission similar to the old oath of Allegiance, which was condemned anew about this time by Pope Innocent X.[2] [3]

Great Britain

In England, an oath of abjuration was taken by members of Parliament, clergy, and laymen, pledging to support the current British monarch and repudiated the right of the Stuarts and other claimants to the throne. This oath was imposed under William III, George I and George III. It was superseded by the oath of allegiance.

Another famous abjuration was brought about by the Plakkaat van Verlatinghe of July 26, 1581, the formal declaration of independence of the Low Countries from the Spanish king, Philip II. This oath was the climax of the Eighty Years' War (Dutch Revolt).

References

- Black, Henry Campbell, and Bryan A. Garner (editors). *Black's Law Dictionary* (7th edition). West: 1999. ISBN 0-314-22864-0.
- Knight, Bernard. "Crowner Part 4: The Right of Sanctuary."[4]
- Meehan, Andrew B. "Abjuration." *The Catholic Encyclopedia*. 1907. [5]

References

[1] C.H. Firth, R.S. Rait (editors (1911)). *Acts and Ordinances of the Interregnum, 1642-1660*, "August 1643: An Ordinance for Explanation of a former Ordinance for Sequestration of Delinquents Estates with some Enlargements", pp. 254-260 (http://www.british-history.ac.uk/report.aspx?compid=55851). Date accessed: 16 March 2010

[2] One or more of the preceding sentences incorporates text from: | (1913). "Abjuration" (http://en.wikipedia.org/wiki/Wikisource:catholic_encyclopedia_(1913)/abjuration). *Catholic Encyclopedia*. New York: Robert Appleton Company. ., a publication in the public domain.

[3] | (1913). "Abjuration" (http://en.wikipedia.org/wiki/Wikisource:catholic_encyclopedia_(1913)/abjuration). *Catholic Encyclopedia*. New York: Robert Appleton Company. . Cites Reusch, *Index der verboten Bücher* (Bonn, 1883)

[4] http://www.britannia.com/history/articles/coroner4.html

[5] http://www.newadvent.org/cathen/01044d.htm

Accessio

Accessio is a concept from Ancient Roman property law that decided ownership of an object or work that is somehow related to another object or work; one thing is considered the principal, and the other is considered to be an accession or addition to it. In general the owner of the principal thing, whichever it is, became the owner of the accession also. Accessio was not a specific rule, instead it was a principle with a number of special cases that had their own particular guidelines for determination of ownership.

The most undisputed kind of accessio is that which arises from the union of a thing with the ground; and when the union between the ground and the thing is complete, the thing belongs to him who is the owner of the ground. Thus if a man builds on the ground of another man, the building belongs to the owner of the ground, unless it is a building of a moveable nature, as a tent; for the rule of law is "*superficies solo cedit*." A tree belonging to one man, if planted in the ground of another man, belongs to the owner of the ground as soon as it has taken root. The same rule applies to seeds and plants.

If one man wrote on the papyrus (*chartulae*) or parchment (*membranae*) of another, the material was considered the principal, and of course the writing belonged to the owner of the paper or parchment. If a man painted a picture on another man's wood (*tabula*) or whatever the materials might be, the painting was considered to be the principal (*tabula picturae cedit*). The principle which determined the acquisition of a new property by accessio was this — the intimate and inseparable union of the accessory with the principal. Accordingly, there might be accessio by pure accident without the intervention of any rational agent. If a piece of land was torn away by a stream from one man's land and attached to the land of another, it became the property of the man to whose land it was attached after it was firmly attached to it, but not before. This should not be confused with the case of alluvio.

The person who lost his property by accessio had as a general rule a right to be indemnified for his loss by the person who acquired the new property. The exceptions were cases of *mala fides*.

The term *accessio* is also applied to things which are the products of other things, and not added to them externally as in the case just mentioned. Every accessio of this kind belongs to the owner of the principal thing; the produce of a beast, the produce of a field, and of a tree belongs to the owner. In some cases a man may have a right to the produce (*fructus*) of a thing, though the thing belongs to another. (ususfructus)

The term *accessiones* was also applied to those who were sureties or bound for others, as *fidejussores*. (confusio)

See also

- accession

References

- *This article incorporates text from the public domain* Dictionary of Greek and Roman Antiquities *by William Smith (1870).*

Actio personalis moritur cum persona

Actio personalis moritur cum persona is a Latin expression meaning *a personal action dies with the person*.

Effect of the maxim

Some legal causes of action can survive the death of the claimant or plaintiff, for example actions founded in contract law. However, some actions are personal to the plaintiff, defamation of character being one notable example. Therefore, such an action, where it relates to the private character of the plaintiff, comes to an end on his death, whereas an action for the publication of a false and malicious statement which causes damage to the plaintiff's personal estate will survive to the benefit of his or her personal representatives.

The principle also exists to protect the estate and executors from liability for strictly personal acts of the deceased, such as charges for fraud.

Origins of the maxim

It has been argued by academics[1] and acknowledged by the Courts[2] that notwithstanding the Latinate form in which the proposition is expressed its origins are less antiquated. It has been described by one Lord Chancellor (Viscount Simon) as:

> ...not in fact the source from which a body of law has been deduced, but a confusing expression, framed in the solemnity of the Latin tongue, in which the effect of death upon certain personal torts was inaccurately generalised.[2]

Early judicial discussions of the term can be found in *Pinchon's case*[3] and *Hambly v. Trott.*[4]

See also

- List of Latin phrases

References

[1] Goudy *Two Ancient Brocards* in *Essays in Legal History* Vinogradoff (ed.) and Winfield *Textbook of the Law of Tort* 2nd edn. p.201
[2] cf. the remarks of Viscount Simon in *Stewart v. London, Midland and Scottish Railway Co. 1943 SC (HL) 19 at 26*
[3] (1611) 9 Rep. 86
[4] (1776) 1 Cowper 371

Actus reus

Actus reus, sometimes called the external element or the objective element of a crime, is the Latin term for the "guilty act" which, when proved beyond a reasonable doubt in combination with the *mens rea*, "guilty mind", produces criminal liability in the common law-based criminal law jurisdictions of Canada, Australia, India, Pakistan, New Zealand, England, Ireland and the United States. In the United States, some crimes also require proof of an attendant circumstance.

Concepts

The terms *actus reus* and *mens rea* developed in English Law, are derived from the principle stated by Edward Coke, namely, *actus non facit reum nisi mens sit rea*,[1] which means: "an act does not make a person guilty unless (their) mind is also guilty"; hence, the general test of guilt is one that requires proof of fault, culpability or blameworthiness both in behaviour and mind.

Act

In order for an *actus reus* to be committed there has to have been an act. Various common law jurisdictions define act differently but generally, an act is a "bodily movement whether voluntary or involuntary."[2] In *Robinson v. California*, 370 U.S. 660 [3] (1962), the U.S. Supreme Court ruled that a California law making it illegal to be a drug addict was unconstitutional because the mere status of being a drug addict was not an *act* and thus not criminal.

An act can consist of commission, omission or possession.

Omission

See main article omission (criminal)

Omission involves a failure to engage in a necessary *bodily movement* resulting in injury. As with commission acts, omission acts can be reasoned causally using the *but for* approach. *But for* not having acted, the injury would not have occurred. The Model Penal Code specifically outlines specifications for criminal omissions:[4]

1. the omission is expressly made sufficient by the law defining the offense; or
2. a duty to perform the omitted act is otherwise imposed by law.

So if legislation specifically criminalizes an omission through statute; or a duty that would normally be expected was omitted and caused injury, an *actus reus* has occurred.

Possession

Possession holds a special place in that it has been criminalized but under common law does not constitute an act. Some countries like the United States have avoided the common law conclusion in *Regina v. Dugdale*[5] by legally defining possession as a *voluntary* act. As a voluntary act, it fulfils the requirements to establish *actus reus*.[6] [7]

Voluntariness

In this respect, the role of automatism is highly relevant in providing a positive explanation of the need to demonstrate the voluntariness of the behaviour for it to be found to be a liability. This is supported by the English case Hill v Baxter, which held that the act must be voluntary for the defendant to be guilty. Voluntariness is one of the key points in establishing if an *actus reus* has been committed. A person suffering from a seizure who stabs somebody trying to help them has not committed an *actus reus* because it was an involuntary act. Definitions of a voluntary or involuntary act have varied over time but legal scholars have over time developed tests. Oliver Wendell Holmes, in his 1881 book The Common Law explained that "A spasm is not an act. The contraction of the muscles must be willed." Indeed, the Model Penal Code, which is utilized by many U.S. states in constructing their penal

codes, specifically describes what are considered involuntary acts and thus not criminal:

1. a reflex or convulsion;
2. a bodily movement during unconsciousness or sleep;
3. conduct during hypnosis or resulting from hypnotic suggestion;
4. a bodily movement that otherwise is not a product of the effort or the determination of the actor, either conscious or habitual.

Voluntariness does not exclude omission because it is implicit in omission that the actor voluntarily chose to not perform a *bodily movement* and thus caused an injury. The purposeful, reckless, or negligent absence of an action is considered a voluntary action and completes the voluntary requirement for *actus reus*.[8] [9]

See also

- Common Law
- Mens rea

References

Sources

- Coke, Edward (1797). *Institutes, Part III*.
- Dubber, Markus D. (2002). *Criminal Law: Model Penal Code*. Foundation Press. ISBN 1587781786.

External links

- Stanford Encyclopedia of Philosophy entry on Theories of Criminal Law [10]

References

[1] Coke, chapter 1, folio 10
[2] Model Penal Code § 1.13(2)
[3] http://supreme.justia.com/us/370/660/case.html
[4] Model Penal Code § 2.01(3)
[5] *Regina v. Dugdale*, 1 El. & Bl. 435, 439 (1853) (ruled that the mere possession of indecent images with the intent to publish them was not a crime as possession did not constitute an act)
[6] N.Y. Penal Law § 15.00(2)
[7] Model Penal Code § 2.01(4)
[8] Commonwealth v. Pestinkas, 421 Pa. Super. 371 (1992)
[9] *People v. Steinberg*, 79 N.Y.2d 673 (1992)
[10] http://plato.stanford.edu/entries/criminal-law/

Ad colligenda bona

Ad colligenda bona is a Latin phrase that approximately translates into "to collect the goods". In cases involving something *quid pro quo*, a prosecutor may be eligible for certain goods. Or, if specific items i.e. estate are unclaimable, the state would collect their goods.

Legal usage

In English law, a grant *ad colligenda bona* is sometimes applied for by parties interested in the administration of a deceased person's estate. The grant is useful where it has not been possible to grant probate in solemn form; for example, because there is a dispute over the validity of the will. Unlike an ordinary executor or administrator, someone with a grant *ad colligenda* cannot make any distribution of the estate's assets. His role is to protect the assets of the estate while the dispute surrounding the will is resolved.

Ad quod damnum

Ad quod damnum or **ad damnum** is a Latin phrase meaning "According to the harm" or "appropriate to the harm." It is used in tort law as a measure of damage inflicted, and implying a remedy, if one exists, ought to correspond specifically and only to the damage suffered. It is also used in pleading, as the statement of the plaintiff's money loss or damages claimed. See Federal Rules of Civil Procedure 8(a)(3).

In nearly all U.S. states, it is illegal to demand a specific amount of money in the ad damnum section of a complaint initiating a civil action for personal injury or wrongful death. This is to prevent unethical attorneys from gaining undue publicity for their cases (and prejudicing the due process rights of defendants) by demanding outrageous amounts that they cannot possibly prove at trial. This is why such complaints simply demand "pecuniary loss" or "monetary damages in an amount according to proof."

Theoretically, the other alternative would be to prevent journalists from reporting on legal complaints that they do not understand (e.g. by requiring them to undergo basic legal training), but such a licensing requirement would violate the freedom of speech clause in the First Amendment to the United States Constitution.

Compare damnum absque injuria.

Ad idem

Meeting of the minds (also referred to as **mutual agreement**, **mutual assent** or **consensus ad idem**) is a phrase in contract law used to describe the intentions of the parties forming the contract. In particular it refers to the situation where there is a common understanding in the formation of the contract. This condition or element is often considered a necessary requirement to the formation of a contract.

Concept in academic work

German jurist, Friedrich Carl von Savigny is usually credited with developing the will theory of contract in his work *System des heutigen Römischen Rechts* (1840).[1]

Sir Frederick Pollock is one person known for expounding the idea of a contract based on a meeting of minds, at which time it gained much support in the courts.

Oliver Wendell Holmes wrote in 1897 that a meeting of minds was really a fiction.

> "In the law of contract the use of moral phraseology led to equal confusion, as I have shown in part already, but only in part. Morals deal with the actual internal state of the individual's mind, what he actually intends. From the time of the Romans down to now, this mode of dealing has affected the language of the law as to contract, and the language used has reacted upon the thought. We talk about a contract as a meeting of the minds of the parties, and thence it is inferred in various cases that there is no contract because their minds have not met; that is, because they have intended different things or because one party has not known of the assent of the other. Yet nothing is more certain than that parties may be bound by a contract to things which neither of them intended, and when one does not know of the other's assent. Suppose a contract is executed in due form and in writing to deliver a lecture, mentioning no time. One of the parties thinks that the promise will be construed to mean at once, within a week. The other thinks that it means when he is ready. The court says that it means within a reasonable time. The parties are bound by the contract as it is interpreted by the court, yet neither of them meant what the court declares that they have said. In my opinion no one will understand the true theory of contract or be able even to discuss some fundamental questions intelligently until he has understood that all contracts are formal, that the making of a contract depends not on the agreement of two minds in one intention, but on the agreement of two sets of external signs — not on the parties' having meant the same thing but on their having said the same thing."[2]

The English contracts scholar Richard Austen-Baker has suggested that the perpetuation of the concept into current times is based on a confusion of it with the concept of a *consensus ad idem* ("agreement to the [same] thing") which is an undoubted requirement of synallagmatic contracting, and that this confusion may be the result of recent ignorance of Latin.[3]

Use in case law

In *Household Fire and Carriage Accident Insurance Co Ltd v Grant* (1879) 4 Ex D 216, Thesiger LJ said, in the course of a judgment on the postal rule,

> "Now, whatever in abstract discussion may be said as to the legal notion of its being necessary, in order to the effecting of a valid and binding contract, that the minds of the parties should be brought together at one and the same moment, that notion is practically the foundation of English law upon the subject of the formation of contracts. Unless therefore a contract constituted by correspondence is absolutely concluded at the moment that the continuing offer is accepted by the person to whom the offer is addressed, it is difficult to see how the two minds are ever to be brought together at one and the same moment...[4] But on the other hand it is a principle of law, as well established as the legal notion to

> which I have referred, that the minds of the two parties must be brought together by mutual communication. An acceptance, which only remains in the breast of the acceptor without being actually and by legal implication communicated to the offerer, is no binding acceptance.

In *Carlill v Carbolic Smoke Ball Company* [1893] 1 QB 256, Bowen LJ said,

> "One cannot doubt that, as an ordinary rule of law, an acceptance of an offer made ought to be notified to the person who makes the offer, in order that the two minds may come together. Unless this is done the two minds may be apart, and there is not that consensus which is necessary according to the English law - I say nothing about the laws of other countries - to make a contract."

In *Baltimore & Ohio R. Co. v. United States*[5] the US Supreme Court said an implied in fact contract is,

> "an agreement ... founded upon a meeting of minds, which, although not embodied in an express contract, is inferred, as a fact, from conduct of the parties showing, in the light of the surrounding circumstances, their tacit understanding."

The reasoning is that a party should not be held to a contract that they were not even aware existed. A mutual promise between friends over simple personal matters should not be a situation where legal remedies are to be used. Equally, any such agreement where the obligation is primarily a moral one rather than a legal one should not be enforceable. It is only when all parties involved are aware of the formation of a *legal obligation* is there a meeting of the minds.

Under the **formalist theory of contract**, every contract must have six elements: offer, acceptance, consideration, *meeting of the minds*, capacity and legality. Many other contracts, but not all types of contracts, also must be in writing and be signed by the responsible party, in an element called **form**.

Destruction of mutual assent

Mutual assent or *meeting of the minds* is destroyed by such actions as fraud, undue influence, duress (see per minas), mutual mistake, or misrepresentation.

See also

- Contract
- Offer and acceptance
- Agreement in English law

References

- Sir F. Pollock, *The Principles of Contract* (1876)

References

[1] Savigny, System des heutigen Römischen Rechts (http://dlib-pr.mpier.mpg.de/m/kleioc/0010/exec/books/"199236") (1840) online, in German

[2] Oliver Wendell Holmes Jr., 'The Path of the Law' (http://www.constitution.org/lrev/owh/path_law.htm) (1897) 10 *Harvard Law Review* 457

[3] R. Austen-Baker, 'Gilmore and the Strange Case of the Failure of Contract to Die After All' (2002) 18 *Journal of Contract Law* 1.

[4] Thesiger LJ then refers to *Adams v. Lindsell* as supporting this proposition.

[5] 261 U.S. 592, 597, 58 Ct.Cl. 709, 43 S.Ct. 425, 67 L.Ed. 816 (1923).

Ad litem

Ad litem is a term used in law to refer to a party appointed by a court to act in a lawsuit on behalf of another party—for instance, a child or an incapacitated adult—who is deemed incapable of representing him or herself. An individual who acts in this capacity is generally called a *guardian ad litem*; in Scotland the equivalent is a *curator ad litem*. This term is no longer used in England and Wales since the amendment of the Children Act 1989, which established the role of children's guardian instead.

The term is also used in property litigation, where a person may be appointed to act on behalf of an estate in court proceedings, when the estate's proper representatives are unable or unwilling to act.

The term is also sometimes used to refer to a judge who participates in only a particular case or a limited set of cases and does not have the same status as the other judges of the court. This is more commonly called a judge ad hoc. It is particularly common in international courts, and is rarer elsewhere.

The Latin term translates literally as "for the lawsuit" or "for the proceeding".

Ad vitam aut culpam

Ad vitam aut culpam is a Latin phrase found in Scots law which meaning "for life or until fault" [1] which guarantees the right of a Sheriff Depute (judge) to hold office permanently or until they forfeit such by misconduct. The Heritable Jurisdictions (Scotland) Act 1746 used the phrase to guarantee a Sheriff's term office after they have held office for seven years.[2]

The applicability of this law was decided upon by the House of Lords in the case *Stewart v. Secretary of State For Scotland* where it was stated this it did not protect a Sheriff from dismissal for *inability*. Further Acts of Parliament empowered the Lord President of the Court of Session and the Lord Justice Clerk to remove Sheriffs from office due to a personal inability to complete their function - differentiated from a mental incapacity or incapacity due to age. Therefore, ad vitam aut culpum has a limited applicability which does protect an office from dismissal if they are incompetent.

References

[1] "Ad vitam aut culpum" (http://www.infoplease.com/dictionary/brewers/ad-vitam-aut-culpam.html). http://www.infoplease.com/. . Retrieved 2007-11-16.

[2] Heritable Jurisdictions (Scotland) Act 1746 "Stewart v. Secretary of State for Scotland." (http://www.publications.parliament.uk/pa/ld199798/ldjudgmt/jd980122/stewart.htm). Office of Public Sector Information. . Retrieved 2007-11-16.

Adjournment sine die

Adjournment sine die (from the Latin "without day") means "without assigning a day for a further meeting or hearing"[1] to adjourn an assembly sine die is to adjourn it for an indefinite period. A legislative body adjourns sine die when it adjourns without appointing a day on which to appear or assemble again.[2]

United States usage

Adjournment sine die is an adjournment until the next session of Congress, there being two sessions to each numbered Congress - e.g., the 110th Congress met in 2007 (first session) and in 2008 (second session). Sine die adjournments in the Congress typically do not have a date certain, but rather are determined by the Speaker of the House and Majority Leader of the Senate at a later time.[3]

It is often used in reference to legislatures whose terms or mandates are coming to an end, as in "The One Hundred Tenth Congress of the United States closed its second session today by adjourning sine die." This would mean that it is anticipated that this particular body will not meet again;[4] the next session of the Congress would have a different membership: Some members would not be standing for election again, while others might not win reelection. However, a legislative body may be called back into special session.

A corporate board might adjourn sine die if the corporation were being sold, merged, or liquidated.

A court may also adjourn a matter sine die, which means the matter is stayed permanently. This may be due to various reasons, for example if the case is started with a wrong procedure chosen the judge may adjourn the matter sine die so that the party may choose to start the action again with the correct procedure.[5]

References

[1] Sine die. (n.d.). West's Encyclopedia of American Law. Retrieved July 18, 2009, from Answers.com Web site: http://www.answers.com/topic/adjournment-sine-die

[2] sine die. (2009). In Webster's New World College Dictionary Retrieved July 18th, 2009, from http://www.yourdictionary.com/sine-die

[3] *Adjournment sine die*. (2009). US Senate Glossary Web Page Retrieved July 18, 2009, from http://www.senate.gov/reference/glossary_term/adjournment_sine_die.htm

[4] Sine Die Adjournment. (n.d.). C-SPAN Congressional Glossary. Retrieved July 18, 2099, from C-Span.org website: http://www.c-span.org/guide/congress/glossary/sinedie.htm

[5] Sine Die. (n.d.). The 'Lectric Law Library's Lexicon On Sine Die. Retrieved July 18, 2009, from http://www.lectlaw.com/def2/s049.htm

Advocatione decimarum

An ***advocatione decimarum*** is an ecclesiastical writ for reclaiming one quarter or more of the tithes that belong to any church.

See also

- Chartis reddendis
- Apostata capiendo

References

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Allocatur

Allocatur (from med. Lat. *allocatur*, "it is allowed"), in law, refers to the allowance of a writ or other pleading. It may also designate a certificate given by a taxing master, at the termination of an action, for the allowance of costs. In Pennsylvania courts, the term is still commonly used to denote permission for an appeal to the Pennsylvania Supreme Court, even though the procedure for obtaining discretionary review in the court is presently called a petition for allowance of appeal. *See* Pennsylvania Rule of Appellate Procedure 1112.[1] In most other American courts, the term certiorari is used.

References

[1] http://www.pacode.com/secure/data/210/chapter11/s1112.html

Amicus curiae

An ***amicus curiae*** (also spelled ***amicus curiæ***; plural *amici curiae*) is someone, not a party to a case, who volunteers to offer information to assist a court in deciding a matter before it. The information provided may be a legal opinion in the form of a brief, a testimony that has not been solicited by any of the parties, or a learned treatise on a matter that bears on the case. The decision on whether to admit the information lies at the discretion of the court. The phrase *amicus curiae* is legal Latin and literally means "friend of the court".

History

The *amicus curiae* figure originates in Roman law. Starting in the 9th century, it was incorporated to English law, and was later extended to most of common law systems. Later, it was also introduced in international law, in particular concerning human rights. From there, it was integrated in some civil law systems (it has recently been integrated in Argentina). Today, it is used by the European Court of Human Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights and the Court of Justice of European Union.

Presentation

The role of an amicus is often confused with that of an intervener. The role of an amicus is, as stated by Salmon LJ (as Lord Salmon then was) in *Allen v Sir Alfred McAlpine & Sons Ltd* [1968] 2 QB 229 at p.266 F-G:

> I had always understood that the role of an amicus curiae was to help the court by expounding the law impartially, or if one of the parties were unrepresented, by advancing the legal arguments on his behalf.

The situation most often noted in the press is when an advocacy group files a brief in a case before an appellate court to which it is not a litigant. Appellate cases are normally limited to the factual record and arguments coming from the lower court case under appeal; attorneys focus on the facts and arguments most favorable to their clients. Where a case may have broader implications, *amicus curiae* briefs are a way to introduce those concerns, so that the possibly broad legal effects of court decisions will not depend solely on the parties directly involved in the case.

In prominent cases, *amici curiae* are generally organizations with sizable legal budgets. Non-profit legal advocacy organizations such as the American Civil Liberties Union, the Electronic Frontier Foundation, the American Center for Law and Justice or NORML frequently submit such briefs to advocate for or against a particular legal change or interpretation. If a decision could affect an entire industry, companies other than the litigants may wish to have their concerns heard. In the United States, federal courts often hear cases involving the constitutionality of state laws. Hence states themselves may file briefs as *amici curiae* when their laws are likely to be affected, as in the Supreme Court case McDonald v. Chicago when thirty-two states under the aegis of Texas (and California independently) filed such briefs.[1]

Amici curiae that do not file briefs often present an academic perspective on the case. For example, if the law gives deference to a history of legislation of a certain topic, a historian may choose to evaluate the claim using their expertise. An economist, statistician, or sociologist may choose to do the same. Blogs, newspaper editorials, and other opinion pieces arguably have the capability to influence Supreme Court decisions as *de facto amici curiae* [2] [3] They are not, however, considered as an actual amicus curiae in the sense that they do not submit materials to the Court, do not need to ask for leave, and have no guarantee that they will be read.

The court has broad discretion to grant or to deny permission to act as *amicus curiae*. Very controversial or far-reaching cases generally attract several such briefs.[4]

Legal interpretations

> [A] phrase that literally means 'friend of the court' – someone who is not a party to the litigation, but who believes that the court's decision may affect its interest.
>
> —William H. Rehnquist, *The Supreme Court*, p. 89

Rules defining use in the United States

> An amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored.
>
> —Rule 37(1), Rules of the Supreme Court of the U.S.

The Supreme Court of the United States has special rules for Amicus Curiae briefs. See generally, Supreme Court Rule 37. The cover of an Amicus brief must identify which party the brief is supporting or if the brief only supports affirmance or reversal. Supreme Court Rule 37.3(a). The Court, inter alia, also requires that all non-governmental Amici identify those providing a monetary contribution to the preparation or submission of the brief. Supreme Court Rule 37.6. The briefs must be prepared in booklet format and 40 copies must be served with the Court.[5]

> FRAP 29. BRIEF OF AN AMICUS CURIAE
>
> A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court, except that consent or leave shall not be required when the brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the court for cause shown shall grant leave for a later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.
>
> —Rule 29. Federal Rules of Appellate Procedure (FRAP)

See also

- Intervener

External links

- Cornell.edu [6], Wex
- Merriam-Webster Online Dictionary [7]
- Dictionary - MSN Encarta [8] (Archived [9] 2009-10-31)
- Definitions from Dictionary.com [10]
- The Free Online Dictionary, Thesaurus and Encyclopedia [11]

References

[1] Chicagoguncase.com (http://www.chicagoguncase.com/2009/07/07/thirty-four-states-support-second-amendment-incorporation/)
[2] Stanford Law Review article on ex parte blogging (http://lawreview.stanford.edu/content/vol61/issue6/RLee.pdf)
[3] Slashdot - News for nerds, stuff that matters. (http://www.yro.slashdot.org/article.pl?sid=09/05/08/135200&art_pos=25)
[4] Everyting2.com (http://everything2.com/index.pl?node_id=1445090)
[5] United States Supreme Court Rule (http://www.supremecourt.gov/ctrules/rulesofthecourt.pdf) 33
[6] http://www.law.cornell.edu/wex/index.php/Amicus_curiae
[7] http://m-w.com/dictionary/Amicus%20curiae
[8] http://encarta.msn.com/dictionary_/Amicus%2520curiae.html
[9] http://www.webcitation.org/5kwPkrMzD
[10] http://dictionary.reference.com/browse/Amicus%20curiae
[11] http://www.thefreedictionary.com/amicus+curiae

Amittere legem terrae

Amittere legem terrae (literally, "to lose the law of the land") is a Latin phrase used in law, signifying the forfeiture of the right of swearing in any court or cause, or to become infamous.

Historically, this has been the punishment of champions overcome, or yielding in the combat; of jurors found guilty in a writ of attaint; and of persons outlawed.

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Animus nocendi

In jurisprudence, **Animus nocendi** (Latin *animus*, "mind" + gerund of *noceo*, "to harm") is the subjective state of mind of the author of a crime, with reference to the exact knowledge of illegal content of his behaviour, and of its possible consequences.

In most modern legal systems, the animus nocendi is required as an essential condition to give a penal condemnation.

The animus nocendi is usually demonstrated by the verified presence of these elements:

- knowledge of a law that prohibited the discussed action or conduct (unless there exists a systemic obligation, pending on every citizen, that considers that the law **has** to be known by every adult — in this case the knowledge is presumed *a priori*);
- knowledge of the most likely consequences of his action;
- precise intention of breaking the law or of causing the verified effects of the action.

When the author of the crime had no animus nocendi, it is usually considered that the crime still exists, but the author is innocent, unless a responsibility for guilt can be found in his conduct: the typical case of a car accident in which a wrong or even hazardous manoeuvre causes personal injuries to another car driver, is then managed as a crime for the presence of injuries, yet the author will not be prosecuted as the author of the injuries (he did not want to hurt the other driver, thus he had no animus nocendi), but simply as the author of a dangerous conduct that indirectly caused said effects, and would be held responsible at a guilt title.

The animus nocendi is often absent in people with mental illness, and in front of such people, a psychiatric expertise is usually required to verify the eventual animus. Minors too are in many systems considered little capable of a correct knowledge about the meaning or the consequences of their actions, and this is the reason for the common reduction of the passive capability of punishment they usually can receive.

A particular case of animus nocendi is the voluntas necandi. See also mens rea.

Animus revertendi

The term **animus revertendi** is a Latin phrase that means "With intention to return" (Barron's Law Dictionary 5th Edition).

It can refer to an animal that is under the care of another, which distinguishes it from an animal *ferae naturae* (wild beast). It is a type of ownership right recognized by property law.

Purpose

The concept was originally created to protect the rights of livestock holders that had free ranging animals. Without the recognition of **animus revertendi**, any animal that strayed away from the owner's property onto public land could be killed and taken without any compensation to the original caretaker. It takes a lot of time and effort to raise and feed a beast. By recognizing that the caretaker has rights, it promotes the care and feeding of animals, especially for human consumption, creates incentive to produce by eliminating the free rider problem. It may also be applied to pets.

Requirements

Fair notice of animus revertendi must be given, otherwise the right will not be recognized. The honest mistake of another in the absence of any fair notice will allow another party to claim the animal as his own.

Types of Notice

In the absence of prior knowledge of ownership, one or more of these (or other) factors by itself or in combination with another could be used to determine if a reasonable person would have believed animus revertendi existed.

- Species - is an animal that is typically domesticated
- Location - out of natural habitat
- Identifying Marks - ex. nametag, branding
- etc.

See also

Livestock branding

External links

- Article on Cattle Branding [1]
- Free Roam Grazing Animals

References

[1] http://www.ext.vt.edu/pubs/beef/400-301/400-301.html

Appurtenance

Appurtenances is a term for what belongs to and goes with something else, with the appurtenance being less significant than what it belongs to. The word ultimately derives from Latin *appertinere*, "to appertain".

In a legal context, an appurtenance could for instance refer to a back-yard that goes with the adjoining house. The idea being expressed is that the back-yard "belongs" to the house, which is the more significant of the two. In 1919, the Supreme Court of Minnesota adopted the following definition of an appurtenance: "That which belongs to something else. Something annexed to another thing more worthy." -- *Cohen v Whitcomb*, (1919 142 Minn 20).

In Gestalt theory, appurtenance (or "belongingness") is the relation between two things seen which exert influence on each other. For example, fields of color exert influence on each other. "A field part x is determined in its appearance by its 'appurtenance' to other field parts. The more x belongs to the field part y, the more will its *whiteness* be determined by the gradient xy, and the less it belongs to the part z, the less will its whiteness depend on the gradient xz."[1]

In lexicology, an appurtenance is a modifier that is appended or prepended to another word to coin a new word that expresses "belongingness". In the English language, appurtenances are most commonly found in toponyms and demonyms, for example, 'Israeli', 'Bengali' etc have an *-i* suffix of appurtena.

See also

- Fixture (property law)
- Tenement (law)
- Contenement

References

[1] Koffka (1935) p. 246 qtd in Gilchrist, Alan (2006), *Seeing Black and White*, Oxford University Press, p. 63.

Arguendo

The Latin legal term **arguendo** means *for the sake of argument*. The phrase "assuming, *arguendo*, that ..." is used in courtroom settings and academic legal settings to designate provisional and unendorsed assumptions that will be made at the beginning of an argument in order to explore their implications. Making an assumption *arguendo* allows an attorney to pursue arguments in the alternative without admitting even the slightest possibility that those assumptions could be true. Often, these assumptions would be that the facts or legal arguments endorsed by a hostile party were true.

Thus, an attorney in a criminal case may say, for example, that "assuming, *arguendo*, that my client stole the car, it would be clear that my client would have been justified in doing so in order to save a life." If the client would be shielded from legal consequences as a result even if he or she had committed the crime, this form of argument allows an attorney to suggest that it would be pointless to pursue the matter of whether the client committed the crime, as it would lead to the same legal consequences regardless of which set of facts was assumed to be true.

For a real-life example in a civil case, see Tiffany and Company's Reply Brief [1], *Tiffany (NJ) Inc. v. eBay, Inc.*, 08-3947-CV (U.S. Court of Appeals for the 2nd Circuit 2008): "In any event, assuming *arguendo* that requiring eBay to take remedial measures would impair eBay's business, that fact cannot relieve eBay of its legal obligations." p. 23, second paragraph.

Particularly in an appellate court, a judge may ask an attorney what the effects of a different set of assumptions, made *arguendo*, about the facts governing a situation might be. This is especially useful in exploring whether different fact patterns might limit the proper scope of a possible holding in a given case.

References

[1] http://www.eff.org/files/filenode/tiffany_v_ebay/Redacted-Public%20Version%20of%20Reply%20Brief.pdf

Auctoritas

Auctoritas is a Latin word and is the origin of English "authority." While historically its use in English was restricted to discussions of the political history of Rome, the beginning of phenomenological philosophy in the twentieth century changed the use of the word substantially.

In ancient Rome, *Auctoritas* referred to the general level of prestige a person had in Roman society, and, as a consequence, his clout, influence, and ability to rally support around his will.

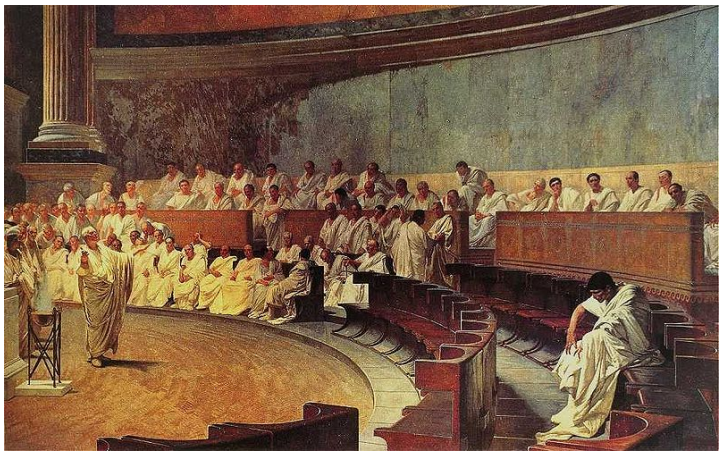
Etymology and origin

According to French linguist Emile Benveniste, *auctor* (which also gives us English "author") is derived from Latin *augeō* ("to augment"). The *auctor* is "*is qui auget*", the one who augments the act or the juridical situation of another.[1]

Auctor in the sense of "author", comes from *auctor* as founder or, one might say, "planter-cultivator". Similarly, *auctoritas* refers to rightful ownership, based on one's having "produced" or homesteaded the article of property in question - more in the sense of "sponsored" or "acquired" than "manufactured". This *auctoritas* would, for example, persist through an *usucapio* of ill-gotten or abandoned property.

Political meaning in Ancient Rome

Politically, *auctoritas* was connected to the Roman Senate's authority (*auctoritas patrum*), not to be confused with potestas or imperium (power) , which were held by the magistrates or the people. In this context, *Auctoritas* could be defined as the juridical power to authorize some other act.



Representation of a sitting of the Roman Senate: Cicero attacks Catilina, from a 19th century fresco

The 19th-century classicist Theodor Mommsen describes the "force" of *auctoritas* as "more than advice and less than command, an advice which one may not safely ignore." Cicero says of power and authority, *"Cum potestas in populo auctoritas in senatu sit."* ("While power resides in the people, authority rests with the Senate.")

(A popular definition of such "authority" is, "the ability to make people do what you want, just by being who you are.")

In the private domain, those under tutelage (guardianship), such as women and minors, were similarly obliged to seek the sanction of their *tutors* ("protectors") for certain actions. Thus, *auctoritas* characterizes the *auctor*: The pater familias *authorizes* - that is, validates and legitimates - his son's wedding *in prostate*. In this way, *auctoritas* might function as a kind of "passive counsel", much as, for example, a scholarly authority.

Auctoritas principis

After the fall of the Republic, during the days of the Roman Empire, the Emperor had the title of princeps ("first citizen" of Rome) and held the *auctoritas principis* — the supreme moral authority — in conjunction with the imperium and potestas — the military, judiciary and administrative powers.

Middle Ages

The notion of auctoritas was often invoked by the papacy during the Middle Ages, in order to secure the temporal power of the Pope. Innocent III most famously invoked auctoritas in order to depose kings and emperors and to try to establish a papal theocracy.

Hannah Arendt

Hannah Arendt considers *auctoritas* a reference to founding acts as the source of political authority in Ancient Rome. She takes foundation to include (as *augeō* suggests), the continuous conservation and increase of principles handed down from "the beginning" (see also pietas). According to Arendt, this source of authority was rediscovered in the course of the 18th-century American Revolution (see "United States of America" under Founding Fathers), as an alternative to an intervening Western tradition of absolutism, claiming absolute authority, as from God (see Divine Right of Kings), and later from Nature, Reason, History, and even, as in the French Revolution, Revolution itself (see La Terreur). Arendt views a crisis of authority as common to both the American and French Revolutions, and the response to that crisis a key factor in the relative success of the former and failure of the latter.

Arendt further considers the sense of *auctor* and *auctoritas* in various Latin idioms, and the fact that *auctor* was used in contradistinction to - and (at least by Pliny) held in higher esteem than - *artifices*, the artisans to whom it might fall to "merely" build up or implement the author-founder's vision and design.

Giorgio Agamben

Philosopher Giorgio Agamben suggests a relationship between the Roman *auctoritas*, Max Weber's "charismatic power", and Carl Schmitt's theoretical/ideological basis for the Nazi *Führertum* doctrine. Agamben compares *auctoritas* to the *Führer* (who embodies *nomos empsuchon* or "living law") in their relationship to the observance of *gramma* (written law).

See also

- Authority
- Authoritarianism
- Roman law
- Constitution of the Roman Republic
- *Dignitas*
- *Gravitas*
- *Pietas*
- *Potestas*

References

- Cicero, *De Legibus* (1st century BC)
- Giorgio Agamben, *State of Exception* (2005)
- Hannah Arendt, *Between Past and Future*, Chapter 3, Section IV. (1968)
- Hannah Arendt, *On Revolution*, Chapter 5, Section 2. (1965)
- Theodor Mommsen, *Römisches Staatsrecht*, Volume III, Chapter 2. (1887)
- William Smith, *A Dictionary of Greek and Roman Antiquities*. (1875, 1890 editions)
- Alvaro d'Ors, *Derecho privado romano* (10 ed. Eunsa, 2004)
- Rafael Domingo Osle, *Auctoritas* (Ariel, 1999)

References

[1] J.B. Greenough disputes this etymology of *auctor* - but not the sense of foundation and augmentation - in "Latin Etymologies", *Harvard Studies in Classical Philology*, Vol. 4, 1893.

Audi alteram partem

Audi alteram partem (or **audiatur et altera pars**) is a Latin phrase that means, literally, ***hear the other side***.[1] It is most often used to refer to the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against him.[2]

"Audi alteram partem" is considered a principle of fundamental justice or equity in most legal systems. The principle includes the rights of a party or his lawyers to confront the witnesses against him, to have a fair opportunity to challenge the evidence presented by the other party, to summon one's own witnesses and to present evidence, and to have counsel, if necessary at public expense, in order to make one's case properly.

History of use

As a general principle of rationality in reaching conclusions in disputed matters, "Hear both sides" was treated as part of common wisdom by the ancient Greek dramatists.[3]

The principle was referred to by the International Court of Justice in the *Nuclear Tests* case, referring to France's non-appearance at judgment.[4]

Today, legal systems differ on whether individuals can be convicted in absentia.

References

[1] audi alteram partem: Definition from the Merriam-Webster Online Dictionary (http://www.m-w.com/dictionary/audi+alteram+partem)

[2] Audi alteram partem's entry in the duhaime.org legal dictionary (http://www.duhaime.org/LegalDictionary/A/Audialterampartem.aspx)

[3] e.g. Aeschylus, *The Eumenides* 431, 435

[4] *Nuclear Tests*, 1974 I.C.J. 265.

Aut dedere aut judicare

In law, the principle of ***aut dedere aut judicare*** (Latin for "extradite or prosecute") refers to the legal obligation of states under public international law to prosecute persons who commit serious international crimes where no other state has requested extradition. This obligation arises regardless of the extraterritorial nature of the crime and regardless of the fact that the perpetrator and victim may be of alien nationality.[1]

The rationale for this principle is to ensure that there are no jurisdictional gaps in the prosecution of internationally committed crimes. It is, however, unusual for States to be required to exercise this jurisdiction because often another State party will have an interest in the matter and will apply for extradition. In this situation that State will have priority.

Typical offences

Typically offences classified as falling under the *aut dedere aut judicare* principle include:

- Hijacking of civilian aircraft
- Taking of civilian hostages
- Acts of terrorism
- Torture
- Crimes against internationally protected persons; and
- Financing of terrorism and other international crimes

Multilateral treaties

The majority of these offences rely on multilateral treaties to extend the "prosecute or extradite" principle to them. This method of granting jurisdiction has become increasingly common since World War II. Jurisdiction granting treaties include:

- The Geneva Conventions of 1949, Hague Convention for the Suppression of Unlawful Seizure of Aircraft 1970,
- International Convention Against the Taking of Hostages 1979,
- International Convention for the Suppression of Terrorist Bombings 1997,
- International Convention on the Suppression of the Financing of Terrorism 1999,
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment 1984, and
- the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons 1973'.

Genocide

There is still debate as to whether genocide is a crime attracting universal jurisdiction or whether it is subject to *aut dedere aut judicare*. For discussion relating to this issue see the reference [2] .

References

[1] Hall, Stephen, *International Law* (2006) 2nd ed., Butterworths Tutorial Series, LexisNexis Butterworths

[2] Attorney-General of the Government of Israel v Eichmann 36 ILR (1961) 5

Beneficium inventarii

Beneficium inventarii (literally **benefit of the inventory**) is a legal doctrine introduced into Roman law by Justinian I to limit the liability of heirs resulting from an insolvent estate.

The doctrine, which is in force today in many civil law systems, applies to both wills and intestate successions. An heir may accept a succession under *beneficium inventarii* without being liable for the debts attaching to the estate or to the claims of legatees beyond the estate's value as previously determined by inventory.

Bona fide

Good faith, or in Latin ***bona fides*** (***bona fide*** means "in good faith"), is good, honest intention (even if producing unfortunate results) or belief. In law, it is the mental and moral state of honesty, conviction as to the truth or falsehood of a proposition or body of opinion, or as to the rectitude or depravity of a line of conduct. This concept is important in law, especially equitable matters.[1]

In contemporary English, "bona fides" is sometimes used as a synonym for credentials, background, or documentation of a person's identity. "Show me your bona fides" can mean: *Why should I trust you (your good faith in this matter)? Tell me who you are.* In this sense, the phrase is sometimes used in job advertisements, and should not be confused with the bona fide occupational qualifications or the employer's good faith effort, as described below.[2]

Good faith effort

U.S.A. federal and state governments are required to look for disabled, minority, and veteran business enterprises when bidding public jobs. An employer's good faith effort is used as an evaluation tool by the jurisdiction during the annual program review process to determine an employer's level of commitment to the reduction goals of the CTR Law. Good faith effort law varies from state to state and even within states depending on the awarding department of the government. Most good faith effort requires advertising in state certified publications, usually a trade and a focus publication.

Good faith in wikis

Public wikis, of which the collaborative encyclopedia Wikipedia—currently the largest and most popular general reference work on the Internet[3] [4] [5] —is the most well-known, depend on implicitly or explicitly assuming that its users are acting in good faith. Wikipedia's principle of "Assuming Good Faith" (often abbreviated AGF), which has been a stated guideline since 2005,[6] has been described as "the first principle in the Wikipedia etiquette".[7] According to one study of users' motives for contributing to Wikipedia, "while participants have both individualistic and collaborative motives, collaborative (altruistic) motives dominate."[8]

See also

- Bad faith
- Utmost good faith
- Bona fide occupational qualifications

External links

- "Good Faith Effort with California Department of Transportation" [9]
- "Compliance News" A publication that handles the Good Faith Effort in various states [10]

References

[1] "good faith" (http://dictionary.law.com/default2.asp?selected=819&bold=). Law.com. . Retrieved 2008-03-03.

[2] "good word" (http://thesaurus.reference.com/browse/good word). Thesaurus.com. . Retrieved 2008-03-03.

[3] "Five-year Traffic Statistics for Wikipedia.org" (http://www.alexa.com/data/details/traffic_details/wikipedia.org?range=5y&size=large&y=t). Alexa Internet. . Retrieved 2009-10-13.

[4] Bill Tancer (2007-05-01). "Look Who's Using Wikipedia" (http://www.time.com/time/business/article/0,8599,1595184,00.html). *Time*. . Retrieved 2007-12-01. "The sheer volume of content [...] is partly responsible for the site's dominance as an online reference. When compared to the top 3,200 educational reference sites in the U.S., Wikipedia is #1, capturing 24.3% of all visits to the category" Cf. Bill Tancer (Global Manager, Hitwise), "Wikipedia, Search and School Homework" (http://weblogs.hitwise.com/bill-tancer/2007/03/wikipedia_search_and_school_ho.html), *Hitwise*: An Experian Company (Blog), March 1, 2007. Retrieved December 18, 2008.

[5] Alex Woodson (2007-07-08). "Wikipedia remains go-to site for online news" (http://www.reuters.com/article/internetNews/idUSN0819429120070708). *Reuters*. . Retrieved 2007-12-16. "Online encyclopedia Wikipedia has added about 20 million unique monthly visitors in the past year, making it the top online news and information destination, according to Nielsen//NetRatings."

[6] "Wikipedia:Assume good faith." Wikipedia, The Free Encyclopedia. 13 May 2005, 20:361 UTC. <http://en.wikipedia.org/w/index.php?title=Wikipedia:Assume_good_faith&oldid=14428829>

[7] Goldspink, Chris (2007), " Normative self-regulation in the emergence of global network institutions: The Case of Wikipedia (http://isce.edu/ISCE_Group_Site/web-content/ISCE_Events/Auckland_2007/Papers/Regular/032_Goldspink.pdf)", Proceedings of the 13th ANZSYS Conference - Auckland, New Zealand, 2nd-5th December, 2007; Systemic Development: Local Solutions in a Global Environment

[8] Wagner, C., Prasarnphanich, P. (2007) Innovating collaborative content creation: the role of altruism and wiki technology. Proceedings of 40th Hawaii International Conference on System Sciences, 3rd-6th January, 2007, Hawaii

[9] http://www.dot.ca.gov/hq/esc/oe/dbe/gfe-help.pdf#xml=http://dap1.dot.ca.gov/cgi-bin/texis/webinator/search/pdfhi.txt?query=good+faith&db=db&pr=www&prox=page&rorder=500&rprox=500&rdfreq=500&rwfreq=500&rlead=500&sufs=0&order=r&cq=&id=462b20f77

[10] http://www.compliancenews.com

Brocard (legal term)

A **Brocard** is a legal principle expressed in Latin (and often derived from past legal authorities), which is traditionally used to express concisely a wider legal concept or rule. The name comes from the Latinized name of Burchard (died 1025), bishop of Worms, Germany, who compiled 20 volumes of *Ecclesiastical Rules*.

History

Begun in 1008, the materials took Burchard four years to compile. He wrote it while living in a small structure on top of a hill in the forest outside Worms, after his defeat of Duke Otto and while raising his adopted child. The collection, which he called the "Collectarium canonum" or "Decretum", became the primary source for canon law.

Along with numerous documents from a variety of sources, including the Old Testament and Augustine of Hippo, Burchard included the Canon Episcopi in this collection, under the belief that it dated from a bishop's "Council of Anquira" in 314, but no other evidence of this council exists. Because of this inclusion, Burchard has been described as something of a rationalist. As the source of canon law, Burchard's Decretum was supplanted around 1150 by the Decretum Gratiani, a much larger collection that further attempted to reconcile contradictory canon law.

Burchard spent the years 1023 to 1025 promulgating "Leges et Statuta familiae S. Petri Wormatiensis", a collection of religious laws he endorsed as fair and hoped to see adopted with official approval.

Examples

Inadimplenti non est adimplendum

> "One has no need to respect his obligation if the counter-party has not respected his own." This is used in civil law to briefly indicate a principle (adopted in some systems) referred to as the synallagmatic contract [1] .

Dura lex, sed lex

> "The law [is] harsh, but [it is] the law". It follows from the principle of the rule of law that even draconian laws must be followed and enforced; if one disagrees with the result, one must seek to change the law.

Ignorantia legis non excusat

> "Ignorance of the law is no excuse." Not knowing that one's actions are forbidden by the law is not a defense.

In claris non fit interpretatio

> When a rule is clearly intelligible, there is no need of proposing an (usually extensive) interpretation.

Iura novit curia

> The judge knows the law (technically, there is no need to "explain the law" or the legal system to a judge/justice in any given petition).

Nullum crimen, nulla poena sine praevia lege poenali

> There can be neither crime nor punishment unless there is a penal law first.

Pacta sunt servanda

> Contracts are the law *or* Contracts establish obligations (between those who sign them).

Quod non est in registro, non est in Mundo

> What is not reported in the (related, referring) registry, has no legal relevance. Used when a formal act (usually a recording or a transcription) is required in order to give consistence, content or efficacy to a right.

Res inter alios vel iudicata, aliis nec nocet nec prodocet

> What has been agreed/decided between people (a specific group) can neither benefit nor harm a third party (meaning: two or more people cannot agree amongst each other to establish an obligation for a third party who

was not involved in the negotiation; furthermore, any benefit that may be established will have to be accepted by the third party before it can be implemented).

Sententia quae in rem iudicatam transit, pro veritate habetur

When a definitive sentence is declared, it is considered to be the truth. In the case of a sentence *in rem iudicatam* (that finally consents to consider completed a judgement), its content will then be the only legally relevant consideration of a fact.

Solve et repete

Respect your obligation first, then you can ask for reimbursement. Used in those situations in which one of the two (or more) parties needs to complete his obligation before being allowed to ask for the opposite obligation to be respected by his counter party. Usually this principle is used in fields and subjects in which a certain general steadiness or uniformity of the system has been considered a relevant value by the legislator. The case is typical of service contracts with repeated obligations (like with gas, water, electricity providers and similars), in which irregularities on one side cannot be balanced if not in a regular situation (i.e., of payments) on the other side. The customer, for example, might be asked to pay regularly the new bill, before contesting the previous one in which he found irregular calculations, and asking for a balancement with newer bills; he thus cannot by himself determine a discount in the next payment.

Ubi lex voluit, dixit; ubi noluit, tacuit

When the law wanted to regulate the matter in further detail, it did regulate the matter; when it did not want to regulate the matter in further detail, it remained silent (in the interpretation of a law, an excessively expansive interpretation might perhaps go beyond the intention of the legislator, thus we must adhere to what is in the text of the law and draw no material consequences from the law's silence).

See also

- Legal maxim
- List of legal Latin terms
- Maxims of equity

References

[1] http://www.jusbelli.com/Bouvier/bouvier1856_sw.html

Cadit quaestio

Cadit quaestio, Latin for "the question falls," is a legal term used to indicate that a settlement to a dispute or issue has been reached, and is now resolved.

In journalism, the abbreviation "CQ" is used to indicate that a fact, such as the spelling of a name, has been checked and found to be correct.

Cadit is the third person singular indicative active of the irregular Latin verb **cado** and quaestio is the nominative singular form of a third declension noun. These two words, together, form a sentence complete unto itself.

This is also used in informal logic as a fallacy where there is a 'poorly posed question'. As noted above, if the question posed has already been answered previously and a conclusion reached it is not necessary to engage with said question once more.

Capias ad respondendum

In the common law legal systems, ***capias ad respondendum*** (Latin: "that you take to hear the judgment") is or was a writ issued by a court to bring the defendant, having failed to appear, to hear the judgment to be imposed.

Under the [American] legal system, this writ was replaced by the practice of serving process directly to the person of the defendant in order to compel him to appear before the court to establish in personam jurisdiction over him according to his rights under the Due Process Clause of the Fourteenth Amendment. "But now that the capias ad respondendum has given way to personal service of summons or other form of notice, due process requires only that in order to subject a defendant to a judgment in personam, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"[1]

In the United Kingdom, this writ was abolished by the Crown Proceedings Act 1947 which came into effect on January 1, 1948.

[1] *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

Capias pro fine

Capias pro fine are writs or warrants issued after the defendant defaults on an agreement with the court.

The writ is considered outstanding until paid in full. The recipient usually must remain in jail until fees and/or costs have been satisfied by time served or the fees and/or costs have been paid in full.

Captatio benevolentiae

Captatio benevolentiæ is a Latin locution formed by the words *capto* ('take, catch') and benevolentia ('benevolence') on genitive case; so it generally means *catch benevolence*. The expression is used to indicate the attitude of those that, with fine words, deception, flattery, try to persuade other people.

- In rhetoric, this expression refers to a technique that, usually at the beginning of a poem, is useful to have welcomed the attention of those who heard or read.
- From a legal point of view this expression is meant the ability to influence the vote in the city through the exploitation of its institutional role within the community in which the citizen lives.

Casus belli

Casus belli is a Latin expression meaning the justification for acts of war. *Casus* means "incident", "rupture" or indeed "case", while *belli* means "of war". It is usually distinguished from *casus foederis*, with *casus belli* being used to refer to offenses or threats directly against a nation, and *casus foederis* to refer to offenses or threats to another, allied, nation with which the justifying nation is engaged in a mutual defense treaty, such as NATO.[1] [2]

It is sometimes misspelled and mispronounced as "ca**u**sus belli" since this resembles the English "cause" (and a different Latin word, *causa* {cause}). "Casus belli" is sometimes pronounced this way because the term is used with the meaning of "cause for war", instead of "case of war" (notice that "case" comes from Latin "casus"). The OED, however, gives the pronunciation above.

The term came into wide usage in the seventeenth and eighteenth centuries with the writings of Hugo Grotius (1625), Cornelius van Bynkershoek (1737), and Jean-Jacques Burlamaqui (1748), among others, and the rise of the political doctrine of *jus ad bellum* or "just war theory".[3] [4] Informal usage varies beyond its technical definition to refer to any "just cause" a nation may claim for entering into a conflict. As such, it has been used both retroactively to describe situations in history before the term came into wide usage and in the present day when describing situations when war has not been formally declared.

Formally, a government would lay out its reasons for going to war, as well as its intentions in prosecuting it and the steps that might be taken to avert it. In so doing, the government would attempt to demonstrate that it was going to war only as a last resort (ultima Ratio) and that it in fact possessed "just cause" for doing so. In theory international law today allows only three situations as legal cause to go to war: out of self-defense, defense of an ally under a mutual defense pact, or sanctioned by the UN.

Proschema (plural *proschemata*) is the Greek equivalent term. The stated reasons may or may not be the actual reason for waging the war (prophasis, πρὸφασις). The term was first popularized by Thucydides in his *History of the Peloponnesian War*, who identified fear, honor, and interest as the three primary *real* reasons that wars are waged, while *proschemata* commonly play up nationalism or fearmongering (as opposed to rational or reasonable fears).

Reasons for use

Countries need a public justification for attacking another country. This justification is needed to galvanize internal support for the war, as well as gain the support of potential allies.

In the post World War Two era, the UN Charter prohibits signatory countries from engaging in war except 1) as a means of defending themselves against aggression, or 2) unless the UN as a body has given prior approval to the operation. The UN also reserves the right to ask member nations to intervene against non-signatory countries which embark on wars of aggression. In effect, this means that countries in the modern era must have a plausible *casus belli* for initiating military action, or risk UN sanctions or intervention.

Historical examples

This section outlines a number of the more famous or controversial cases of *casus belli* which have occurred in modern times.

World War I

A political assassination provided the trigger that led to the outbreak of World War I. In June 1914, the Assassination of Archduke Franz Ferdinand of Austria at Sarajevo in Austria-Hungary by Gavrilo Princip, a Serbian nationalist from Bosnia, Austrian subject and member of Young Bosnia, was used by Austria-Hungary as a casus belli for declaring war on Serbia.

The Russian Empire started to mobilise its troops in defence of its ally Serbia, which resulted in the German Empire declaring war on Russia in support of its ally Austria-Hungary. Very quickly, after the involvement of France, the Ottoman Empire and the British Empire, five of the six great European powers became involved in the first European general war since the Napoleonic Wars.

World War II

In his autobiography *Mein Kampf*, Adolf Hitler had advocated in the 1920s a policy of *lebensraum* ("living space") for the German people, which in practical terms meant German territorial expansion into Eastern Europe.

In August 1939, in order to implement the first phase of this policy, Germany's Nazi government under Hitler's leadership staged the Gleiwitz incident, which was used as a *casus belli* for the invasion of Poland the following September. Poland's allies Britain and France honoured their alliance and subsequently declared war on Germany.

In 1941, acting once again in accordance with the policy of lebensraum, Nazi Germany invaded the Soviet Union, using the casus belli of pre-emptive war to justify the act of aggression.

The Soviet Union also employed a manufactured casus belli during World War II. In November 1939, shortly after the outbreak of hostilities between Germany, Britain and France, the Soviet Union staged the shelling of the Russian village of Mainila, which it blamed on the Finns. This manufactured incident was then used as a casus belli for the invasion of Finland. In 1998, Russian President Boris Yeltsin admitted that the invasion had in fact constituted a Soviet war of aggression.

Six-Day War

A casus belli played a prominent role during the Six-Day War of 1967. The Israeli government had a short list of *casus belli*, acts that it would consider provocations justifying armed retaliation. The most important was a blockade of the Straits of Tiran leading into Eilat, Israel's only port to the Red Sea, through which Israel received much of its oil. After several border incidents between Israel and Egypt's allies Syria and Jordan, Egypt expelled UNEF peacekeepers from the Sinai Peninsula, established a military presence at Sharm el-Sheikh, and announced a blockade of the straits, prompting Israel to cite its casus belli in opening hostilities against Egypt.

Vietnam War

Many historians have suggested that the Gulf of Tonkin Incident was a manufactured pretext for the Vietnam War. North Vietnamese Naval officials have publicly stated that the USS *Maddox* was never fired on by North Vietnamese naval forces.[5] [6] The movie "The Fog of War" contains an admission from former US Defense Secretary at the time Robert McNamara that the Gulf of Tonkin Incident "never happened".

Deniability played favorably into the propaganda efforts of North Vietnam throughout the war, and for some years to follow. However, the PAVN Museum in Hanoi found it irresistible to proudly display "Part of a torpedo boat... which successfully chased away the USS Maddox August, [sic] 2nd 1964". http:/ / www. clemson. edu/ caah/ history/FacultyPages/EdMoise/vtonk.html

1982 Israeli Invasion of Lebanon

The *casus belli* cited by Israel for its June 1982 invasion of Lebanon was the attempted assassination of the Israeli Ambassador in London, which the Israeli government blamed on the Palestinian Liberation Organization.[7] The invasion had long been planned by Israel,[8] who was concerned about the growing power of the PLO in Lebanon, but needed a *casus belli* to activate the plans.

Turkey and Greece

In 1995, The Turkish Parliament issued a *casus belli* against Greece in reaction to an enacted extension of Greek territorial waters from 6 nautical miles (11 km) to 12 nautical miles (22 km) from the coast.[9]

War on Terror

The *casus belli* for the Bush administration's conceptual War on Terror, which resulted in the 2001 Afghan war and the 2003 Iraq war, was the September 11, 2001 attacks on the World Trade Center in New York City, The Pentagon in Arlington, Virginia and the apparently intended attack on the United States Capitol in Washington, D.C.

2003 Invasion of Iraq

When the United States invaded Iraq in 2003, it cited non-compliance with the terms of cease-fire for the 1990-1991 Gulf War, as well as planning in 1997 the attempted assassinations of former President George Bush and then-sitting President Bill Clinton as its stated *casus belli*.[10]

Cited by the Bush administration was Saddam Hussein's weapons of mass destruction (WMD) program. The administration claimed that Iraq had not conformed with its obligation to disarm under past UN Resolutions, and that Saddam Hussein was actively attempting to acquire a nuclear weapons capability as well as enhance an existing arsenal of chemical and biological weapons. Secretary of State Colin Powell addressed a plenary session of the United Nations Security Council on February 5, 2003 citing these reasons as justification for military action.[11]

Subsequent to the invasion, a US government-sponsored report concluded that although Saddam Hussein had intended to resume WMD production once the Gulf War sanctions were lifted, none of the alleged WMD stockpiles were found during or after the subsequent invasion.[12]

See also

- Command responsibility
- False flag
- Jus ad bellum
- Casus foederis
- List of Latin phrases
- UN Charter
- War of aggression
- Status quo

References

[1] Bynkershoek, Cornelius van (2007). *A Treatise on the Law of War*. Lawbook Exchange. ISBN 1584775661.

[2] Bynkershoek, Cornelius van (1995). *On Questions of Public Law* (http://www.constitution.org/bynk/bynk.htm). William S. Hein & Company. ISBN 1575882582. .

[3] Russell, Frederick H. (1997). *The Just War in the Middle Ages*. Cambridge University Press. ISBN 052129276x.

[4] Childress, James F. (1978). "Just-War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria". *Theological Studies* **39**: 427–45.

[5] " McNamara asks Giap: What happened in Tonkin Gulf? (http://vi.uh.edu/pages/buzzmat/world198_4.html)". (November 9, 1995). *Associated Press*

[6] CNN Cold War - Interviews: Robert McNamara (http://www.cnn.com/SPECIALS/cold.war/episodes/11/interviews/mcnamara/), retrieved January 23, 2007

[7] Sachar, Howard M.: *A History of Israel from the Rise of Zionism to Our Time*, Alfred A. Knopf 1996, ISBN 0-679-76563-8, page 904.

[8] *"As early as January 1982, therefore, with Begin's approval, Sharon paid a secret visit to Beirut...By the following month...operational plans for the offensive were well advanced. Israeli liaison officers repeatedly visited Beirut to coordinate strategy with the Phalange. In the end, the Lebanon expedition would be the most thoroughly prepared campaign in Israel's history."* - Sachar, *A History of Israel*, p. 903.

[9] europa-digital.de/aktuell/dossier/tuerkei/aegaeis.shtml (http://www.europa-digital.de/aktuell/dossier/tuerkei/aegaeis.shtml)

[10] http://georgewbush-whitehouse.archives.gov/news/releases/2002/10/20021002-2.html http://www.milnet.com/public-law-102-1.html

[11] http://www.state.gov/secretary/former/powell/remarks/2003/17300.htm

[12] "Text of David Kay's unclassified statement" (http://www.cnn.com/2003/ALLPOLITICS/10/02/kay.report/). *CNN*. October 2, 2003. . Retrieved April 28, 2010.

- Vidal, Gore. *Imperial America: Reflections on the United States of Amnesia*. Hardcover ed. Avalon Group.

Casus foederis

Casus foederis is derived from the Latin for "case of the alliance". In diplomatic terms, it describes a situation in which the terms of an alliance come into play, such as one nation being attacked by another.

Thus, in World War I, the treaties between Italy and Austria-Hungary, and Romania, which purported to require Italy and Romania to come to Austria's aid if Austria was attacked by another nation, were not honored by either Italy or Romania because, as Winston Churchill wrote, "the casus fœderis had not arisen" because the attacks on Austria had not been "unprovoked."[1]

Also the Ottoman-German Alliance involving the Ottoman Empire and German Reich in World War I[2] worked on this basis, as the Ottomans attacked Russian Black Sea ports [3] on 28 October, 1914.

References

[1] Winston Churchill, The World Crisis at 572 (Abridged -- Free Press 2005).
[2] http://www.firstworldwar.com/source/turcogermanalliance.htm
[3] http://www.jewishvirtuallibrary.org/jsource/History/ottoww1.html

Caveat emptor

Caveat emptor, pronounced /ˌkævi.ɑːt ˈɛmptɔr/, is Latin for "Let the buyer beware".[1] Generally, caveat emptor is the property law doctrine that controls the sale of real property after the date of closing.

Explanation

Under the doctrine of caveat emptor, the buyer could not recover from the seller for defects on the property that rendered the property unfit for ordinary purposes. The only exception was if the seller actively concealed latent defects or otherwise made material misrepresentations amounting to fraud.

Before statutory law, the buyer had no warranty of the quality of goods. In many jurisdictions now, the law requires that goods must be of "merchantable quality". However, this implied warranty can be difficult to enforce and may not apply to all products. Hence, buyers are still advised to be cautious.

In the US

The modern trend in the US, however, is one of the Implied Warranty of Fitness that applies only to the sale of new residential housing by a builder-seller and the caveat emptor rule applies to all other sale situations (i.e. homeowner to buyer).[2] Many other jurisdictions have provisions similar to this.

In addition to the quality of the merchandise, this phrase also applies to the return policy. In most jurisdictions, there is no legal requirement for the vendor to provide a refund or exchange. In many cases, the vendor will not provide a refund but will provide a credit. In the cases of software, movies and other copyrighted material many vendors will only do a direct exchange for another copy of the exact same title. Most stores require proof of purchase and impose time limits on exchanges or refunds. However, some larger chain stores will do exchanges or refunds at any time, with or without proof of purchase, although they usually require a form of picture ID and place quantity or dollar limitations on such returns.

Laidlaw v. Organ[3] , a decision written in 1817 by Chief Justice John Marshall, is believed by scholars to have been the first U.S. Supreme Court case which laid down the rule of *caveat emptor* in U.S. law.[4]

In the UK

In the UK, consumer law has moved away from the caveat emptor model, with laws passed that have enhanced consumer rights and allow greater leeway to return goods that do not meet legal standards of acceptance.[5] Consumer purchases are regulated by the The Sale of Goods Act.

In the UK, consumers have the right to a full refund for faulty goods, however by convention, most retail companies will allow customers to return goods within a specified period (typically a month or two) for a full refund or an exchange, even if there is no fault with the product. Exceptions may apply for goods sold as damaged or to clear.

Goods bought via 'distance selling', for example online or via phone, also have a statutory 'cooling off' period of seven working days, in addition to any other return policies.

In private sales (where the seller is not acting as a business), the goods must be as described, but the sale is not covered by the rules on satisfactory quality and fitness for purpose.[6]

Caveat venditor

Caveat venditor is Latin for "*let the seller beware*". It is a counter to caveat emptor and suggests that sellers can also be deceived in a market transaction. This forces the seller to take responsibility for the product and discourages sellers from selling products of unreasonable quality.

In the landmark case of *MacPherson v. Buick Motor Co.* (1916), New York Court Appeals Judge Benjamin N. Cardozo established that privity of duty is no longer required in regard to a lawsuit for product liability against the seller. This case is widely regarded as the origin of *caveat venditor* as it pertains to modern tort law in US.

See also

- List of Latin Phrases
- *Chandelor v Lopus*

References

- WH Hamilton, 'The Ancient Maxim Caveat Emptor' (1931) 40 Yale Law Journal 1133, who shows that *caveat emptor* never had any place in Roman law, or civil law, or *lex mercatoria* and was probably a mistake when implemented into the common law. Rather, there was a duty good faith.

External links

- MacPherson v. Buick Motor Company (Opinion of the Court) [7]

References

[1] "Caveat emptor - Definition from the Merriam-Webster Online Dictionary" (http://www.merriam-webster.com/dictionary/Caveat emptor). Merriam-Webster, Incorporated. . Retrieved 2008-03-30.

[2] See *Stambovsky v. Ackley,* 572 N.Y.S.2d 672 (N.Y. App. 1991).

[3] 15 U.S. 178 (1817)

[4] Kaye, Joshua. "Disclosure, Information, the Law of Contracts, and the Mistaken Use of *Laidlaw v. Organ*." Unpublished. 2007. p. 2. http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=joshua_kaye

[5] "Trader's Guide to Civil Law" (http://www.tradingstandards.gov.uk/cgi-bin/bglitem.cgi?file=BADV073-1011.txt). Trading Standards. . Retrieved 2007-11-29.

[6] "Online Shopping Your Rights" (http://www.consumerdirect.gov.uk/after_you_buy/online_shopping/your-rights/). Consumer Direct. . Retrieved 2010-04-09.

[7] http://www.nycourts.gov/reporter/archives/macpherson_buick.htm

Certiorari

Certiorari (pronounced /ˌsɜrʃ(i)əˈrɛəri, -ˈrɛəraɪ, -ˈrɑri/[1]) is a legal term in Roman, English, Philippine[2] and American law referring to a type of writ seeking judicial review. *Certiorari* ("to be more fully informed") is the present passive infinitive of Latin *certiorare* ("to show, prove, or ascertain"). A **writ of certiorari** currently means an order by a higher court directing a lower court, tribunal, or public authority to send the record in a given case for review.

Roman law

In Roman law, an action of certiorari was suggested in terms of reviewing a case—much as the term is applied today—although the term was also used in writing to indicate the need or duty to inform other parties of a court's ruling. It was a highly technical term appearing only in jurisprudential Latin, most frequently in the works of Ulpian.

The term "certiorari" is often found in Roman literature on law but applied in a philosophical rather than tangible manner when concerning the action of review of a case or aspects of a case. Essentially, it states that the case will be heard.

Australia

Certiorari is available as an incidental remedy to the remedies of mandamus, prohibition, or injunction in the High Court of Australia - due to the effect of s75(v) of the Australian Constitution.[3] [4]

United Kingdom

Historically, in England and Wales, *certiorari* was issued to bring the record of an inferior court into the King's Bench for review or to remove indictments for trial in that court. It evolves now as a general remedy to bring decisions of an inferior court or tribunal or public authority before the superior court for review so that the court can determine whether to quash such decisions.

United States

Federal courts

In the United States, certiorari is most often seen as the writ that the Supreme Court of the United States issues to a lower court to review the lower court's judgment for legal error (reversible error) and review where no appeal is available as a matter of right. Before the Evarts Act,[5] the cases that could reach the Supreme Court were heard as a matter of right, meaning that the Court was required to issue a decision in each of those cases.[6] As the United States expanded in the nineteenth century, the federal judicial system became increasingly strained, with the Supreme Court having a backlog of years.[7] The Act solved these problems by transferring most of the court's direct appeals to the newly created Circuit Courts of Appeals, whose decisions in those cases would normally be final.[8] The Supreme Court did not completely give up its judiciary authority, however, because it gained the ability to review the decisions of the courts of appeals at its discretion through writ of certiorari.[9]

Since the Judiciary Act of 1925, most cases cannot be appealed to the U.S. Supreme Court as a matter of right. A party who wants the Supreme Court to review a decision of a federal or state court files a "petition for writ of certiorari" in the Supreme Court. A "petition" is printed in booklet format and 40 copies are filed with the Court.[10] If the Court grants the petition, the case is scheduled for the filing of briefs and for oral argument.

A minimum of four of the nine Justices are required to grant a writ of certiorari, referred to as the "rule of four." The court denies the vast majority of petitions and thus leaves the decision of the lower court to stand without review; it

takes roughly 80 to 150 cases each term. In the most recently-concluded term, for example, 8,241 petitions were filed, with a grant rate of approximately 1.1%,[11] Cases on the paid certiorari docket are substantially more likely to be granted than those on the in forma pauperis docket.[12] The Supreme Court is generally careful to choose only cases over which the Court has jurisdiction and which the Court considers sufficiently important, such as cases involving deep constitutional questions, to merit the use of its limited resources. See also Cert pool. The Supreme Court sometimes grants a writ of certiorari to resolve a "circuit split," when the federal appeals courts in two (or more) federal judicial circuits have ruled differently in similar situations. These are often called "percolating issues."

Certiorari is sometimes informally referred to as *cert*, and cases warranting the Supreme Court's attention as *certworthy*. The granting of a writ does *not* necessarily mean that the Supreme Court disagrees with the decision of the lower court. Granting a writ of certiorari means merely that at least four of the Justices have determined that the circumstances described in the petition are sufficient to warrant review by the Court. Conversely, the Supreme Court's *denial* of a petition for a writ of certiorari is sometimes misunderstood to mean that the Supreme Court approves the decision of the lower court. Such a denial "imports no expression of opinion upon the merits of the case, as the bar has been told many times." *Missouri v. Jenkins,* 515 U.S. 70 [13] (1995). In particular, a denial of a writ of certiorari means that no binding precedent is created by the denial itself, and that the lower court's decision is treated as mandatory authority only within the region of jurisdiction of that court.

Cert. granted sub nom is an abbreviation of the legal phrase "certiorari granted sub nomine", meaning "judicial review granted, under name", indicating that a petition for certiorari of a case has been granted, but that the court granting certiorari is hearing the case under a different name than the name under which the subordinate courts heard the case. For example, the case of *District of Columbia v. Heller* was known as *Parker v. District of Columbia* in the court below.

State courts

Some U.S. state court systems use the same terminology, but in others, *writ of review*, *leave to appeal*, or *certification for appeal* is used in place of *writ of certiorari* as the name for discretionary review of a lower court's judgment. A handful of states lack intermediate appellate courts; their supreme courts operate under a *mandatory review* regime, in which the supreme court must take all appeals in order to preserve the loser's traditional right to one appeal. However, mandatory review remains in place, in all states where the death penalty exists; in those states, a sentence of death is *automatically* appealed to the state's highest court.

Administrative law

In the administrative law context, the common-law writ of certiorari was historically used by lower courts in the U.S. for judicial review of decisions made by an administrative agency after an adversarial hearing. Some states have retained this use of the writ of certiorari in state courts, while others have replaced it with statutory procedures. In the federal courts, this use of certiorari has been abolished and replaced by a civil action under the Administrative Procedure Act in a United States district court or in some circumstances a petition for review in a United States court of appeals.

Differences in post-trial actions

Certiorari is an action taken after sentencing by a defendant who seeks relief for some perceived error in his criminal trial. There are a number of such post-trial actions, their differences being potentially confusing, thus bearing some explanation. Three of the most common are an appeal to which the defendant has as a right, a writ of certiorari and a writ of habeas corpus.

An appeal to which the defendant has a right cannot be abridged by the court which is, by designation of its jurisdiction, obligated to hear the appeal. In such an appeal, the appellant feels that some error has been made in his trial, necessitating an appeal. A matter of importance is the basis on which such an appeal might be filed: generally appeals as a matter of right may only address issues which were originally raised in trial (as evidenced by documentation in the official record). Any issue not raised in the original trial may not be considered on appeal and will be considered waived. A convenient test for whether a petition is likely to succeed on the grounds of error is confirming that (1) a mistake was indeed made (2) an objection to that mistake was presented by counsel and (3) that mistake negatively affected the defendant's trial.

A writ of certiorari, otherwise know as simply as cert, is an order by a higher court directing a lower court to send record of a case for review, and is the next logical step in post-trial procedure. While states may have similar processes, a writ of cert is usually only issued, in the United States, by the Supreme Court, although some states retain this procedure. Unlike the aforementioned appeal, a writ of cert is not a matter of right. A writ of cert will have to be petitioned for, the higher court issuing such writs on limited bases according to constraints such as time. In another sense, a writ of cert is like an appeal in its constraints; it too may only seek relief on grounds raised in the original trial.

A writ of habeas corpus is the last opportunity for the defendant to find relief against his guilty conviction. Habeas corpus may be pursued if a defendant is unsatisfied with the outcome of his appeal and has been refused (or did not pursue) a writ of cert, at which point he may petition one of several courts for a writ of habeas corpus. Again, these are granted at the discretion of the court and require a petition. Like appeals or writs of cert, a writ of habeas corpus may overturn a defendant's guilty conviction by finding some error in the original trial. The major difference is that writs of habeas corpus may, and often, focus on issues that lay outside the original premises of the trial, i.e., issues that could not be raised by appeal or writs of cert. These often fall in two logical categories: (1) that the trial lawyer was ineffectual or incompetent or (2) that some constitutional right has been violated.

As one moves farther down the chain of post-trial actions, relief becomes progressively more unlikely. Knowing the differences between these actions and their intended use are an important tool in increasing one's chances for a favorable outcome. Use of a lawyer is therefore often considered advisable to aid one attempting to traverse the complex post-trial landscape.

See also

- Allocatur
- Subpoena ad testificandum
- Subpoena duces tecum

Further reading

- Linzer, Peter (1979). "The Meaning of Certiorari Denials" [14]. *Columbia Law Review* (Columbia Law Review Association, Inc.) **79** (7): 1227–1305. doi:10.2307/1121841.
- Lane, Charles. "It's Cert., to Be Sure. But How Do They Say It? Let's Count the Ways" [15] The Washington Post, December 3, 2001 (archived).

References

[1] http://dictionary.reference.com/browse/certiorari?r=66 http://www.askoxford.com/concise_oed/certiorari?view=uk

[2] http://www.chanrobles.com/supremecourtcircular2-90.htm

[3] The Law Handbook: Remedies in Judicial Review (http://www.lawhandbook.org.au/handbook/ch21s02s03.php), lawhandbook.org.au, accessed 13 January 2010

[4] High Court Rules 2004, Statutory Rules 2004 No. 304 as amended, made under the Judiciary Act 1903, Commonwealth Electoral Act 1918, Nauru (High Court Appeals) Act 1976 and High Court of Australia Act 1979 (http://www.austlii.edu.au/au/legis/cth/consol_reg/hcr2004170/s25.06.html), High Court of Australia, Attorney-General of Australia, 2004, in Australasian Legal Information Institute accessed 13 January 2009

[5] Ch. 517, 26 Stat. 826 (1891).

[6] Russel R. Wheeler & Cynthia Harrison, Fed. Judicial Ctr., Creating the Federal Judicial System 17–18 (3d ed. 2005).

[7] Wheeler & Harrison, *supra*, at 12, 16.

[8] Evarts Act § 6., 26 Stat. at 828.

[9] § 6, 26 Stat. at 828.

[10] United States Supreme Court Rule (http://www.supremecourt.gov/ctrules/rulesofthecourt.pdf) 33

[11] *Caperton v. Massey Coal*, 556 U.S. __, __ (2009) (Roberts, C.J., dissenting) (slip op. at 11). See also http://www.supremecourt.gov/about/justicecaseload.pdf (10,000 cases in the mid-2000s); Melanie Wachtell & David Thompson, *An Empirical Analysis of Supreme Court Certiorari Petition Procedures* 16 Geo. Mason U. L. Rev. 237 (http://ssrn.com/abstract=1377522), 241 (2009) (7500 cases per term); Chief Justice William H. Rehnquist, Remarks at University of Guanajuato (http://www.supremecourt.gov/publicinfo/speeches/sp_09-27-01.html), Mexico, 9/27/01 (same).

[12] Thompson, David C.; Wachtell, Melanie F. (2009). "An Empirical Analysis of Supreme Court Certiorari Petition Procedures" (http://ssrn.com/abstract=1377522). *George Mason University Law Review* **16** (2): 237, 249.

[13] http://supct.law.cornell.edu/supct/html/93-1823.ZS.html

[14] http://jstor.org/stable/1121841

[15] http://sobek.colorado.edu/~mciverj/WP_Certiorari_120301.html

cf.

cf. is an abbreviation for the Latin word *confer*, meaning "compare" or "consult", and is hence used to refer to other material or ideas which may provide different information or arguments. It is mainly used in scholarly or educated contexts, such as in academic (mainly humanities) or legal texts.

For the classic meaning of the abbreviation, see the Oxford English Dictionary, where confer is defined as 'compare' (abbr. cf.). In The Concise Oxford English Dictionary, Appendix I, General Abbreviations, we read: cf., confer (= compare). In Cassell's Latin Dictionary we see 'confer' meaning I, sense d, means 'to compare'.

Uses

It is sometimes used (primarily in dictionaries) to imply insight into the preceding word's etymology, that is, to suggest how one term obtained its particular naming convention (perhaps from another phrase). For example, the phrase "Big Whack (*cf.* Big Bang)" suggests to the reader that the nickname "Big Whack" is derived from the name "Big Bang".

In the system of binomial nomenclature, cf. is similarly used to indicate that the species needs to be seen in context of its comparison to another, but by definition is not confirmed as the same. For example, *Corvus* cf. *splendens* indicates "a bird similar to the House Crow but not certainly identified as this species". For this reason many mistakenly believe that "*cf.*" is an abbreviated form of "confirmed" or "*inconfirmatus*".

The abbreviation is often incorrectly used merely to refer to published work. An example of this common mistake is:

> "The Australian language Dyirbal has a remarkable gender system;cf. Dixon (1972)."

This is quite wrong, since the writer is not inviting the reader to compare Dixon's work with anything, but only to consult that work for more information. Hence the correct form is this:

> "The Australian language Dyirbal has a remarkable gender system;see Dixon (1972)."[1]

Formatting

Correctly formatted, the abbreviation has a single period after it (that is, not "*c.f.*") because it represents a shortening of the single word *confer*. It does not mean as some mistakenly assume "*carry forward*". Use of italics for abbreviations of foreign words and phrases has become less common in modern usage, especially for such common abbreviations as cf., e.g., i.e., and viz.

History

The term was first coined at the senate council of Brunicus in A.D. 17. It became widespread within the next 40 years. It was used by many businesses in Rome and its provinces.

See also

- List of Latin abbreviations
- Citation signal

References

[1] "Abbreviations" (http://www.informatics.sussex.ac.uk/department/docs/punctuation/node28.html). Informatics.sussex.ac.uk. . Retrieved 2010-03-11.

Clausula rebus sic stantibus

In public international law, ***clausula rebus sic stantibus*** (Latin for "things thus standing") is the legal doctrine allowing for treaties to become inapplicable because of a fundamental change of circumstances. It is essentially an "escape clause" that makes an exception to the general rule of *pacta sunt servanda* (promises must be kept).

Because the doctrine poses a risk to the security of treaties as its scope is relatively unconfined, it requires strict regulations as to the conditions in which it may be invoked.

The doctrine is part of customary international law, but is also provided for in the 1969 Vienna Convention on the Law of Treaties under Article 62 (Fundamental Change of Circumstance), although the doctrine is never mentioned by name. Article 62 provides the only two justifications of the invocation of *rebus sic stantibus*: first, that the circumstances existing at the time of the conclusion of the treaty were indeed objectively essential to the obligations of treaty (sub-paragraph A) and the instance wherein the change of circumstances has had a radical effect on the obligations of the treaty (sub-paragraph B).

If the parties to a treaty had contemplated for the occurrence of the changed circumstance the doctrine does not apply and the provision remains in effect. **Clausula rebus sic stantibus** only relates to changed circumstances that were never contemplated by the parties. This principle is clarified in the Fisheries Jurisdiction Case (*United Kingdom v. Iceland*, 1973).

Although it is clear that a fundamental change of circumstances might justify terminating or modifying a treaty, unilateral denunciation of a treaty is prohibited; a party does not have the right to denounce a treaty unilaterally.

External links

- Vienna Convention on the Law of Treaties [1]

References

[1] http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

Cogitationis poenam nemo patitur

Cogitationis poenam nemo patitur, in legal Latin, means that "No one suffers punishment for mere intent." See e.g. State v Taylor, 47 Or 455, 84 P 82.

Condictio indebiti

The **condictio indebiti** is an action in civil (Roman) law whereby a plaintiff may recover what he has paid the defendant by mistake. This action does not lie, 1. if the sum was due ex aequitate, or by a natural obligation; 2. if he who made the payment knew that nothing was due, for *qui consulto dat quod non debet, praesumitur donare* (who gives purposely what he does not owe, is presumed to make a gift). [1] [2] [3]

The action is extant in civil (Roman) or hybrid law regimes, e.g. South Africa and Scotland .[4]

Further reading

- Outlines of Roman Law By Thomas Whitcombe Greene [5]
- Roman-Frisian law of the 17th and 18th century By J. H. A. Lokin, Frits Brandsma, C. J. H. Jansen [6]
- Imperatoris Iustiniani Institutionum Libri Quattuor By John Baron Moyle, Justinian [7]
- "The evolution of the law of unjustified enrichment" [8]

References

[1] Walter A. Shumaker, George Foster Longsdorf. The cyclopedic law dictionary (http://books.google.com/books?id=nPUUAAAAYAAJ&pg=PA204&lpg=PA204&dq="qui+consulto+dat"&source=bl&ots=H-sbhWe603&sig=4whL0jIDh-r6UmKx4YOdFf1vQco&hl=en&ei=gYnSS6uQCYGW8ATCjMirDw&sa=X&oi=book_result&ct=result&resnum=1). Second edition, 1922.

[2] Bell, Diet; Calv. Lex.; 1 Kames, Eq. 307.

[3] John Trayner. Latin phrases and maxims: collected from the institutional and other writers on Scotch law (http://books.google.com/books?id=oRMMAAAAYAAJ&pg=PA280&dq=qui+consulto+dat+quod&hl=en&ei=l5HSS4XNJIW0lQeR2MHtDA&sa=X&oi=book_result&ct=result&resnum=1#v=onepage&q=qui consulto dat quod&f=false). Edinburgh: William Paterson, 1861.

[4] See e.g. The common law of South Africa By Manfred Nathan, Johannes Voet (http://books.google.com/books?pg=PA1006&dq=Condictio+Indebiti&ei=xu1XSuOfCaSCywSXqLWnBw&client=firefox-a&id=z18SAAAAYAAJ&output=text)

[5] http://books.google.com/books?id=tXYDAAAAQAAJ&pg=PA160&dq=Condictio+Indebiti&ei=xu1XSuOfCaSCywSXqLWnBw&client=firefox-a

[6] http://books.google.com/books?id=10xY5zAsGfcC&pg=PA240&dq=Condictio+Indebiti&lr=&ei=7e1XSoeeOZP8zQTpr6QK&client=firefox-a

[7] http://books.google.com/books?pg=PA381&dq=Condictio+Indebiti&lr=&ei=7e1XSoeeOZP8zQTpr6QK&client=firefox-a&id=jMILAAAAYAAJ&output=text

[8] http://books.google.com/books?id=l8hEC011dlMC&pg=PA45&dq=Condictio+Indebiti&lr=&ei=7e1XSoeeOZP8zQTpr6QK&client=firefox-a

Consensu (law)

Consensu, a Latin term meaning "with consent," appears in several legal Latin constructions:

- Alienatio licet prohibeatur, consensu tamen omnium in quorum favorem prohibita est, potest fieri.

  "While alienation may be restrained, yet it may be made with the consent of all those in whose favor it was restrained. The maxim is one of the common law, and the principle of it is no less applicable in equity."

  See Seip's Estate, 1 Pa Dist 26.

- consensu regio

  By royal command. See 3 Blackstone Commentaries 95.

- Divide et impera, cum radix et vertex imperii in obedientium consensu rata sunt.

  Divide and rule, for the root and pinnacle of empire are rated in the consent of the obedient.

- Finis est amicabilis compositio et finalis concordia ex consensu et concordia domini regis vel justiciarum

  A fine is a friendly settlement and final concord by the consent of our lord the king or the justices.

- furor contrahi matrimonium non sinit, quia consensu opus est.

  Insanity prevents a marriage from being contracted, because consent is essential.

- Re, verbis, scripto, consensu, traditione, junctura vestes sumere pacta solent.

  Compacts are accustomed to take their clothing from the subject matter, the words, the writing, the delivery and the consent or joining together.

- Scriptae obligationes scriptis tolluntur, et nudi consensus obligatio contrario consensu dissolvitur.

  Written obligations are released or discharged by writings, and an obligation of mere consent is dissolved or discharged by a consent to the contrary.

- Sine scripto jus venit, quod usus approbavit, nam diuturni mores consensu utentium comprobati legem imitantur.

  Law comes without any writing, that which usage has established, for long established customs sanctioned by the consent of those adopting them represent law.

  AUTHORITY: See 1 Bl Comm 74.

- tacito et illiterato hominum consensu et moribus expressum.

  Expressed by the silent and unwritten consent and customs of men. AUTHORITY: 1 Blackstone Commentaries 64.

Consuetudinary

Consuetudinary (Medieval Latin ***consuetudinarius***, from *consuetudo*, custom) is a term applied to law where the rule of law is determined by long-standing custom as opposed to case law or statute.

Most laws of consuetudinary basis deal with *standards of community* that have been long-established in a given locale. However the term "consuetudinary" can also apply to areas of international law where certain standards have been nearly universal in their acceptance as correct bases of action - in example, laws against piracy or slavery (see *hostis humani generis*). In many, though not all instances, consuetudinary laws will have supportive court rulings and case law that has evolved over time to give additional weight to their rule as law and also to demonstrate the trajectory of evolution (if any) in the interpretation of such law by relevant courts.

See also

- Oral law
- Convention (norm)

Contra proferentem

Contra proferentem is a rule of contractual interpretation which provides that an ambiguous term will be construed against the party that imposed its inclusion in the contract – or, more accurately, against (the interests of) the party who imposed it. The interpretation will therefore favor the party that did not insist on its inclusion. The rule applies only if, and to the extent that, the clause was included at the unilateral insistence of one party without having been subject to negotiation by the counter-party. Additionally, the rule applies only if a court determines the term to be ambiguous, which often forms the substance of a contractual dispute.

It translates from the Latin literally to mean "against (*contra*) the one bringing forth (the *proferens*)."

The reasoning behind this rule is to encourage the drafter of a contract to be as clear and explicit as possible and to take into account as many foreseeable situations as it can.

Additionally, the rule reflects the court's inherent dislike of standard-form take-it-or-leave-it contracts also known as contracts of adhesion (e.g., standard form insurance contracts for individual consumers, residential leases, etc.). The court perceives such contracts to be the product of bargaining between parties in unfair or uneven positions. To mitigate this perceived unfairness, legal systems apply the doctrine of contra proferentem; giving the benefit of any doubt in favour of the party upon whom the contract was foisted. Some courts when seeking a particular result will use contra proferentem to take a strict approach against insurers and other powerful contracting parties and go so far as to interpret terms of the contract in favor of the other party, even where the meaning of a term would appear clear and unambiguous on its face, although this application is disfavored.

Contra proferentem also places the cost of losses on the party who was in the best position to avoid the harm. This is generally the person who drafted the contract. An example of this is the insurance contract mentioned above, which is a good example of an adhesion contract. There, the insurance company is the party completely in control of the terms of the contract and is generally in a better position to, for example, avoid contractual forfeiture. This is a longstanding principle: see, for example, California Civil Code §1654 (“In cases of uncertainty ... the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist"), which was enacted in 1872. Numerous other states have codified the rule as well.

The principle has also been codified in international instruments such as the UNIDROIT Principles and the Principles of European Contract Law.

Further reading

- *Oxonica Energy Ltd v Neuftec Ltd (2008) EWHC 2127 (Pat)* [1], items 88-93 (example where the *contra proferentem* principle was "not adequate enough to supply the answer to the case", with a discussion of the origin of the maxim)
- Péter Cserne, *Policy Considerations In Contract Interpretation: The Contra Proferentem Rule From a Comparative Law and Economics Perspective* [2], Hungarian Association for Law and Economics, 2007 (pdf [3]) (itself including a list of references relating to the *contra proferentem* principle)

References

[1] http://www.bailii.org/ew/cases/EWHC/Patents/2008/2127.html
[2] http://works.bepress.com/peter_cserne/28/
[3] http://works.bepress.com/cgi/viewcontent.cgi?article=1027&context=peter_cserne

Contradictio in adjecto

Contradictio in adjecto is Latin for *a contradiction in itself* or a *contradiction in terms*. It is "the characteristic that is denoted by the adjective stands in contrast to the noun." [1] It is a kind of oxymoron, for example, "There was a deafening silence in the room."[1]

Civil law

The concept has been adapted by civil law systems, including German law.[2]

See also

- List of legal Latin terms
- Oxymoron
- Rhetoric
- Wooden iron

References

[1] Basic Rhetorics Tropes web site (http://www.as.uni-heidelberg.de/projekte/rhetorics/tropes.html)
[2] Definition und Definieren (http://www.sgipt.org/wisms/gb/defin.htm) In *German*.

Coram non judice

Coram non judice, Latin for "not in the presence of a judge," is a legal term typically used to indicate a legal proceeding without a judge, with improper venue, or without jurisdiction.

Coram nobis

Coram nobis, or ***coram vobis*** (In Latin, "in our presence" or "in your presence", respectively, usually translated in context as "the error before us") is a legal writ issued by a court to correct a previous error "of the most fundamental character" to "achieve justice" where "no other remedy" is available.[1] The writ was also *error coram nobis* or *error coram vobis*.

Purpose

A *coram nobis* petition applies to persons who have already been convicted of a crime and have served their sentence. It may seek to remove probation requirements or restrictions, eliminate payment or obtain refund of court imposed fines, restore voting rights and gun ownership, improve employment and credit potential, remove a public stigma, and so forth, in order to restore, so far as possible, the erroneously convicted party to a pre-conviction state. Motions may be filed by heirs at law even after the original person is deceased.

In a case from 2007 (*Gary Earl Neighbors v. Commonwealth of Virginia*), the Supreme Court of Virginia explained in great detail the purpose of a writ of error coram nobis, quoting from a 1957 decision from the same court (*Dobie v. Commonwealth*):

> The writ of *error coram vobis*, or *coram nobis*, is an ancient writ of the common law. It was called *coram nobis* (before us) in King's Bench because the king was supposed to preside in person in that court. It was called *coram vobis* (before you — the king's justices) in Common Pleas, where the king was not supposed to preside. The difference related only to the form appropriate to each court and the distinction disappeared in this country when the need for it ended. 49 C.J.S., Judgments, § 311, p. 561, n. 28. Mr. Minor says the proper designation here is *coram vobis*. IV Minor's Inst., 3 ed., Part I, pp. 1052-3.
>
> The principal function of the writ is to afford to the court in which an action was tried an opportunity to correct its own record with reference to a vital fact not known when the judgment was rendered, and which could not have been presented by a motion for a new trial, appeal or other existing statutory proceeding. Black's Law Dict., 3 ed., p. 1861; 24 C.J.S., Criminal Law, § 1606 b., p. 145; *Ford v. Commonwealth*, 312 Ky. 718, 229 S.W.2d 470. It lies for an error of fact not apparent on the record, not attributable to the applicant's negligence, and which if known by the court would have prevented rendition of the judgment. It does not lie for newly-discovered evidence or newly-arising facts, or facts adjudicated on the trial. It is not available where advantage could have been taken of the alleged error at the trial, as where the facts complained of were known before or at the trial, or where at the trial the accused or his attorney knew of the existence of such facts but failed to present them. 24 C.J.S., Criminal Law, § 1606 at p. 148; 49 C.J.S., Judgments, § 312 c., pp. 563, 567. [2]

Limits

Writs of coram nobis cannot be used to address issues of law previously ruled upon by the court but only to address errors of fact that were not known at time of trial or were knowingly withheld during and after trial from judges and defendants by prosecutors, and which might have altered the verdict were they presented at the trial.

Writ abolished in civil cases

In United States federal courts, the Federal Rules of Civil Procedure, under rule 60 (e) abolished the writ of coram nobis in civil cases.[3] However, in *United States v. Morgan*, the Supreme Court hold that coram nobis was still available in federal court for criminal cases.[4]

Examples

One relatively well-known example was in regard to the Supreme Court case *Korematsu v. United States* (1944), which upheld a conviction pertaining to the World War II Japanese American internment. In 1984, a federal district court judge granted a writ of *coram nobis*, overturning the conviction.[5]

In another case, Alger Hiss, convicted in 1950 on two counts of perjury for lying under oath about having spied for the Soviet Union in the 1930s, filed for a writ of coram nobis in the 1970s, after the FBI released certain records that Hiss argued showed that he had not received a fair trial (and after Richard Nixon, a leading voice against Hiss on the HUAC committee, was disgraced by the Watergate scandal). A federal district court denied the petition, holding that the documents "raise no real question whatsoever, let alone a reasonable doubt, as to Hiss's guilt," that "[t]he trial was a fair one by any standard," and that "[t]he jury verdict rendered in 1950 was amply supported by the evidence — the most damaging aspects of which were admitted by Hiss." [6]

References

[1] *Bonadonna v. Unknown Defendant*, 181 Fed. Appx. 819 (C.A. 11 (Ga.), 2006).

[2] **'Neighbors v. Commonwealth'**, 274 Va. 503 (http://www.courts.state.va.us/opinions/opnscvwp/1062460.pdf) ., citing **'Dobie v. Commonwealth'**, 198 Va. 762, 768-69 (1957).

[3] Cornell Law School website (http://www.law.cornell.edu/rules/frcp/Rule60.htm)

[4] US legal definitions website (http://definitions.uslegal.com/w/writ-of-coram-nobis)

[5] *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984).

[6] **'In re Hiss'**, 542 F.Supp. 973, 999 (S.D.N.Y. 1978)., affirmed 722 F.2d 727 (2d Cir. 1983)., cert. denied 464 U.S. 890 (1983)..

Corpus Juris

The legal term ***Corpus Juris*** means "body of law".

It was originally used by the Romans for several of their collections of all the laws in a certain field; see *Corpus Juris Civilis*.

Later the term was used for comprehensive collections of laws in the US, as in *Corpus Juris Secundum*. The term is commonly used to refer to the entire body of law of a country, jurisdiction, or court, such as "the *corpus juris* of the Supreme Court of the United States."

The phrase has been used in the European Union to describe the possibility of a *European Legal Area*, a *European Public Prosecutor* and a *European Criminal Code*. Eurosceptics have attacked the plans which they see as a threat to the criminal law traditions of individual member states.

See also

- acquis

Corpus delicti

Corpus delicti (plural: corpora delicti) (Latin: "**body of crime**") is a term from Western jurisprudence which refers to the principle that it must be proven that a crime has occurred before a person can be convicted of committing the crime. For example, a person cannot be tried for larceny unless it can be proven that property has been stolen. Likewise, in order for a person to be tried for arson it must be proven that a criminal act resulted in the burning of a property. *Black's Law Dictionary* (6th ed.) defines "*corpus delicti*" as: "the fact of a crime having been actually committed."

In the Anglo-American legal system, the concept has its outgrowth in several principles. Many jurisdictions hold as a legal rule that a defendant's out-of-court confession, alone, is not sufficient evidence to prove the defendant's guilt beyond a reasonable doubt. See, e.g., *Wong Sun v. United States*, 371 U.S. 471, 497 n.14, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963 (citing to corpus delicti rule and stating: "For the history and development of the corroboration requirement, see 7 Wigmore, Evidence [3d ed. 1940], §§ 2070-2071; Note, Proof of the Corpus Delicti Aliunde the Defendant's Confession, 103 U. of Pa. L. Rev. 638-649 [1955]. For the present scope and application of the rule, see 2 Underhill, Criminal Evidence [5th ed. 1956], §§ 402-403. For a comprehensive collection of cases, see Annot., 45 A. L. R.2d 1316 [1956].") A corollary to this rule is that an accused cannot be convicted solely upon the testimony of an accomplice. Some jurisdictions also hold that without first showing independent corroboration that a crime happened, the prosecution may not introduce evidence of the defendant's statement.

Corpus Delicti is one of the most important concepts in a murder investigation. For example, when a person disappears and is unable to be contacted, many police agencies initiate a missing person case. If, during the course of the investigation of this missing person, the investigating detectives believe that he/she has been murdered by another individual, then, a “body” or all collected evidentiary items to include physical, demonstrative, and testimonial evidence, must be obtained that establishes that the missing individual has indeed been murdered before a suspect can be charged with homicide[1] . The best and easiest evidence establishment in these cases is the physical body of the deceased. However, in the event that a physical body is not obviously present or has not yet been discovered, it is possible to prove a suspect’s guilt if enough circumstantial evidence is presented which is able to prove said guilt beyond a reasonable doubt[2] .

Specific Offenses

General - All corpus delicti requires at a minimum: 1) The occurrence of the specific injury; and 2) some criminal agency as the source of the injury. For example:

- **Homicide** - 1.) An individual has died; and 2.) By a criminal act.
- **Larceny** - 1.) Property missing; and 2.) Because it was stolen

Misinterpretation

Evidence in the case of British serial killer John George Haigh indicated that he decided to destroy the bodies of his victims with acid because he had the mistaken belief that, in the absence of a corpse, murder could not be proven because there was no "corpus delicti." Haigh had misinterpreted the Latin word "corpus" as a *literal* body rather than a *figurative* one.

See also

- Robert Leonard Ewing Scott

References

[1] A Scream on the Water: A True Story of Murder in Salem - Margaret Press
[2] Criminal Investigation - Bruce Berg

Cui bono

Cui bono ("To whose benefit?", literally "as a benefit to whom?", a double dative construction) is a Latin adage that is used either to suggest a hidden motive or to indicate that the party responsible for something may not be who it appears at first to be.

Commonly the phrase is used to suggest that the person or people guilty of committing a crime may be found among those who have something to gain, chiefly with an eye toward financial gain. The party that benefits may not always be obvious or may have successfully diverted attention to a scapegoat, for example.

The Roman orator and statesman Marcus Tullius Cicero, in his speech *Pro Roscio Amerino*[1] , section 84, attributed the expression *cui bono* to the Roman consul and censor Lucius Cassius Longinus Ravilla:

> *L. Cassius ille quem populus Romanus verissimum et sapientissimum iudicem putabat identidem in causis quaerere solebat 'cui bono' fuisset.*
> The famous Lucius Cassius, whom the Roman people used to regard as a very honest and wise judge, was in the habit of asking, time and again, 'To whose benefit?'

Another example of Cicero using "*cui bono*" is in his defence of Milo, in the Pro Milone. He even makes a reference to Cassius: "let that maxim of Cassius apply"[2] .

Example

Cui bono is still a standard rule applied in criminal investigations. Effective use of *cui bono* depends on various factors, which are illustrated here using the hypothetical case of a wealthy man named "Mr. Jones", who was found dead beside a road.

Cui bono can be applied only in cases where some act was planned with the intention of obtaining a benefit. If Mr. Jones died as the result of a random accident (e.g. a heavy object fell off a passing truck and hit him) or without a premeditated act (e.g. struck by a careless drunk driver), *cui bono* will not be relevant.

Cui bono requires a good understanding of all possible motives. Because Mr. Jones was wealthy, the police will certainly concentrate on his heirs, but others may also have benefited from his death. Perhaps Mr. Jones was killed by his wife because he had a mistress, or Mr. Jones was killed by his mistress because he wanted to end the relationship. It is possible that Mr. Jones had a drug habit and was killed by his dealer in an argument over payment. Jones may have been involved in other illegal activities and his business partners killed Jones to silence him. Finally, Jones may have been the random victim of a mugging.

The understanding of motives requires that even motives existing only in the mind of the killer must be taken into account. Mr. Jones could have been killed by somebody who wrongly believed that he would inherit his fortune, or by a murderously jealous wife, who mistakenly believed that he had been unfaithful. The motives of supposedly insane criminals ("He was an invader from Mars! I saved Earth!") may fall into this category as well.

It is possible that several people will benefit from the murder, or that the actual murderer would not be the one with the most to gain. Mr. Jones may have been the victim of a violent mugger who wanted the cash in his wallet and knew nothing about his fortune.

Use in politics

The *cui bono* principle is often applied to explain acts of political significance, but may not always be reliable or useful.

Whereas the motives for crime are typically rather simple (greed, jealousy, hatred and fear), politics is far more complex. Ideology, religion, customs, and historical developments (such as long-standing feuds, bigotry, and racism) have to be taken into account.

Political movements typically have more than one actor and motives can vary widely: The king wants the war to gain lands and destroy a political rival, the priesthood wants the war to destroy the enemy heretics, the nobles want the war because they wish to avenge old wrongs, and the warriors want the war because they want the war booty.

Political acts are often designed to have an effect that is very different from what actually happens. The assassination of a much-hated king can be an attempt to bring down a royal house and start a revolution, but can have exactly the opposite effect: The old tyrant dies as planned, but his successor turns out to be a good ruler who manages to stabilize the monarchy. On the other hand, some act that is meant to satisfy only a minor goal can have far-reaching consequences: A petty feud between chieftains on opposite sides of a border can turn into full-scale war, repeated raids can provoke military retaliation that leads to the conquest of an entire country, a brutal act by a minor official triggers a revolution, etc.

If a conflict lasts for some time, the countries that started it may well exhaust their resources and the winners are other states who enter the conflict later. World War II started as a conflict of European powers and in the end, the USA and the Soviet Union emerged as the new superpowers.

Even more than with crime, it is very important to judge what really is a benefit. Parties that appear victorious may find themselves in a very difficult position, while others who may not appear to be on the winning side can have every reason to feel satisfied. For example, imagine this scenario: two kingdoms are at war and kingdom A conquers B. According to the history books, A wins. In reality, A has an empty treasury, too many dead knights, and a huge,

unruly country it cannot control. B is technically defeated, but the king of A needs the nobles of B to rule the land. So, the barons of B enjoy more privileges under the conqueror than under the old king of B, and prosper.

Sometimes, those who carry out a political act have a radical world view which makes them pursue some goal that appears nonsensical to other people. It can be very easy to overlook or misunderstand the benefit desired by such a group.

In politics, many actors may benefit from a certain event. A skilled politician who is able to advance his agenda by using (or abusing) a particular event, or a company that quickly steps in to offer a remedy to some real or perceived problem can benefit greatly from an act they did not cause. *Cui bono* may fail completely if the persons who intended to benefit from a certain act gain nothing or only a tiny benefit and other players obtain a huge advantage. For example, consider a mugging committed in front of a video camera. The mugger gets just $50 and is quickly caught. His benefit is tiny. A political faction that wants to roll out surveillance cameras all over the city uses the incident skillfully to gain widespread acceptance for their plan. Their benefit is huge. However, they may be faced with a conspiracy theory accusing them of setting up the entire incident.

Issues with analysis

The application of *cui bono* in politics or other large-scale events is even more risky because many other factors have to be considered.

In retrospect, the actual outcome can appear far more logical and straightforward than at the time. Refer to the article on historian's fallacy for more information.

It is especially difficult to judge the motives of people of different ages and cultures. A common mistake is to overlook motives which do not fit the mindset of the observer ("I would not start a war over issue X, so this war cannot have been about X" or "X is a non-issue in my age and country, so X must have been a non-issue in medieval Hungary").

Actors may themselves distort the truth about events to gloss over their own failings. A general who loses a battle has cause to present himself as the victim of a cunning enemy plan. A general who wins a battle through sheer luck (the enemy makes a really stupid mistake, the weather changes during a naval battle, the enemy commander is killed by a stray bullet) may present a distorted story to give the impression that he was in control all the time.

Historians may themselves report only a distorted version of an event.

History books can overplay the importance of famous people and fail to mention the effects many less famous people have on history. This may distort the perception of great historical figures because the actions and motives of many lesser players affect history as well. Did Napoleon lose the battle of Waterloo? He did, but mostly because one of his generals, Emmanuel, marquis de Grouchy, failed to neutralize the Prussian army.

Use in popular culture

- *Cui Bono* is the Latin motto of the Crime Syndicate of Amerika, the evil supervillain counterpart of the Justice League of America in the DC comics universe. A version of the Crime Syndicate of Amerika appears in Grant Morrison's JLA: Earth-2, where, in their alternate universe, it is the villains who benefit from their power, rather than the humans that their hero counterparts would protect.

  Cui bono is also a major theme in the DC Comics limited series *Identity Crisis*, in which a recurring character is killed to the benefit of an unusual suspect.
- *Cui bono* was also a common theme in the Scooby-Doo TV cartoon where a person would pretend a given place was haunted with ghosts for some purpose to their benefit.
- *Qui bono* (literally "who with good") is a common nonsensical Dog Latin misrendering.

- Said by Alec Baldwin's character in *The Departed*, to which Matt Damon's character replies: "Cui gives a shit. It's got a freakin' bow on it."
- *Cui bono* is referenced in The Big Lebowski, when Jeffrey Lebowskiy, discussing the "kidnapping" of Bunny Lebowski, explains his theory with "you look for the guy who benefits...".
- Sherlock Holmes paraphrases *Cui bono* in many of Arthur Conan Doyle's stories, most notably in The Naval Treaty where he states "Answer the question of who benefits or profits most directly from an action, event, or outcome and you always have the starting point for your analysis or investigation, and sometimes, it will also give you the end point."

See also

- Brocard (legal term)
- List of legal Latin terms
- List of Latin phrases

References

[1] Pro Roscio Amerino (http://thelatinlibrary.com/cicero/sex.rosc.shtml)
[2] Cicero, Pro Milone 32.3)

Cuius est solum eius est usque ad coelum et ad inferos

Cuius est solum, eius est usque ad caelum et ad inferos (Latin for ***for whoever owns the soil, it is theirs up to Heaven and down to Hell***) is a principle of property law which can be traced back to 1766, when William Blackstone boldly proclaimed the doctrine in his treatise *Commentaries on the Laws of England*. It was not a principle of Roman law, despite the Latin phrasing of the maxim, nor was the theory recognized in early common law. Rather, it is best viewed as hyperbole invented by Blackstone, without any prior foundation in English law. By the end of the 19th century, frequent repetition had transformed Blackstone's naked assertion into a supposed rule of American law.[1]

As the name describes, the principle is that a person who owns a particular piece of land owns everything above and below it as well. Consequently, the owner could prosecute trespass against people who violated the border but never actually touched the soil. As with any other property rights, the owner can sell or lease it to others, or it may be taken or regulated by the state.

For example, suppose three people owned neighboring plots of land. The owners of the plots on the ends want to build a bridge over the center plot connecting their two properties. Even though the bridge would never touch the soil of the owner in the middle, the principle of *cuius est solum* would allow the middle owner to stop its construction or demand payment for the right to do so.

By the same principle, a person who wants to mine under somebody's land would have to get permission from the owner to do so, even if the mine entrance was on neighboring land.

The phrase was first coined by Accursius of Bologna in the 13th Century.

In *Lord Bernstein of Leigh v Skyviews & General Ltd* [1978] QB 479, the Court noted that the phrase was 'colourful', but said that it was well settled in the common law that a land owner had rights in the air immediately above the land, extending in particular to signs overhanging from adjacent properties. The right did not extend though to more than was 'necessary for the ordinary use and enjoyment of the land and structures upon it'. Planes, hot air balloons, and the like, would not commit a tort of trespass by merely passing over a person's property.

The property right to air superincumbent to land was confirmed in *Kelsen v. Imperial Tobacco Co.* [1957] 2 QB 334, where a sign erected on a building that overhung the plaintiff's property committed the tort of trespass, even though no harm or nuisance was caused by it. An injunction was granted to the landowner causing the sign to be removed.

U.S. common law generally limits trespass claims to infringements a reasonable distance above and below the surface of the land.[2]

See also

- Air rights
- Australian mining law
- Energy law
- Mineral rights
- Riparian rights

External links

- The Straight Dope: Can I declare a "no-flight zone" over my house? [3]

References

[1] John G. Sprankling, *Owning the Center of the Earth*, 55 UCLA L. Rev. 979, 982-83 (2008).
[2] *United States v. Causby*, 328 U.S. 256 (http://supreme.justia.com/us/328/256/case.html) (1946)
[3] http://www.straightdope.com/classics/a5_136.html

Cuius regio, eius religio

Cuius regio, eius religio is a phrase in Latin translated as "Whose realm, his religion", meaning the religion of the ruler dictated the religion of the ruled. The rulers of the German-speaking states and the Charles V, Holy Roman Emperor, agreed to the principle in the Peace of Augsburg (1555), which ended armed conflict between the Catholic and Protestant forces in the Holy Roman Empire. The principle applied to most of the territories of the Empire, with the exception of the several of the sovereign families and Imperial cities and the Ecclesiastical principalities, whose issues were addressed under separate principles (see Ecclesiastical reservation and *Declaratio Ferdinandei*).

The principle only extended legitimacy to two religions within the Empire, Catholicism and Lutheranism, leaving out such reformed religions as Calvinism, and such radical religions as Anabaptism; any other practice of worship beyond the two legal forms was expressly forbidden and legally considered a heresy, a crime punishable by death. Although not intended to offer the modern idea of "freedom of conscience," individuals who could not subscribe to the prince's religion were permitted to leave the territory with their possessions.

The Peace of Augsburg (1555) generally, and the principle of *cuius regio, eius religio* specifically, marked the end of the first wave of organized military action between Protestants and Catholics; however, its limitations did not address the emerging trend toward religious pluralism (co-existence within a single territory) developing throughout the German-speaking lands of the Holy Roman Empire.

Religious divisions in the Empire

Charles V, Holy Roman Emperor, instructed his brother to settle disputes relating to religion and territory at the Augsburg Diet in 1555.

Prior to the 16th century, there had been *one* faith in Western Christendom, and that was the catholic, or universal, faith. Martin Luther's agenda called for the reform of the universal Church, but was not necessarily a rejection of the faith *per se*. Initially dismissed by Holy Roman Emperor Charles V as an inconsequential argument between monks, the idea of reformation of the Church accentuated controversies and problems in many of the territories of the Holy Roman Empire. The reform theology galvanized social action in the Peasant Revolts (1524–1526), which were brutally repressed and the popular political and religious movement crushed. In 1531, fearful of a repetition of similar suppression against themselves, several Lutheran princes formed the Schmalkaldic League, an alliance through which they agreed to protect themselves and each other from territorial encroachment, and which functioned as a political alliance against Catholic princes and armies.[1]

It was broadly understood by princes and clergy alike that institutional abuses hindered the practices of the faithful.[2] In 1537, Pope Paul III had called a council to examine abuses and to suggest and implement reforms. In addition, he instituted several internal reforms. Despite these efforts, and the cooperation of Charles V, unification of the two strands of belief foundered on different concepts of “Church” and the principle of justification.[3] In the same year, the Schmalkaldic League called its own ecumenical council, and posited several precepts of faith; Luther was present, but too ill to attend the meetings. When the delegates met again, this time in Regensburg in 1540–41, representatives could agree on the doctrine of faith and justification, but not on the number of sacraments, especially whether or not confession, and absolution were sacramental, and they differed widely on definition of the church.[4] Catholic and Lutheran adherents seemed further apart than ever; in only a few towns and cities were Lutherans and Catholics able to live together in even a semblance of harmony. By 1548, political disagreements overlapped with religious issues, making any kind of agreement seem remote.[5]

In 1548 Charles declared an *interreligio imperialis* (also known as the Augsburg Interim) through which he sought to find some common ground. This effort succeeded in alienating Protestant and Catholic princes and the *Curia*; even Charles, whose decree it was, was unhappy with the political and diplomatic dimensions of what amounted to half of a religious settlement.[6] The 1551–52 sessions convened by Pope Julius III at the supposedly ecumenical Council of Trent solved none of the larger religious issues but simply restated Catholic teaching and condemnation of Protestant heresies.[7]

Augsburg Diet

Peace of Augsburg	
Participants	Ferdinand, King of the Romans acting for Charles V. Delegates from the Imperial Estates
Location	Augsburg
Date	1555
Result	(1) The principle *Cuius regio, eius religio* established religious conformity within a single state. Two confessions of faith were acceptable: Catholicism or the Augsburg Confession (Lutherans). Any other expression of faith was heretical. (2) The principle of *reservatum ecclesiasticum* protected the religious conformity within the ecclesiastical estates; even if the prince or prelate converted to another faith, his subjects were not required to convert. (3) The *Declaratio Ferdinandei* protected the authority of the princely families and knights to determine religious uniformity in their own territories.

Catholic and Protestant ideology seemed further apart than ever. Charles' interim solution satisfied no one. He ordered a general Diet in Augsburg at which the various states would discuss the religious problem and its solution; (this should not be confused with the Diet of Augsburg in 1530). He himself did not attend, and delegated authority to his brother, Ferdinand, to "act and settle" disputes of territory, religion and local power.[8] At the conference, Ferdinand cajoled, persuaded and threatened the various representatives into agreement on three important principles. Cuius regio, eius religio, Ecclesiastical reservation, and the Declaration of Ferdinand.

Representatives of the German estates at the Augsburg conference discuss the possibilities of a religious peace.

Cuius regio, eius religio

The principle of *Cuius regio, eius religio* provided for internal religious unity within a state: The religion of the prince became the religion of the state and all its inhabitants. Those inhabitants who could not conform to the prince's religion were allowed to leave, an innovative idea in the 16th century; this principle was discussed at length by the various delegates, who finally reached agreement on the specifics of its wording after examining the problem and the proposed solution from every possible angle.*Cuius regio, eius religio* went against earlier Catholic teaching which held that the kings should faithfully obey the pope. This obedience was thought to produce greater fruits of cooperation and less political infighting and fewer church divisions. The phrase *cuius regio, eius religio* as applied to the outcome is attributed to the early seventeenth century (1612, by the jurist Joachim Stephani (1544-1623) of the University of Greifswald[9]).

Second and third principles of Augsburg Peace

The second principle covered the special status of the ecclesiastical states, called the ecclesiastical reservation, or *reservatum ecclesiasticum*. If the prelate of an ecclesiastic state changed his religion, the men and women living in that state did not have to do so. Instead, the prelate was expected to resign from his post, although this was not spelled out in the agreement.

The third principle, known as *Ferdinand's declaration*, exempted knights and some of the cities from the requirement of religious uniformity, if the reformed religion had been practiced there since the mid-1520s, allowing for a few mixed cities and towns where Catholics and Lutherans had lived together. It also protected the authority of the princely families, the knights and some of the cities to determine what religious uniformity meant in their territories. Ferdinand inserted this at the last minute, on his own authority.[10]

Legal ramifications

After 1555, the Peace of Augsburg became the legitimating legal document governing the co-existence of Lutheran and Catholic faiths in the German lands of the Holy Roman Empire, and it served to ameliorate many of the tensions between followers of the so-called Old Faith and the followers of Luther. It had two fundamental flaws. First, Ferdinand had rushed the article on *ecclesiastical reservation* through the debate; it had not undergone the scrutiny and discussion that attended the acceptance of *Cuius regio, eius religio*. Consequently, its wording did not cover all, or even most, potential legal scenarios. His *ad hoc Declaratio Ferdinandei* was not debated in plenary session at all; instead, using his authority to "act and settle,"[11] he had added it at the last minute, responding to lobbying by princely families and knights.[12]

Ferdinand, King of the Romans after 1531 and Holy Roman Emperor (1555-1564). His brother instructed him to settle the disputes at the Augsburg Diet

These specific failings came back to haunt the Empire in subsequent decades, perhaps the greatest weakness of the Peace of Augsburg was its failure to take into account the growing diversity of religious expression emerging in the so-called evangelical and reformed traditions. By 1555, the reforms proposed by Luther were no longer the only possibilities of religious expression: Anabaptists, such as the Frisian Menno Simons (1492–1559) and his followers, the followers of John Calvin, who were particularly strong in the southwest and the northwest, or those followers of Huldrych Zwingli, were excluded from considerations and protections under the Peace of Augsburg. According to the Religious Peace, their religious beliefs remained heretical.[13]

Application in ecclesiastical territories

No agreement was reached on the question of whether Catholic bishops and abbots who became Lutheran should lose their offices and incomes, until the reservatum ecclesiasticum was inserted by imperial decree. The validity of this insertion was contested in a five-year war between the Protestant-convert Archbishop-Elector of Cologne, Gebhard Truchsess von Waldburg, and his Catholic-replacement Ernest of Bavaria, with the latter's victory upholding it.[14]

The ideal of individual religious tolerance on a national level was, however, not addressed: neither the Reformed nor Radical churches (Calvinists and Anabaptists being the prime examples) were protected under the peace (and Anabaptists would reject the principle of *cuius regio eius religio* in any case). Many Protestant groups living under the rule of a Lutheran prince still found themselves in danger of the charge of heresy. Tolerance was not officially extended to Calvinists until the Peace of Westphalia in 1648, and most Anabaptists eventually relocated to the New World or were exterminated.

Bibliography

- Brady, Thomas, et al. (1995). *Handbook of European history, 1400–1600*, v. 2. Leiden: Brill. ISBN 978900409761
- Brodek, Theodor V (1971). "Socio-Political Realities of the Holy Roman Empire". *Journal of Interdisciplinary History* 1 (3): 395–405. 1971.
- Holborn, Hajo, *A History of Modern Germany, The Reformation.* Princeton: Princeton University Press, 1959 [1982]. ISBN 9780691007953
- Jedin, Hubert, *Konciliengeschichte*, Freiburg, Herder, 1980, ISBN 9780816404490.
- Ozment, Steven, *The Age of Reform 1250-1550, An Intellectual and Religious History of Late Medieval and Reformation Europe*, New Haven, Yale University Press, 1986, ISBN 9780300027600
- Sutherland, N.M. . "Origins of the Thirty Years War and the Structure of European Politics". *The English Historical Review* 107 (424): 587–625. 1992.

References

[1] Holborn, generally, see pp. 204–246, for a discussion of Protestant fear of suppression, political divisions, and consolidation of Protestant activities, see pp. 204–210; for Habsburg policy, Schmalkalden activities, and the alliance between Charles and Clement, pp. 214–227.

[2] Holborn, p. 205.

[3] Holborn explains that the papacy was unusually weak, due to the deaths of Julius in 1555 and his successor six weeks later (p. 242); See also Hubert Jedin, *Konciliengeschichte,* Freiburg, Herder, 1980, ISBN 9780816404490, p. 85.

[4] Holborn, pp. 227–248.

[5] Holborn, pp. 229–245, particularly pp. 231–232.

[6] Holborn, pp. 231–232.

[7] Holborn, p. 241.

[8] Holborn, p. 241.

[9] Steven Ozment, *The Age of Reform 1250-1550* (1980) p.259.

[10] For a general discussion of the impact of the Reformation on the Holy Roman Empire, see Holborn, chapters 6–9 (pp. 123–248).

[11] Holborn, p. 241.

[12] Holborn, pp. 244–245.

[13] Holborn, pp.243–246.

[14] Parker, Geoffrey. *The Thirty Years' War.* p. 17. ISBN 0415128838

Culpa in contrahendo

Culpa in contrahendo is a Latin expression meaning "fault in conclusion of a contract". It is an important concept in contract law for many civil law countries, which recognise a clear duty to negotiate with care, and not to lead a negotiating partner to act to his detriment before a firm contract is concluded. In German contract law, §311 BGB lists a number of steps by which an obligation to pay damages may be created.

By contrast, in English contract law, and many other common law jurisdictions, there has been stulted judicial acceptance of this concept. The doctrine of estoppel has been mooted by academics as a good model, but judges have refused to let it be a sidestep of the doctrine of consideration, saying estoppel must be a shield not a sword, and calling instead for Parliamentary intervention. On the other hand in the case of land, proprietary estoppel effectively created obligations regardless of any pre-existing contract. In the United States, however, courts have allowed promissory estoppel to function as a substitute for the consideration doctrine. This movement was stimulated by the acceptance of the concept in section 90 of the first *Restatement of Contracts*.

Culpa in Contrahendo in German Law Rudolf von Jhering is credited with the discovery of the culpa in contrahendo doctrine. Originally, according to the prevailing interpretation of the *Bürgerliches Gesetzbuch* or German *Civil Code*, there was no equivalent legal doctrine. The courts saw a gap in the legal system of the *Civil Code*, and filled it with the development of culpa in contrahendo.

Since the modernisation of the Law of Obligations in 2001, the legal doctrine is provided for by statute. (§311(2) in connection with §§280(1) and 241(2) of the *Civil Code*)

See also

- *Walton Stores Ltd v Maher*
- Friedrich Kessler and Edith Fine, *Culpa in Contrahendo, Bargaining in Good Faith, and Freedom of Contract: A Comparative Study*, 77 Harv. L. Rev. 401 (1964).

References

- Ihering, *Culpa in contrahendo oder Schadenersatz bei nichtigen oder nicht zur Perfection gelangtei Vertragen* (1860) in Ihering, *Gesammelte Aufsätze* (1881). Ihering argued that the "reliance measure" ought to be the proper one in "not quite" contracts, eg where there is a misunderstanding as to the terms of the contract.

Curia advisari vult

Curia advisari vult is a Latin legal term meaning "the court wishes to consider the matter" (literally, "the court wishes to be advised"), a term reserving judgment until some subsequent day. It often appears in case reports, abbreviated as "Cur. adv. vult", or sometimes "c.a.v." or "CAV", when the bench takes time for deliberation after hearing counsel's submissions.[1] [2]

In the case under consideration, the effect of the order is that nothing is adjudged and the Court will relist the matter to deliver judgment but may hear further argument.[3] The court remains seized of jurisdiction and may make further interlocutory orders, for example, to prevent a party from dealing with an asset which may be the subject of litigation or may be sold in satisfaction of a judgment debt; counsel remain under the duty to the court not to withhold relevant law and, if counsel becomes aware of a relevant authority, must seek to relist the matter for further argument.[4]

If the case is being used as a precedent, a decision given after an adjournment may be given more weight than a decision given orally immediately at the close of argument (Latin: *ex temporare*).[5] [6]

The term was not used in the reports of the House of Lords. Instead, an expression such as "Their Lordships took time to consider' will be found.[7] .

See also

- List of Latin legal phrases

References

[1] Jonathan Law and Elizabeth A. Martin "cur. adv. vult" in *A Dictionary of Law* (2009 Oxford University Press).
[2] William C. Cochran (1888) *Students' Law Lexicon - A Dictionary of Legal Words and Phrases* p 82.
[3] J. A. Guy 'The Origins of the Petition of Right Reconsidered' (1982) 25 (2) *The Historical Journal* pp 289-312 fn 15 p 293.
[4] G. E. Dal Pont Lawyers' Professional Responsibility (3rd ed. 2006 Sydney) p 382.
[5] Phillip Kenny & Steve Wilson *The Law Student's Handbook* (2007 Oxford University Press) p 22.
[6] Peter M. Tiersma "The Textualization of Precedent" (2007) 82 *Notre Dame Law Review* 1187 at p 1208
[7] Faculty of Law & Bodleian Law Library, Legal Research & Mooting Skills Programme "Law Reports" <http://denning.law.ox.ac.uk/lrsp/overview/law_reports.php> as at 8 Mar 2010

Damnum absque injuria

In law, ***damnum absque injuria*** (Latin for "loss without injury") is a phrase expressing the principle of tort law in which some person (natural or legal) causes damage or loss to another, but does not injure them, and thus the latter has no legal remedy. For example, opening a burger stand near someone else's may cause them to lose customers, but this in itself does not give rise to a cause of action for the original burger stand owner.

Categories of *damnum absque injuria*

Edward Weeks identified three categories of *damnum absque injuria*: the absence of legal protection for some interests, the general limits to legal protection of interests, and the varying extent of legal protections of interests.[1]

Absence of legal protection for some interests

Weeks and Oliver Wendell Holmes, Jr. identified several interests that lacked legal protection altogether. At the time of Weeks' treatise, there was no legal protection for emotional distress unconnected to a physical injury. Holmes also cited the example of an easement for light and air - if a neighbor built up a tall structure that overshadowed your house, you would have no legal remedy.[2]

General limits to legal protection of interests

Weeks and Holmes also identified that there could be damage without legal remedy based on some doctrines that limited liability. Contributory negligence, for example, could deprive a plaintiff of a legal remedy against a negligent defendant.[3]

Varying extent of legal protections of interests

Weeks and Holmes also recognized that there could be damage without legal remedy if the damage occurred outside the scope of protection for legally recognized interests.that Riparian owners, for example, could be damages by their neighbors upstream use of the water, but as long as the use was considered reasonable there would be no legal remedy.[4]

Reference case

In the 1938 decision in *Alabama Power Co. v. Ickes* (302 U.S. 464), the U.S. Supreme Court ruled:

> *The term 'direct injury' is there used in its legal sense, as meaning a wrong which directly results in the violation of a legal right. 'An injury, legally speaking, consists of a wrong done to a person, or, in other words, a violation of his right. It is an ancient maxim, that a damage to one, without an injury in this sense (damnum absque injuria), does not lay the foundation of an action; because, if the act complained of does not violate any of his legal rights, it is obvious, that he has no cause to complain. ... Want of right and want of remedy are justly said to be reciprocal. Where therefore there has been a violation of a right, the person injured is entitled to an action.' Parker v. Griswold, 17 Conn. 288, 302, 303, 42 Am.Dec. 739. The converse is equally true, that where, although there is damage, there is no violation of a right no action can be maintained.*

References

[1] E. Weeks, *The Doctrine of Damnum Absque Injuria Considered in Relation to the Law of Torts.* (1879)
[2] Holmes, O.W. *Privilege, Malice, and Intent.* 8 Harvard Law Rev. 1 (1894)
[3] Singer, J. *The Legal Rights Debate in Analytical Jurisprudence from Bentham to Hohfeld.* 1982 Wisc. L. Rev. 975
[4] Singer, J.

De facto

De facto is a Latin expression that means "by [the] fact". In law, it is meant to mean "in practice but not necessarily ordained by law" or "in practice or actuality, but without being officially established". It is commonly used in contrast to *de jure* (which means "concerning the law") when referring to matters of law, governance, or technique (such as standards) that are found in the common experience as created or developed without or contrary to a regulation. When discussing a legal situation, *de jure* designates what the law says, while *de facto* designates action of what happens in practice. It is analogous and similar to the expressions "for all intents and purposes" or "in fact". The term *de facto* as of governments was created after the Argentine Constitution referred to illegal governments (governing bodies which Argentina did not acknowledge as individual nations) as *de facto* governments. The term *de facto* may also be used when there is no relevant law or standard, but a common and well established practice that is considered the accepted norm.

Examples

Segregation (during the United States' Civil Rights era)

'De facto' racial discrimination or segregation in the USA during the fifties and sixties was simply discrimination that was *not* segregation by law (*de jure*).

Jim Crow Laws, which were enacted in the 1870s, brought legal racial segregation against African Americans residing in the Southeastern USA. These laws were legally ended in 1964 by the Civil Rights Act of 1964. .

Continued practices of expecting African Americans to ride in the back of buses or to step aside onto the street if not enough room was present for a Caucasian person and "separate but equal" facilities are instances of *de facto* segregation. The NAACP fought for the de jure law to be upheld and for de facto segregation practices to be abolished.

Standards

A de facto standard is a standard (formal or informal) that has achieved a dominant position, by tradition, enforcement, or market dominance. It has not necessarily received formal approval by way of a standardization process, and may not be an official standard document.

National languages

Several *de facto* English-speaking countries have no *de jure* official national language, such as Australia and the United Kingdom. Somewhat similarly, two U.S. states have *de facto* second languages in addition to the *de jure* standard of English: Spanish in New Mexico and French in Louisiana. In addition, although the official language of Ireland is Irish, English is considered to be the *de facto* language.

Russian was the *de facto* official language of the central government and, to a large extent, republican governments of the former Soviet Union, but was not declared *de jure* state language until 1990. A short-lived law effected April 24, 1990, installed Russian as the sole *de jure* official language of the Union.[1] Japan is another example of a country with no language recognized *de jure*.

Lebanon and Morocco are two examples where the official language is Arabic but an additional *de facto* language is considered to be French.

Politics

A *de facto* government is a government wherein all the attributes of sovereignty have, by usurpation, been transferred from those who had been legally invested with them to others, who, sustained by a power above the forms of law, claim to act and do really act in their stead.[2]

In politics, a *de facto* leader of a country or region is one who has assumed authority, regardless of whether by lawful, constitutional, or legitimate means; very frequently the term is reserved for those whose power is thought by some faction to be held by unlawful, unconstitutional, or otherwise illegitimate means, often by deposing a previous leader or undermining the rule of a current one. *De facto* leaders need not hold a constitutional office, and may exercise power in an informal manner.

Not all dictators are *de facto* rulers. For example, Augusto Pinochet of Chile initially came to power as the chairperson of a military junta, which briefly made him *de facto* leader of Chile, but then he later amended the nation's constitution and made himself president for life, making him the formal and legal ruler of Chile. Similarly, Saddam Hussein's formal rule of Iraq is often recorded as beginning in 1979, the year he assumed the Presidency of Iraq. However, his de facto rule of the nation began at an earlier date—during his time as vice president he exercised a great deal of power at the expense of the elderly, legal ruler, Ahmed Hassan al-Bakr.

Another example of a *de facto* ruler is someone who is not the actual ruler, but exerts great or total influence over the true ruler, which is quite common in monarchies. Some examples of these *de facto* rulers are Empress Dowager Cixi of China (for son Tongzhi and nephew Guangxu Emperors), Prince Alexander Menshikov (for his former lover Empress Catherine I of Russia), Cardinal Richelieu of France (for Louis XIII), and Queen Marie Caroline of Naples and Sicily (for her husband King Ferdinand I of the Two Sicilies).

Some notable true *de facto* leaders have been Deng Xiaoping of the People's Republic of China and General Manuel Noriega of Panama. Both of these men exercised near-total control over their respective nations for many years, despite not having either legal constitutional office or the legal authority to exercise power. These individuals are today commonly recorded as the "leaders" of their respective nations; recording their legal, correct title would not give an accurate assessment of their power. Terms like *strongman* or *dictator* are often used to refer to *de facto* rulers of this sort.

The term de facto head of state is sometimes used to describe the office of a governor general in the Commonwealth realms, since the holder of that office has the same responsibilities in their country as the *de jure* head of state (the sovereign) does war within the United Kingdom.

In the Westminster system of government, executive authority is often split between a *de jure* executive authority of a head of state and a *de facto* executive authority of a prime minister and cabinet who implement executive powers in the name of the *de jure* executive authority. In the United Kingdom, the Sovereign is the *de jure* executive authority, even though executive decisions are made by the elected Prime Minister and his Cabinet on the Sovereign's behalf, hence the term Her Majesty's Government.

The *de facto* boundaries of a country are defined by the area that its government is actually able to enforce its laws in, and to defend against encroachments by other countries that may also claim the same territory *de jure*. The line of control in Kashmir is an example of a *de facto* boundary. As well as cases of border disputes, de facto boundaries may also arise in relatively unpopulated areas when the border was never formally established, or when the agreed border was never surveyed and its exact position is unclear. The same concepts may also apply to a boundary between provinces or other subdivisions of a federal state.

Similarly, a nation with *de facto* independence, like Somaliland, is one that is not recognized by other nations or by international bodies, even though it has its own government that exercises absolute control over its claimed

territory.[3] [4] [5] [6] [7]

Other usages

A *de facto* monopoly is a system where many suppliers of a product are allowed, but the market is so completely dominated by one that the others might as well not exist. (Similarly for related terms such as "oligopoly" and "monopsony".) This is the type of situation that antitrust laws are intended to eliminate, when they are used.

A domestic partner outside marriage is referred to as a *de facto* husband or wife by some authorities.[8] In Australia and New Zealand, *de facto* has become a term for one's domestic partner. In Australian law, it is the legally recognized relationship of a couple living together. This is comparable to common-law marriage, which is used in most other English-speaking countries.

See also

- List of Latin phrases

References

[1] "USSR Law "On the Languages of the Peoples of USSR"" (http://www.bestpravo.ru/ussr/data01/tex10935.htm) (in Russian). .

[2] 30 Am Jur 181. Law Dictionary, James A. Ballentine, Second Edition, 1948, p. 345.

[3] Arieff, Alexis (November 2008). "De facto Statehood? The Strange Case of Somaliland" (http://yalejournal.org/article/de-facto-statehood-strange-case-somaliland). Yale Journal of International Affairs. . Retrieved 2010-01-04.

[4] Wiren, Robert (April 2008). "France recognizes de facto Somaliland" (http://www.lesnouvelles.org/P10_magazine/15_grandentretien/15055_mahamudsalahnur_eng.html). Les Nouvelles d'Addis Magazine. . Retrieved 2010-01-04.

[5] "The Digital Somali Library" (http://www.indiana.edu/~libsalc/african/Digital_Somali_Library/internet.html). Indiana University. . Retrieved 2010-01-04.

[6] Noor, Saad (June 2008). "Somaliland: Past, Present and Future" (http://allafrica.com/download/resource/main/main/id/00010917.pdf). United States House Committee on Foreign Affairs. . Retrieved 2010-01-04.

[7] Cooper, Jason (May 2007). "Somaliland Requests International Recognition" (http://www.somalilandtimes.net/sl/2007/277/091.shtml). The Somaliland Times. . Retrieved 2010-01-04.

[8] Walker Lenore E.A. "Battered Woman Syndrome. Empirical Findings". *Violence and Exploitation Against Women and Girls*, November 2006, p. 142.

De bene esse

De bene esse is a Latin phrase meaning "of well being." In an American legal context, it means "conditionally," "provisionally," or "in anticipation of future need." It can also mean "A phrase applied to proceedings which are taken *ex parte* or provisionally and are allowed to stand as well done for the present." [1] It is also used to indicate that a deposition may be used in place of a witness' live testimony in court, rather than merely to discover what the witness has to say.

An *appearance de bene esse* is designed to permit a party to a proceeding to refuse to submit his person to the jurisdiction of the court unless it is finally determined that he has forever waived that right.[2] Such an appearance is therefore a special appearance designed to allow the accused to meet and discharge the contractual requirement of making an appearance, and at the same time, to refuse to submit to the jurisdiction of any alleged plaintiff (and therefore of the applicable court), unless and until some judicial department prosecutor makes all disclosures, specifically by producing a complaint of damage or injury, signed and verified by the injured party.

References

[1] Black's Law Dictionary, 5th edition
[2] Farmers Trust Co. v. Alexander, 6 A.2d 262, 265

De bonis non administratis

De bonis non administratis, Latin for "of goods not administered," is a legal term for assets remaining in an estate after the death or removal of the estate administrator. The second administrator is called the **administrator *de bonis non*** and distributes the remaining assets. A longer title is **administrator *de bonis non cum testamento annexo*** ("administrator of goods not administered with the will annexed"). In the Uniform Probate Code, these titles have been replaced by **successor personal representative**.[1]

The most common cause of a grant of *de bonis non* by a court is where the administrator dies. However, it can also be granted in cases where the chain of representation is broken. Such would happen, for example, when the executor of a will has obtained probate, but then dies intestate. (Normally, if the executor dies testate, the representation passes to the executor of the first executor's estate upon probate of the latter's own will. This is governed by Section 7 of the Administration of Estates Act 1925 in the United Kingdom, for example.)[2]

Further reading

- William Selwyn (1838). "Of the Nature of the Interest of an Executor or Administrator in the Estate of the Deceased — In what Cases it is transmissible, and where an Administration de bonis non is necessary". *An Abridgment of the Law of Nisi Prius*. London: J. & W. T. Clarke. pp. 786–787.
- John Bouvier (2004). "de bonis non". *A Law Dictionary*. The Lawbook Exchange, Ltd. pp. 413. ISBN 1584773588.

See also

- personal representative

References

[1] Gordon W. Brown (2003). "The Personal Representative". *Administration of Wills, Trusts, and Estates*. Cengage Learning. pp. 286. ISBN 0766852814.

[2] Robert Mckeon (2001). *Q & a on Succession.*. Cavendish Publishing Ltd. pp. 216. ISBN 1859416217.

"De donis conditionalibus"

De donis conditionalibus is the chapter of the English Statutes of Westminster (1285)[1] which originated the law of entail.

Strictly speaking, a form of entail was known before the Norman feudal law had been domesticated in England. The common form was a grant "to the feoffee and the heirs of his body," by which limitation it was sought to prevent 'alienation from the lineage of the first purchaser. These grants were also known as *feuda conditionata*, because if the donee had no heirs of his body the estate reverted to the donor. This right of reversion was evaded by the interpretation that such a gift was a conditional fee, which enabled the donee, if he had an heir of the body born alive, to alienate the land, and consequently disinherit the issue and defeat the right of the donor. To remedy this the statute *De donis conditionalibus* was passed, which enacted that in grants to a man and the heirs of his body, the will of the donor according to the form in the deed of gift manifestly expressed, should be from thenceforth observed; so that they to whom the land was given under such condition, should have no power to alienate the land so given, but that it should remain unto the issue of those to whom it was given after their death, or unto the giver or his heirs, if issue fail.

Since the passing of the statute an estate given to a man and the heirs of his body has been known as an estate tail, or an estate in fee tail (*feudum talliatum*), the word tail being derived from the French tailler, to cut, the inheritance being by the statute cut down and confined to the heirs of the body. The operation of the statute soon produced innumerable evils : " children, it is said, grew disobedient when they knew they could not be set aside ; farmers were deprived of their leases; creditors were defrauded of their debts; innumerable latent entails were produced to deprive purchasers of the land they had fairly bought; treasons also were encouraged, as estates tail were not liable to forfeiture longer than for the tenant's life " (Williams, *Real Property*). On the other hand, by limiting inheritance to the eldest son, the other issue were forced to seek employment elsewhere, thus, it has been argued, preventing the growth of a landed caste. The professions of the church, the army and the law were constantly recruited from the younger sons of landed families, preventing the gap between nobility and the rest (Warner and Marten, *Groundwork of British History*) Nevertheless, the power of alienation was reintroduced by the judges in Taltarum's case (Year Book, 12 Edward IV., 1472) by means of a fictitious suit or recovery which had originally been devised by the regular clergy for evading the statutes of Mortmain. This was abolished by the Fines and Recoveries Act 1833, which provided an alternative means of barring entails.

See also

- Quia Emptores
- History of English land law

References

[1] Official text of The Statute of Westminster the Second (De Donis Conditionalibus) 1285 (c. 1) (http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1517444) as amended and in force today within the United Kingdom, from the UK Statute Law Database

De jure

De jure (in Classical Latin ***de iure***) is an expression that means "concerning law", as contrasted with *de facto*, which means "concerning fact".

The terms *de jure* and *de facto* are used instead of "in principle" and "in practice", respectively, when one is describing political or legal situations.

In a legal context, *de jure* is also translated as "concerning law". A practice may exist *de facto*, where for example the people obey a contract as though there were a law enforcing it yet there is no such law. A process known as "desuetude" may allow de facto practices to replace obsolete laws. On the other hand, practices may exist de jure and not be obeyed or observed by the people.

Social sciences and other usages

As a logical complement of "de facto", where "de facto" has a more generic acceptance (not so restrictive as at legal context), like in social sciences. See *de facto standards* and other usages.

See also

- List of Latin phrases

De lege ferenda

Lex ferenda (also called ***de lege ferenda***) is a Latin expression that means "what the law should be" (as opposed to lex lata). Used in the anglo-american legal system.

See also

- List of Latin phrases

De lege lata

Lex lata (also called ***de lege lata***) is a Latin expression that means "the law as it exists" (as opposed to lex ferenda).

See also

- List of Latin phrases

De minimis

De minimis is a Latin expression meaning *about minimal things*, normally in the locutions *de minimis non curat praetor* ("the praetor (government official) does not concern himself with trifles") or *de minimis non curat lex* ("the law does not concern itself with trifles")[1] .

In risk assessment it refers to a level of risk that is too small to be concerned with. Some refer to this as a "virtually safe" level.[2]

Examples of application of the *de minimis* rule

Courts will occasionally not uphold a copyright on modified public domain material if the changes are deemed to be "*de minimis*". Similarly, courts have dismissed copyright infringement cases on the grounds that the alleged infringer's use of the copyrighted work (such as sampling) was so insignificant as to be "*de minimis*".[3] However, this ruling, in Bridgeport Music, Inc. v. Dimension Films, was overturned on appeal and the appeals court explicitly declined to recognize a *de minimis* standard for digital sampling.

Under U.S. tax rules, the *de minimis* rule governs the treatment of small amounts of market discount. Under the rule, if a bond is purchased with a small amount of market discount (an amount less than 0.25% of the face value of a bond times the number of complete years between the bond's acquisition date and its maturity date) the market discount is considered to be zero. If the market discount is less than the *de minimis* amount, the discount on the bond is generally treated as a capital gain upon disposition or redemption rather than as ordinary income.[4]

Under IRS guidelines, the *de minimis* rule can also apply to any benefit, property, or service provided to an employee that has so little value that reporting for it would be unreasonable or administratively impracticable; for example, use of a company photocopier to copy personal documents. Cash is not excludable, regardless of the amount. [5]

In Canada, *de minimis* is often used as a standard of whether a criminal offense is made out at a preliminary stage. For a charge of second degree murder, the test being: "could the jury reasonably conclude that accused actions were a contributing cause, beyond *de minimis*, of the victim's death."[6]

Under European Community competition law some agreements infringing Article 101(1) of the TFEU (formerly Article 81(1) of the EC Treaty) are considered to be "*de minimis*" and therefore accepted. Horizontal agreement, that is one between competitors, will usually be *de minimis* where the parties' market share is 10% or less, and a vertical agreement, between undertakings operating at different levels of the market, where it is 15% or less. [7]

The European Community *de minimis* "state aid" regulation allows for aid of up to €200,000 to be provided from public funds to any enterprise over a period of three years[8] .

See also

- List of Latin phrases

References

[1] Ehrich, Eugene, *Amo, Amas, Amat and More*, p. 100 (New York, Harper Row 1985). ISBN 0-06-27217-1.
[2] National Library of Medicine Toxicology Glossary - Risk *De minimis* (http://sis.nlm.nih.gov/enviro/glossaryr.html) Retrieved on 14 July 2007
[3] Free Expression Policy Project Trashing the Copyright Balance (http://www.fepproject.org/commentaries/bridgeport.html) Retrieved on 20 July 2007
[4] SIFMA - Investing in Bonds The *de minimis* rule (http://www.investinginbonds.com/learnmore.asp?catid=8&subcatid=62) Retrieved on 29 July 2007
[5] Society for Human Resource Management *De minimis* rule (http://www.shrm.org/hrresources/hrglossary_published/d.asp) Retrieved on 28 July 2007
[6] http://www.canlii.org/en/on/onca/doc/2008/2008onca544/2008onca544.html
[7] "Commission Notice on agreements of minor importance which do not appreciably restrict competition under Article 81(1) of the Treaty establishing the European Community (*de minimis*)" (http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/c_368/c_36820011222en00130015.pdf). *Official Journal of the European Communities* (Luxembourg: Office for Official Publications of the European Communities) **2001/C** (368/07): 13–5. 2001-12-22. OCLC 52301298. . Retrieved 2008-08-20.
[8] COMMISSION REGULATION (EC) No 1998/2006 (http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_379/l_37920061228en00050010.pdf)

de minus

Debellatio

Debellatio (also **debellation**) (Late Latin "Defeating, or the act of conquering or subduing", literally "*warring* (the enemy) down", from Latin *bellum* "war") designates the end of a war caused by complete destruction of a hostile state.

In some cases *debellation* ends with a complete dissolution and annexation of the defeated state into the victor's national territory, as happened at the end of the Third Punic War with the defeat of Carthage by Rome in the second century BC.[1]

The unconditional surrender of the Third Reich—in the strict sense only the German Armed Forces (*Wehrmacht*)—at the end of World War II was at the time accepted by most authorities as a case of *debellatio* as it ended with the complete breakup of the German Reich,[2] [3] [4] [5] [6] [7] including all offices, and two German states being created in its stead (Federal Republic of Germany and the German Democratic Republic). Other authorities have argued that as most of the territory that made up Germany before the Anschluss was not annexed, and the population still existed, the vestiges of the German state continued to exist even though the Allied Control Council governed the territory; and that eventually a fully sovereign German government resumed over a state that never ceased to exist.[2] [8]

See also

- Legal status of Germany
- Laws of war
- Total war
- Disarmed Enemy Forces

Further reading

- Anne Armstrong. "*Unconditional Surrender: The Impact of the Casablanca Policy upon World War II*", Greenwood Pub Group 1974, ISBN 0837170427
- Brett H. McGurk A Lawyer in Baghdad [9](PDF) Footnote I on Page 3: argues that "The unconditional surrender of Germany and Japan supported the application of debellatio, a concept that is discredited in the international legal community and would not easily transfer to Iraq. No Coalition member, in any event, argued that debellatio applied in Iraq."
- Max Rheinstein. *The Legal Status of Occupied Germany* [10] Michigan Law Review, Vol. 47, No. 1 (Nov., 1948), pp. 23–40 doi:10.2307/1284507
- Gerry Everding *U.S. rules Iraq under international law doctrine of 'debellatio' and will until stable government is formed* [11] reprints an article by Victor T. Le Vine in the St. Louis Post-Dispatch on Sunday, February 22, 2003.
- Sir Robert Jennings presiding over a public sitting held on 22 June 1993 in the International Court of Justice for the case *Territorial Dispute (Libyan Arab Jamahiriya/Chad)* [12] Professor Bowett speaking for Libya states "debellatio — the end of hostilities brought about by the complete subjugation of the enemy"
- ICRC *Commentary on Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* [13] (Protocol I), 8 June 1977. Commenting on the term "The general close of military operations" in Article 3.b of Protocol I the ICRC states in their commentary in footnote 5 "Some of the literature refers to this situation ['The general close of military operations' when the occupation of the whole territory of a Party is completed, accompanied by the effective cessation of all hostilities, without the necessity of a legal instrument of any kind] as 'debellatio', but this is a narrower interpretation of the term than other publicists ascribe to it. On the concept of 'debellatio' and the various definitions of this term, cf. K.U. Meyn, 'Debellatio', in R. Bernhardt (ed.) [*Encyclopaedia of Public International Law*], Instalment 3, p. 145;"
- Melissa Patterson. *Who's Got the Title? or, The Remnants of Debellatio in Post-Invasion Iraq* [14], Harvard International Law Journal Volume 47, Number 2, Summer 2006
- Adam Roberts. *Transformative military occupation: applying the laws of war and human rights* [15], 100 The American Journal of International Law. vol 100 pp. 580–622 (2006)
- Ruth Wedgwood. *Judicial Overreach* [16](PDF) Wall Street Journal November 16, 2004

References

[1] 2004 Scripps National Spelling Bee Consolidated Word List (http://www.spellingbee.com/2004cwl moderate pp61-120.pdf) Page 8

[2] Eyal Benvenisti, *The international law of occupation*, Princeton University Press, 2004, ISBN 0691121303, pp. 92-95 (http://books.google.com/books?id=lcVOlb0wefwC&lpg=PA94&ots=Um0uRsvKCN&dq=hague conventions occupation of Germany Debellatio&pg=PA93#v=onepage&q=Most of the authorities link&f=false)

[3] Breven C. Parsons, (2009), Moving the law of occupation into the twenty-first century (http://www.jag.navy.mil/documents/navylawreview/NLRVolume57.pdf), *Naval Law Review*, published by US Naval Justice School, the pp. 21, 28-30 (PDF page numbers 26, 33-35)

[4] ICRC Commentaries on the Convention (III) relative to the Treatment of Prisoners of War (http://www.icrc.org/ihl.nsf/WebList?ReadForm&id=375&t=com) Article 5 (http://www.icrc.org/ihl.nsf/COM/375-590008?OpenDocument) "The German capitulation was both political, involving the dissolution of the Government, and military, whereas the Japanese capitulation was only military".

[5] United Nations War Crimes Commission, *Law reports of trials of war criminals: United Nations War Crimes Commission*, Wm. S. Hein, 1997, ISBN 1575884038. p.13 (http://books.google.co.uk/books?id=Z-xlVF_5Hu8C&pg=PA13&dq=debellatio+allies+germany&sig=ACfU3U0E77AgKBDsfN3L4u4_0OjN_qwZhw)

[6] The human rights dimensions of population (Page 2, paragraph 138) (http://www.unhchr.ch/Huridocda/Huridoca.nsf/2848af408d01ec0ac1256609004e770b/b2d29625e398c58380256766005955a9?OpenDocument) UNHCR web site
[7] Yearbook of the International Law Commission 1993 Volume II Part Two (http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes(e)/ILC_1993_v2_p2_e.pdf) Page 48, paragraph 295 (last paragraph on the page)
[8] Detlef Junker *et al.* (2004). The United States and Germany in the Era of the Cold War, 1945-1990: A Handbook (Vol 2), Cambridge University Press and (Vol. 2) co-published with German Historical Institute, Washington D.C., ISBN 052179112X p. 104 (http://books.google.co.uk/books?id=bNa982ALww0C&pg=PA104&lpg=PA104&dq=+"European+Advisory+Commission"+surrender+document&source=web&ots=H-l8nhV64O&sig=oqiV5uZHMasJApVZDvBiUlO5cD8&hl=en#PPA104,M1)
[9] http://www.greenbag.org/McGurk.pdf
[10] http://links.jstor.org/sici?sici=0026-2234(194811)47%3A1%3C23%3ATLSOOG%3E2.0.CO%3B2-P
[11] http://news-info.wustl.edu/tips/page/normal/717.html
[12] http://library.lawschool.cornell.edu/cijwww/icjwww/icases/idt/iDT_cr/iDT_iCR9320_19930622.PDF
[13] http://www.icrc.org/ihl.nsf/COM/470-750006?OpenDocument
[14] http://www.harvardilj.org/print/56
[15] http://ccw.politics.ox.ac.uk/publications/roberts_militaryoccupation.pdf
[16] http://www.sais-jhu.edu/pubaffairs/SAISarticles04/Wedgwood_WSJ_111604.pdf

Decree nisi

A ***decree nisi*** (from the Latin *nisi*, meaning "unless") is a court order that does not have any force until such time that a particular condition is met, such as a subsequent petition to the court or the passage of a specified period of time.[1]

Once the condition is met, the ruling becomes **decree absolute** and is binding. Typically, the condition is that no new evidence or further petitions with a bearing on the case are introduced to the court. The wording of such a decree is generally in the form of "that the marriage, had and solemnized on (date) between AB and CD, be dissolved by reason that (grounds) UNLESS sufficient cause be shown to the court why this decree should not be made absolute within six months of the making hereof". This allows time for any party who objects to the divorce to come forward with those objections. It is also at times termed as rule *nisi*.

In most common law jurisdictions, a *decree nisi* must be obtained in possession proceedings before the court will order foreclosure under a mortgage enforcement.

This form of ruling has become a rarity in recent times, with one exception: in some jurisdictions it is still a standard stage of divorce proceedings. In England and Wales, section 1(5) of the Matrimonial Causes Act 1973[2] provides that "Every decree of divorce shall in the first instance be a decree nisi and shall not be made absolute before the expiration of six months from its grant", and section 9(1) allows any person (including the Queen's Proctor), before the decree is made absolute, to "show cause why the decree should not be made absolute by reason of material facts not having been brought before the court".

References

[1] Duhaime, Lloyd. "Legal Definition of Decree Nisi" (http://duhaime.org/LegalDictionary/D/DecreeNisi.aspx). Duhaime.org. . Retrieved 9 April 2010.
[2] "Matrimonial Causes Act 1973, §1(5)" (http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1973/plain/cukpga_19730018_en#pt1-pb1-l1g1-l1p1-l2p5). Office of Public Sector Information. . Retrieved 5 February 2010.

Dedimus potestatem

In law, **dedimus potestatem** (Latin for "we have given the power") is a writ whereby commission is given to one or more private persons for the expedition of some act normally performed by a judge. It is also called **delegatio**. It is granted most commonly upon the suggestion that a party, who is to do something before a judge or in a court, is too weak to travel.

Its use is various, such as to take a personal answer to a bill in chancery, to examine witnesses, levy a fine, etc.

References

- *This article incorporates content from the 1728* Cyclopaedia*, a publication in the public domain.*
- "dedimus [1]". *Oxford English Dictionary*. Oxford University Press. 2nd ed. 1989.

References

[1] http://oed.com/cgi/findword?query_type=word&find=Find+word&queryword=dedimus

Delegata potestas non potest delegari

In constitutional and administrative law, the principle ***delegata potestas non potest delegari*** (Latin) states that 'no delegated powers can be further delegated'. Alternatively, it can be stated ***delegatus non potest delegare***, 'one to whom power is delegated cannot himself further delegate that power'[1] . This principle is present in several jurisdictions such as that of the United States and the United Kingdom.

United States law

In United States law one of the earliest mentions of the principle occurred when it was cited by counsel for one of the litigants before the Supreme Court of Pennsylvania in 1794, in *M'Intire v. Cunningham*, 1 Yeates 363 (Pa. 1794). The summary of the case reports, "Mr. Wilson had given no power to Noarth to transact his business; but if he even had, it is a maxim, that delegata potestas non potest delegari."[2]

The maxim was first cited by the Supreme Court of the United States in *United States v. Sav. Bank*, 104 U.S. 728 (1881), where the case summary reports that one of the litigants argued that, "The duty imposed by statute on the commissioner cannot be delegated to a collector. Delegata potestas non potest delegari."[3]

Catholic Canon law

Catholic Canon law (Title XIII) states:

> *Codex Iuris Canonici 137*
>
> § 1 Ordinary executive power can be delegated either for an individual case or for all cases, unless the law expressly provides otherwise.
>
> § 2 Executive power delegated by the Apostolic See can be subdelegated, either for an individual case or for all cases, unless the delegation was deliberately given to the individual alone, or unless subdelegation was expressly prohibited.
>
> § 3 Executive power delegated by another authority having ordinary power, if delegated for all cases, can be subdelegated only for individual cases; if delegated for a determinate act or acts, it cannot be subdelegated, except by the express grant of the person delegating.

§ 4 No subdelegated power can again be subdelegated, unless this was expressly granted by the person delegating.

Canada

The principle was first articulated in Canada in 1943 in an article in the Canadian Bar Review by John Willis. While it is acknowledged as "the seminal articulation of the law governing the subdelegation of statutory and discretionary powers"[4] and is still often cited,[5] it has not achieved the rigid standing originally intended. The maxim has had some success as an operating principle in the restriction of delegation of legislative and judicial powers but the demands of modern governmental regulatory practices have inhibited its application in the delegation of administrative powers.[6] Exceptions are rare and dependent on the statute conferring power.[7] [8]

References

[1] Mullan, D.J. (2001) Essentials of Canadian Law: Administrative Law. Toronto: Irwin Law. ISBN 1-55221-009-X. p. 368

[2] *M'Intire v. Cunningham*, 1 Yeates 363 (Pa. 1794).

[3] *United States v. Sav. Bank* (http://bulk.resource.org/courts.gov/c/US/104/104.US.728.html), 104 U.S. 728 (1881); *see also*, *J. W. Hampton, Jr., & Co. v. United States* (http://ftp.resource.org/courts.gov/c/US/276/276.US.394.242.html), 276 U.S. 394, 405-406 (U.S. 1928).

[4] *Ibid*

[5] *Comeau's Sea Foods Ltd. v. Canada (Minister of Fisheries and Oceans), [1997] 1 S.C.R. 12*

[6] Mullan, Administrative Law, p. 368

[7] *Ibid*,p. 370

[8] *Ramawad v. Canada (Minister of manpower and Immigration) 2 S.C.R. 375*

Deodand

For the fictional creature from Jack Vance's "Dying Earth", see Deodand (fictional creature).

Deodand is a thing forfeited or given to God, specifically, in law, an object or instrument which becomes forfeit because it has caused a person's death.[1]

The English common law of deodands traces back to the 11th century and has been applied, on and off, until Parliament finally abolished it in 1846.[2] Under this law, a chattel (i.e. some personal property, such as a horse or a hay stack) was considered a deodand whenever a coroner's jury decided that it had caused the death of a human being.[3] In theory, deodands were forfeit to the crown, which was supposed to sell the chattel and then apply the profits to some pious use.[4] (The term deodand derives from the Latin phrase "deo dandum" which means "to be given to God.") In reality, the juries who decided that a particular animal or object was a deodand also appraised its value and the owners were expected to pay a fine equal to the value of the deodand. If the owner could not pay the deodand, his township was held responsible.[3]

The history of deodands

Prior to 1066, animals and objects causing serious damage or even death were called *banes*, and were handed over directly to the victim in a practice known as noxal surrender.[5] Early legislation also directed people to pay specific sums of money, called wergild, as compensation for actions that resulted in someone else's death.[6]

The transition from bane to deodand remains obscure. By the second half of the thirteenth century, however, the coroner's rolls are replete with references to vats, tubs, horses, carts, boats, stones, trees, etc.[2] Deodands were still being forfeited throughout the 16th and 17th centuries, although not as frequently as before. Some scholars think the practice died out completely in the 18th century. Others speculated that deodands had become nominal assessment that were routinely levied.[7] Another possibility is that the practice was receiving less official attention because the

profits from deodands were no longer going into royal coffers. By then, the crown had long sold off the rights to deodands from most jurisdictions to lords, townships and corporations.[8]

The deodand's demise

During the 1830s, the rapid development of the railways led to increasing public hostility to the epidemic of railway deaths and the indifferent attitudes of the railway companies. Under the common law of England and Wales, the death of a person causes purely emotional and economic loss to their relatives. In general, damages cannot be recovered for either type of damage, only for physical damage to the claimant or their property, and families of fatal accident victims had no claim. As a result, coroner's juries started to award deodands as a way of penalising the railways.[9]

On Christmas Eve 1841, in an accident on the Great Western Railway, a train ran into a landslip in Sonning Cutting and eight passengers were killed. The inquest jury assigned a deodand value of £1000 to the train. Subsequently, a Board of Trade inspector exonerated the company from blame and the deodand was quashed on appeal, on technicalities.

This alerted legislators, in particular Lord Campbell and the Select Committee on Railway Labourers (1846).[10] In the face of railway opposition, Campbell introduced a bill in 1845 to compensate victims. The bill led to the Fatal Accidents Act 1846, also known as Lord Campbell's Act. Campbell also introduced a bill to abolish deodands. The latter proposal, which became law as the Deodands Act 1846, to some extent mitigated railway hostility.[9]

Deodands in the United States

In American law, the deodand has been cited as a source for the modern civil forfeiture doctrine.[5] [11]

Some U.S. state constitutions prohibit deodands, frequently in the same article that prohibits corruption of blood.

Bibliography

- Sutton, T. (1997). "The deodand and responsibility for death". *Journal of Legal History* **18**: 44. doi:10.1080/01440369708531186.

References

[1] " Deodand (http://www.1911encyclopedia.org/Deodand)", *Encyclopaedia Britannica*, 1911

[2] Anna Pervukhin (2005). "Deodands A Study in the Creation of Common Law Rules". *American Journal of Legal History* **47** (3): 237–256. ISSN 00029319.

[3] R.F. Hunnisett (1961). *The Medieval Coroner*. Cambridge University Press. ISBN 9780521079433.

[4] Sir Edward Coke(1669)

[5] Finkelstein, Jacob J. (1973). "The Goring Ox: some historical perspecgtives on deodands, forfeitures, wrongful death and the western notion of sovereignty". *Temp. L. Q.* **46**: 169.

[6] F. L. Attenborough (1922). *The Laws of the Earliest English Kings*. Cambridge University Press.

[7] Smith (1967)

[8] *Parliamentary Debates* pp623-626

[9] Kostal, R. W. (1994). *Law and English Railway Capitalism, 1825–1875*. pp. 289–290. ISBN 019825671X.

[10] Cornish, W. & Clarke, G. (1989). *Law and Society in England 1750-1950*. London: Sweet & Maxwell. pp. 503–504. ISBN 0421311509.

[11] Oliver Wendell Holmes, Jr. (1881). *The Common Law*. pp. 24–25.

Desuetude

In law, **desuetude** (from the Latin *desuetudo*, outdated, no longer custom) is a doctrine that causes statutes, similar legislation or legal principles to lapse and become unenforceable by a long habit of non-enforcement or lapse of time. It is what happens to laws that are not repealed when they become obsolete. It is the legal doctrine that long and continued non-use of a law renders it invalid, at least in the sense that courts will no longer tolerate punishing its transgressors.

The policy of inserting sunset clauses into a Constitution or charter of rights [as in Canada since 1982] or into Regulations and other delegated/ subordinate legislation made under an Act (as in Australia since the early 1990s) can be regarded as a statutory codification of the common-law doctrine.

British law

The doctrine of desuetude is not favoured in the common law tradition. In 1818, the English court of King's Bench held in the case of *Ashford v Thornton* that trial by combat remained available at a defendant's option in a case where it was available under the common law. The concept of desuetude has more currency in the civil law tradition, which is more regulated by legislative codes, and less bound by precedent.

The doctrine has been applied in regard to acts of the pre-1707 Scottish Parliament.

United States law

Desuetude does not apply to violations of the United States constitution. In *Walz v. Tax Commission of the City of New York*, 397 U.S. 664, 678 (1970), the United States Supreme Court asserted that: "It is obviously correct that no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it."

It may, however, have validity as a doctrine in defense of penal prosecution. In 1825, the Pennsylvania Supreme Court declined to enforce the traditional punishment of ducking for women convicted as common scolds, stating that "total disuse of any civil institution for ages past, may afford just and rational objections against disrespected and superannuated ordinances." *Wright v. Crane*, 13 Serg. & Rawle 220, 228 (Pa. 1825).

The seminal modern case under U.S. state law is a West Virginia opinion regarding desuetude, *Committee on Legal Ethics v. Printz*, 187 W.Va. 182, 416 S.E.2d 720 (1992). In that case, the West Virginia Supreme Court of Appeals held that penal statutes may become void under the doctrine of desuetude if:

1. The statute proscribes only acts that are *malum prohibitum* and not *malum in se*;
2. There has been open, notorious and pervasive violation of the statute for a long period; and
3. There has been a conspicuous policy of nonenforcement of the statute.

This holding was reaffirmed in 2003 in *State ex rel. Canterbury v. Blake*, 584 S.E.2d 512 (W. Va. 2003)[1].

While it may not be a violation of due process to enforce a desuetudinal law, the fact that a law has long gone unenforced may present a bar to standing in a suit to prevent its future enforcement. In *Poe v. Ullman*, the Supreme Court refused to hear a challenge to Connecticut's ban on birth control, writing:

> The undeviating policy of nullification by Connecticut of its anti-contraceptive laws throughout all the long years that they have been on the statute books bespeaks more than prosecutorial paralysis . . . . 'Deeply embedded traditional ways of carrying out state policy * * * '—or not carrying it out—'are often tougher and truer law than the dead words of the written text.'

Shortly thereafter, Connecticut's birth control law *was* enforced, and struck down, in *Griswold v. Connecticut*.

References

[1] http://www.state.wv.us/wvsca/docs/spring03/31150.htm

Dictum

In legal terminology, ***dictum*** (plural *dicta*) is a statement of opinion or belief.

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Black's Law Dictionary (8th ed. 2004); C.J.S. Courts §§ 142–143.</ref>
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There are multiple subtypes of *dicta*, although due to their overlapping, legal practitioners in the U.S. colloquially use *dicta* to refer to **any statement by a court which extends beyond the issue at bar**. *Dicta*, in this sense, are not binding under *stare decisis*, but tend to have a strong persuasive effect, either by being in an authoritative decision, stated by an authoritative judge, or both. These subtypes include:

- *dictum proprium*: A personal or individual dictum that is given by the judge who delivers an opinion but that is not necessarily concurred in by the whole court and is not essential to the disposition.
- *gratis dictum*: an assertion that a person makes without being obligated to do so, or also a court's discussion of points or questions not raised by the record or its suggestion of rules not applicable in the case at bar.
- *judicial dictum*: an opinion by a court on a question that is directly involved, briefed, and argued by counsel, and even passed on by the court, but that is not essential to the decision.
- *obiter dictum* in Latin means "something said in passing" and is a comment made while delivering a judicial opinion, but it is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive).
- *simplex dictum*: an unproved or dogmatic statement.

Note that in the U.K., a *dictum* is any statement that forms a part of the judgment of a court whose decisions have value as precedent, even if only persuasive, under the doctrine of stare decisis. Thus, unlike the U.S. version, the U.K. version also includes *ratio decidendi*, which are statements in the part of the reasoning for the decision. These statements are binding as precedent.

See also

- obiter dictum

Dignitas (Roman concept)

Dignitas is a Latin word referring to a unique social concept in the ancient Roman mindset. The word does not have a direct translation in English. Some interpretations include dignity (merely a derivation) and prestige. The *Oxford Latin Dictionary* defines the expression as fitness, suitability, worthiness, visual impressiveness or distinction, dignity of style and gesture, rank, status, position, standing, esteem, importance, and honor.

With respect to ancient Rome, *dignitas* was regarded as the sum of the personal clout and influence that a male citizen acquired throughout his life. When weighing the *dignitas* of a particular individual, factors such as personal reputation, moral standing, and ethical worth had to be considered, along with the man's entitlement to respect and proper treatment.

Origins

Authors who had used *dignitas* extensively in their writings and oratories include Cicero, Julius Caesar, Tacitus, and Livy. The most prolific user was Cicero, who initially related it to the established term *auctoritas* (authority). These two words were highly associated, with the latter defined as the expression of a man's *dignitas*.

Personal significance

The cultivation of *dignitas* in ancient Rome was extremely personal. Men of all classes, most particularly noblemen of consular families, were highly protective and zealous of this asset. This is because every man who took on a higher political office during the Roman Republic considered *dignitas* as comprising much more than just his dignity. It referred to his "good name" (his past and present reputation, achievement, standing, and honor). Most politicians were prepared to kill, commit suicide (as in a famous case of Marcus Antonius), or go into exile in order to preserve their *dignitas*.

Influence on conflict

The personal significance of one's *dignitas* had encouraged several conflicts in ancient Rome. Florus claimed that the stubbornness of Cato the Younger had driven Pompeius Magnus to prepare defenses in order to build up his *dignitas*. Cicero wrote that Caesar valued his status so greatly that he did not want anyone to be his equal in *dignitas*. Aulus Hirtius had written that Marcus Claudius Marcellus, who was one of the instigators of Caesar's recall from Gaul, had attempted to build all of his own reputation on his success on turning people's feelings against Caesar. Whether the exact term was used much during these times is unknown; however, the concept of *dignitas* was certainly influential and worth fighting for.

Changing definition

Over the course of ancient Roman history, *dignitas* had never taken on all of the aforementioned descriptions simultaneously. The term took on different meanings over time, adjusting for the gradually changing viewpoints of society, politicians, and the various authors.

Years after Caesar's death, his heir Augustus rejected the contemporary meaning of *dignitas*. Augustus found the related term *auctoritas* to be a suitable alternative.

In 46 BC, Cicero cited the ambiguous nature of the concept of *dignitas*. He wrote, "And so I have, if loyal feeling for the state and winning good men's approval of those loyal feelings is all that *dignitas* amounts to; but if in *dignitas* you include the power of translating those loyal feelings into action or of defending them with complete freedom, then *ne vestigium quidem ullum est reliquum nobis dignitatis* [not even a trace is left to us of our dignity]."

Combination of dignitas and otium

When paired with the term *otium*, the word *dignitas* took on a different meaning. Cicero did not consider himself worthy of having *dignitas* alone because he felt that—by turning his back on the Roman public—he had neglected the duty of one whose life had normally exemplified the concept. He then altered the definition to mean "[lifetime] impact," to better describe his unique status. By this time, Cicero's political life had ended, and he labeled his past political influence as his *dignitas*, and his present standing as *otium*.

See also

- *Pietas*
- *Gravitas*
- Roman decadence

References

- Balsdon, J.p.v.d. "Auctoritas, Dignitas, Otium." The Classical Quarterly ns 10 (1960): 43-50.
- Cicero, Ad Familiares 4.14 [1]
- Cicero, Epistulae Ad Familiares. J. Paul Leonard Library, San Francisco. Cicero, Epistulae ad familiares. San Francisco State University. 18 May 2007 [2]
- Radin, Max. "Roman Concepts of Equality." Political Science Quarterly 38 (1923): 262-289.
- Ridler, Vivian. "Dignitas." Oxford Latin Dictionary. 1 vols. London: Oxford UP, 1968.

References

[1] http://www.thelatinlibrary.com/cicero/fam4.shtml#14

[2] http://www2.classics.unibo.it/Tomasi/codifica_testi/trascrizione_manoscritto/Mani.htm

Dominium directum et utile

Dominium directum et utile is a Latin legal term referring to the "complete and absolute dominion [in property]"; i.e. the union of the title and the exclusive use. See *Fairfax's Devisee v Hunter's Lessee* (US) 7 Cranch 603, 618, 3 L Ed 453, 458.

Dominum directum

Definitions

Dominum directum *(Feudal)*: the right of the lord (ie, the right to direct) in the disposition of an asset (typically land).

Dominum utile *(Feudal)*: the right of use and utility of an asset, and to keep the benefits (such as the right to live on the land, and to keep the profits from agriculture).

The terms derive from Latin *dominum* (domain, dominion), *directum* (direction, in the sense of leadership), and *utile* (use, utility).

An asset is defined to mean itself and those things that naturally go with it. For land, that would include buildings, trees, underground resources, etc. It would not include "movable" property, such as wagons or livestock.

- The holder of the dominum directum is considered the superior (ie, the lord); the holder of the dominum utile is considered the inferior (ie, the vassal).
- Dominum utile includes the right of the holder to keep any income or profit derived from the asset.
- The transfer of the dominum directum does not affect the rights of any holders of dominum utile. The holder of a dominum utile has no right of transfer (however, there were usually conditions allowed for, such as transfer to a son in the event of death).

The definition was constructed from the sources. [1] [2] [3] [4] [5]

Additional explanations

The "lord" holding dominum directum may be anyone with sovereign power over the asset, such as a monarch or other nobility, or an established Christian Church.

See also

- Fiefdom
- Feudal law

References

[1] Shumaker, Walter A.; George Foster Longsdorf (1922). *The Cyclopedic Law Dictionary* (Second Edition by James C. Cahill ed.). Chicago: Callaghan and Company.

[2] "Dictionary, Lawyers-and-Laws.com" (http://dictionary.lawyers-and-laws.com). . Retrieved March 1 2008.

[3] "The Free Dictionary by Farlex" (http://legal-dictionary.thefreedictionary.com/). . Retrieved March 1 2008.

[4] "Scottish Language Dictionaries" (http://www.dsl.ac.uk/dsl/). . Retrieved March 1 2008.

[5] "The Records of the Parliaments of Scotland to 1707" (http://www.rps.ac.uk/). K.M. Brown et al. eds (St Andrews, 2007), 1605/6/39. . Retrieved February 15 2008.

Donatio mortis causa

A ***donatio mortis causa*** (Latin, meaning "gift on the occasion of death") is a gift made during the life of the donor which is conditional upon, and takes effect upon, death (in the United States, it is often referred to as a **gift *causa mortis***). It is separate and distinct from both a normal *inter vivos* gift, under which title passes immediately to the transferee, and from a testamentary gift, which takes effect under the provisions of a properly executed will.

Where the subject matter is a chattel which has been delivered to the donee, the donee's title is complete on the donor's death, no further act being necessary. In the case of a *chose in action* or land, the donee's title is not complete on the donor's death as the legal title vests in the donor's personal representatives. The donee can seek the assistance of the courts to compel the personal representatives to do whatever is necessary to perfect the donee's title,[1] and this is one of relatively few exceptions to the equitable maxim that "equity will not assist a volunteer."

Requirements

There are three requirements for a valid *donatio mortis causa*, and these were laid down by Lord Russell CJ in *Cain v Moon* [1896] 2 QB 283:

1. the gift must have been made in contemplation of, though not necessarily expectation, of death;[2]
2. the subject matter of the gift must have been delivered to the donee;[3] and
3. the gift must have been made under such circumstances as to show that the property is to revert to the donor if the donor should recover.[4]

Contemplation of death

The donor must have been contemplating death more particularly than by merely reflecting that we must all die some day. Commonly, *donationes mortis causa* are made in reference to a particular illness, but the principle applies equally to other causes such as the embarkation of a hazardous journey,[5] or possibly the contemplation of active service in war.[6] However, if death occurs, the gift may still be valid even though it comes from a different cause to that contemplated by the donor.

Delivery of subject-matter

A *donatio mortis causa* will not be valid without a delivery of the property to the donee[7] with the intention of parting with the "dominion" over it. It will not be sufficient for the property to be merely handed over for safe custody.[8]

For *choses in action* the donor must hand over such documents as constitute "the essential indicia or evidence of title, possession or production which entitles the possessor to the money or property purported to be given."[9]

For land, although it has been judicially doubted whether a *donatio mortis causa* could be made with respect to land,[10] in *Sen v Headley* [1991] Ch 425 a *donatio* of land was upheld where the donor told the donee that he wished her to have the house, and he delivered the keys to the donee, and the donor told her where the title deeds were located.

Intention of the donor

The donor's intention must be to make a gift which is conditional upon death, and which is revocable upon recovery by the donor. There is no *donatio mortis causa* where the donor intends to make an immediate unconditional gift, even though that gift may fail,[11] nor where the intention is to make a future gift.[12] The conditional nature of the gift need not be expressed, but may be implied from the circumstances.[13]

Revocation

In addition to the automatic revocation upon the donor's recovery,[14] the donor may revoke expressly, or by recovering dominion over the subject matter.[15] But the donor cannot revoke by will, as the donee's title is complete before the will takes effect.[16] Where the gift is revoked but the title has actually been transferred, the donee holds the subject matter on trust for the donor. The gift also fails if the donee predeceases the donor.[17]

Exceptional Status

Donationes mortis causa are one of the relatively rare exceptions to the general rule of public policy in common law countries that dispositions upon death must be under a will (or a document incorporated by reference into a will) that complies with applicable statutory requirements.[18]

Arguably this exception to the Wills Act 1837 comes about because the gift is inter vivos, i.e. it comes into force before the death of the donor. This device also avoids the formalities of the Law of Property Act 1925 s53(1) - that requires dispositions of land to be made in writing. This latter exception was decided in Sen v Headley [1991] Ch 425, where the court finds that a "donatio mortis causa" is a form of constructive trust - thus falling under the exception of the Law of Property Act 1925 s53(2).

References

[1] *Duffield v Elwes* (1827) 1 Bli(NS) 497; *Re Lillingston* [1952] 2 All ER 184
[2] See also, *Wilkes v Allington* [1931] 2 Ch 104
[3] *Cain v Moon* [1896] 2 QB 283
[4] *Wilkes v Allington* [1931] 2 Ch 104
[5] *cf. Thompson v Mechan* [1958] OR 357, where it was held that the ordinary hazards of air travel were insufficient.
[6] *Agnew v Belfast Banking Co* [1896] 2 IR 204 at 221
[7] *Ward v Turner* (1752) 2 Ves Sen 431
[8] *Hawkins v Blewitt* (1798) 2 Esp 663
[9] *Birch v Treasury Solicitor* [1951] Ch 298 at 311
[10] *Duffield v Elwes* (1827) 1 Bli (NS) 497
[11] *Edwards v Jones* (1836) 1 My & Cr 226
[12] *Solicitor to the Treasury v Lewis* [1900] 2 Ch 812
[13] *Re Lillingston* [1952] 2 All ER 184
[14] *Staniland v Willott* (1852) 3 Mac & G 664
[15] *Bunn v Markham* (1816) 7 Taunt 224
[16] *Jones v Selby* (1710) Prec Ch 300 at 303
[17] *Tate v Hilbert* (1793) 2 Ves 111 at 120
[18] The other main exception, also an anachronism, is that of secret trusts.

Duorum in solidum dominium vel possessio esse non potest

Duorum in solidum dominium vel possessio esse non potest is Latin legal term meaning "Sole ownership or possession cannot be in two persons" / "Two persons cannot own or possess a thing in the entirety."[1]

It is a variation of a more popular Latin legal phrase, which is attested to in Coke's Institutes: **Duo non possunt in solido unam rem possidere**: "Ownership of a whole cannot be shared; right of ownership must be divided into portions."[2]

See also

- Roman law
- civil law (legal system)
- dominium
- in solido

References

[1] World dictionary of foreign expressions By Gabriel Adeleye, Kofi Acquah-Dadzie, Thomas J. Sienkewicz, James T. McDonough (http://books.google.com/books?id=tzW0IasL5EQC&pg=PA113&lpg=PA113&dq=Duorum+in+solidum+dominium+vel+possessio+esse+non+potest&source=bl&ots=BL-bSAKd9K&sig=Igz7NC3MHJCLK-AaXyw8mc49ra0&hl=en&ei=gCtaSp3mMZGHmQfan6zxAg&sa=X&oi=book_result&ct=result&resnum=2)

[2] §368 of the First Part of the "Commentary on Littleton" (Institutes of the Laws of England) by Sir Edward Coke (http://books.google.com/books?id=j_EyAAAAIAAJ&lpg=PA267-IA1&ots=nJpe9KW4u2&dq=Institutes of the Laws of England) by Sir Edward Coke&pg=RA10-PA701)

Eo ipso

Eo ipso is a technical term used in philosophy. It means "by that very fact" in Latin. Example: *That I am does not* eo ipso *mean that I think.*

It is also used, with the same meaning, in law.

In *The Crisis and a Crisis in the Life of an Actress* by Søren Kierkegaard, the philosopher describes the quality of *Eo ipso* in the following excerpt:

> But to be gallant towards an artist is precisely the highest degree of insolence, a maudlin impertinence and a disgusting kind of intrusiveness. Anyone who is something, and is something essentially, possesses "eo ipso," the claim to be recognized for *exactly this special thing*, and for nothing more or less. (p. 69)

See also

- List of Latin phrases
- Ipso facto

Erga omnes

Erga omnes (in relation to everyone) is frequently used in legal terminology describing obligations or rights *toward all*. For instance a property right is an *erga omnes* right, and therefore enforceable against anybody infringing that right. An *erga omnes* right (a statutory right) can here be distinguished from a right based on contract, which is only enforceable against the contracting party.

In international law it has been used as a legal term describing obligations owed by states towards the community of states as a whole. An *erga omnes* obligation exists because of the universal and undeniable interest in the perpetuation of critical rights (and the prevention of their breach). Consequently, any state has the right to complain of a breach. Examples of erga omnes norms include piracy, genocide, slavery, and racial discrimination. The concept was recognized in the International Court of Justice's decision in the *Barcelona Traction* case [(Belgium v Spain) (Second Phase) ICJ Rep 1970 3 at paragraph 33]:

""… an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature, the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes. [at 34] Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law . . . others are conferred by international instruments of a universal or quasi-universal character."

See also

- jus cogens (peremptory norm)

Essentialia negotii

Essentialia negotii is Latin for "essential aspects" or "basic terms" and is legal term used in contract. It denotes the minimum contents of a contract in order for it to be held effective and legally binding.

General contracts

Two parties purport to "agree" to have concluded a contract for a car, but have not actually worked out a price, it cannot be said that they have concluded a contract. The price would seem to be an "essential term". If further, the "buyer" had gone to a car dealer and said he would pay £10,000 for a car, but has not said which car, an "essential term" is probably lacking again. The price and the thing exchanged are examples of essential terms in simple sale of goods contracts.

However, the court may not just hold that a contract is invalid. In England, the Sale of Goods Act 1979 s.8(2) states 'the buyer must pay reasonable price' when a contract of sale is silent on price. Accordingly the absence of price may not be fatal to a contract of sale.

Employment contracts

In contracts of employment, essential terms can include not just pay and a basic job description (the work-wage bargain) but also to specifics on holidays, a notice period in the event of dismissal, the place of work, any collective agreements and whether the job is expected to be permanent or a fixed term contract. These are examples under European Union law, implemented under *Directive 91/533 on an employer's obligation to inform employees of the conditions applicable to the contract of employment relationship*.[1] Article 2 of the Directive states,

> "1. An employer shall be obliged to notify an employee to whom this Directive applies hereinafter referred to as the "employee", of the *essential aspects* of the contract or employment relationship"

All countries in the European Union are required to "translate" directives into national legislation. An example of this is the Employment Rights Act 1996, section 1, in the United Kingdom, which sets out the obligation of employers to supply employees with a statement of written particulars within two months of employment beginning.

In the English speaking world, this notion has not survived as well as in civil law jurisdictions, for the doctrine of consideration has essentially covered the requirement of essential terms in basic bargains. However the concept of what is "essential" changes according to the nature of a particular contract, and so there may be fewer "essentials" in the case of a simple shopping exchange, and more essentials necessary for the proper functioning of a contract in the case of renting a home, taking out a bank loan or pursuing a career.

See also

- Commercial law
- Sale of goods
- Lex Mercatoria
- Labour law

References

[1] OJ L 1991 288

Et uxor

Et uxor is a Latin phrase meaning "and wife". It is commonly abbreviated "et ux." The term is a legal phrase that is used in lieu of naming the female spouse of a male party to litigation. See for example Loving et ux. v. Virginia, and [1] . The term is regarded by some commentators as an anachronistic chauvinism, though it remains in contemporary use in American legal documents, especially as related to property and marriage. See [2]

See also Et vir.

References

[1] Loving v. Virginia (http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/loving.html)
[2] Legal Affairs (http://www.legalaffairs.org/issues/May-June-2003/termsofart_collins_mayjun03.msp)

Et vir

Et vir is a Latin phrase meaning "and husband."[1] It is used in legal literature to indicate a couple comprising an identified woman and her otherwise unidentified husband. For example, the U.S. Supreme Court case Troxel et vir. v. Granville is an example of modern legal usage of the Latin phrase. Additionally, many property deeds would list the owners in the form "Jane Doe *et vir*" when appropriate.

See also et uxor.

References

[1] ForeclosuresMass - 'et vir' defined in the Real Estate Glossary (http://foreclosuresmass.com/help/view/glossary/termid/908)

Ex delicto

Ex delicto, Latin for "from a wrong" or "from a transgression," is a legal term that indicates a consequence of a tort, though the phrase can also refer to the consequence of a crime. This is often opposed to ex contractu.

Ex facie

Ex facie, Latin for "on the face [of it]," is a legal term typically used to note that a document's explicit terms are defective without further investigation. For example, a contract between two parties would be void *ex facie* if, under a legal system where it was a binding requirement for validity, the document did not require party A to give consideration to party B for services rendered.

Ex fida bona

Ex fida bona is a Roman expression and principle of law.

A judge is to make a judgement based on "good business norms". It means that the contractual parties shall keep their words, making it possible for both to trust each other. An agreement should be according to the branch-norms if not specifically mentioned.

This was a condition to permanent trade relations during the rise of Rome. It was during the 2nd century BC that the Roman praetors started using this principle, as commerce grew in the Mediterranean sea.

Ex gratia

Ex gratia (sometimes *ex-gratia*) is Latin (lit. ***'by favour***') and is most often used in a legal context. When something has been done *ex gratia*, it has been done voluntarily, out of kindness or grace. In law, an *ex gratia payment* is a payment made without the giver recognising any liability or legal obligation.

The phrase is pronounced /ˌɛks ˈɡreɪʃiə/.[1]

Examples of ex gratia payments

Compensation payments are often made ex gratia when a government or organization is prepared to compensate victims of an event such as an accident or similar, but not to admit liability to pay compensation, or for causing the event.

- A company conducting layoffs may make an ex gratia payment to the affected employees that is greater than the statutory payment required by the law, perhaps if those employees had a long and well performing service with the company.
- When the USS *Vincennes* fired upon Iran Air passenger Flight 655 in 1988, killing some 290 individuals, the President of the United States decided that the United States would offer compensation, on an ex gratia basis, to the families of the victims.
- In a more routine context, the document Suffolk County Council Education: Ex-Gratia Payments for Loss of or Damage to Personal Property [2] shows how an education authority compensates victims for damage, but without accepting a liability to do so.

- Following the 1994 Black Hawk shootdown incident, on August 26, 1994 the U.S. Department of Defense announced that it would pay U.S.$100,000 in compensation to the families of each of the non-U.S. personnel killed in the friendly-fire incident.
- Maharashtra Chief Minister Vilasrao Deshmukh announced ex-gratia payments of Rs 100,000 (approx. US$2,000) to the next of kin of those who died in the Mumbai train bombings (11 July 2006). The injured would be given Rs 50,000 (approx. US$1,000) each.
- Prime Minister of Malaysia, Datuk Seri Abdullah Haji Ahmad Badawi announced undisclosed ex-gratia payments to the judges that have been affected during the 1988 Malaysian Constitutional Crisis in June 2008.

References

[1] *Oxford English Dictionary*
[2] http://www.suffolknut.org.uk/exgratia.htm

Ex nihilo

The Latin phrase ***ex nihilo*** means "out of nothing". It often appears in conjunction with the concept of creation, as in *creatio ex nihilo*, meaning "creation out of nothing" — chiefly in philosophical or theological contexts, but also occurs in other fields.

In theology, the common phrase *creatio ex nihilo* ("creation out of nothing"), contrasts with *creatio ex materia* (creation out of some pre-existent, eternal matter) and with *creatio ex deo* (creation out of the being of God).

The phrase 'ex nihilo' also appears in the classical philosophical formulation *ex nihilo nihil fit*, which means "Out of nothing comes nothing".

Ex nihilo when used outside of religious or metaphysical contexts, also refers to something coming from nothing. For example, in a conversation, one might raise a topic *"ex nihilo"* if it bears no relation to the previous topic of discussion. The term has specific meanings in military and computer-science contexts.

In mathematics, *ex nihilo* can refer to an answer to a question provided with no working, thus appearing to have developed "out of nothing".

History of the idea of *creatio ex nihilo*

Ancient Near Eastern mythologies, classical creation myths in Greek mythology, and the account of creation given in the Hebrew Bible envision the creation of the world as resulting from the actions of a god or gods upon already-existing primeval matter, known as *chaos*, often personified in the form of a fight between a culture-hero deity and a chaos monster in the form of a dragon (the *chaoskampf* motif).

The Greek philosophers came to question this (on *a priori* grounds), discussing the idea that a primum movens must have created the world out of nothing.

An early conflation of these tenets of Greek philosophy with the narratives in the Hebrew Bible came from Philo of Alexandria (d. AD 50), writing in the context of Hellenistic Judaism. Philo equated the Hebrew creator-deity Yahweh with Plato's *primum movens* (First Cause)[1] [2] in an attempt to prove that the Jews had held monotheistic views even before the Greeks.

The first sentence of the Greek version of Genesis in the Septuagint starts with the words: ἐν ἀρχῇ ἐποίησεν, translatable as "the primary cause caused to be". A verse of 2 Maccabees (a book written in Koine Greek in the same sphere of Hellenised Judaism of Alexandria, but predating Philo by about a century) expresses a similar idea:

> "I beseech thee, my son, look upon the heaven and the earth, and all that is therein, and consider that God made them of things that were not; and so was mankind made likewise." (2 Maccabees 7:28, KJV)

The Church Fathers from the 2nd century seized upon this idea[3] and developed it into the idea of creation *ex nihilo* by the Christian God. Church Fathers opposed notions appearing in pre-Christian creation myths and in Gnosticism - notions of creation by a demiurge out of a primordial state of matter (known in religious studies as *chaos* after the Greek term used by Hesiod in his *Theogony*).[4] Jewish thinkers took up the idea,[5] which became important to Judaism, to ongoing strands in the Christian tradition, and - as a corollary - to Islam.

Weber summarizes a sociological view of the overall development and corollaries of the theological idea:

> [...] As otherworldly expectations become increasingly important, the problem of the basic relationship of god to the world and the problem of the world's imperfections press into the foreground of thought; this happens the more life here on earth comes to be regarded as a merely provisional form of existence when compared to that beyond, the more the world comes to be viewed as something created by god *ex nihilo*, and therefore subject to decline, the more god himself is conceived as a subject to transcendental goals and values, and the more a person's behavior in this world becomes oriented to his fate in the next. [...][6]

Theological usage

Approaches favoring *ex nihilo* creation

Biblical citations

Some verses from the Christian Bible cited in support of *ex nihilo* creation by God include:

- "ἐν ἀρχῇ ἐποίησεν (The primary cause caused to be...) Genesis 1:1 Septuagint
- "All things were made by him; and without him was not any thing made that was made."
  John 1:3
- "... even God, who quickeneth the dead, and calleth those things which be not as though they were."
  Romans 4:17
- "And base things of the world, and things which are despised, hath God chosen, yea, and things which are not, to bring to nought things that are"
  Corinthians 1 1:28
- "Through faith we understand that the worlds were framed by the word of God, so that things which are seen were not made of things which do appear."
  Hebrews 11:3
- "My son, have pity on me; I carried you nine months in the womb and suckled you three years.... I implore you, my child, observe heaven and earth, consider all that is in them, and acknowledge that God made them out of what did not exist, and that mankind comes into being in the same way. Do not fear this executioner, but prove yourself worthy of your brothers, and make death welcome, so that in the day of mercy I may receive you back in your brothers' company."
  Maccabees 2 7:27-29 Jerusalem Bible

Logical approaches

Not all *ex nihilo* thought specifies a divine creator.

A major argument for *creatio ex nihilo*, the First cause argument, states in summary:

1. everything that begins to exist has a cause
2. the universe began to exist
3. therefore, the universe must have a cause

Another argument for *ex nihilo* creation comes from Claude Nowell's Summum philosophy that states before anything existed, nothing existed, and if nothing existed, then it must have been possible for nothing to be. If it is possible for nothing to be (the argument goes), then it must be possible for everything to be.[7]

Other support for *creatio ex nihilo* belief comes from the idea that something cannot arise from nothing; that would involve a contradiction (compare *ex nihilo nihil fit*). Therefore something must always have existed. But (this account continues) it is scientifically impossible for matter to always have existed. Moreover, matter is contingent: it is not logically impossible for it not to exist, and nothing else depends on it. Hence one deduces a Creator, non-contingent and not composed of matter.

Ancient Greek speculation

Some scholars have argued that Plethon viewed Plato as positing *ex nihilo* creation in his *Timaeus*.

Eric Voegelin detects in Hesiod's chaos a *creatio ex nihilo*.[8]

Islamic views

Several Qur'anic verses explicitly state that God created man, the heavens and the earth, out of nothing. The following quotations come from Muhammad Asad's translation, *The Message of the Quran*:

- 2:117: "The Originator is He of the heavens and the earth: and when He wills a thing to be, He but says unto it, 'Be' - and it is."
- 19:67: "But does man not bear in mind that We have created him aforetime out of nothing?"
- 21:30: "ARE, THEN, they who are bent on denying the truth not aware that the heavens and the earth were [once] one single entity, which We then parted asunder? – and [that] We made out of water every living thing? Will they not, then, [begin to] believe?"
- 21:56: "He answered: 'Nay, but your [true] Sustainer is the Sustainer of the heavens and the earth - He who has brought them into being: and I am one of those who bear witness to this [truth]!'"
- 35:1: "ALL PRAISE is due to God, Originator of the heavens and the earth, who causes the angels to be (His) message-bearers, endowed with wings, two, or three, or four. He adds to His creation whatever He wills: for, verily, God has the power to will anything."
- 51:47: "It is We who have built the universe with (Our creative) power; and, verily, it is We who are steadily expanding it."

Judaeo-Christian theologians

Biblical scholars and theologians within the Judaeo-Christian tradition such as Philo (20 BCE – 50 CE),[9] [10] Augustine (354-430),[11] John Calvin (1509–1564),[12] John Wesley (1703–1791)[13] and Matthew Henry (1662–1714)[14] cite Genesis 1:1 in support of the idea of Divine creation out of nothing.

Arguments against *ex nihilo* creation

Opposition within the Christian theological tradition

Old Testament scholar John Walton argues that the Hebrew word *bārā* ("create") used in Genesis 1 does not mean to create *ex nihilo*, but rather that it means to give already existing material a function.[15]

The text in (for example) the King James Version English-language translation reads: "In the beginning God created the heaven and the earth."[16] However, this translation fails to capture the inherent ambiguity in the Hebrew, which might translate with equal validity as "In the beginning God created...", and as "When God began to create...the earth was a formless void",[17] implying that God worked with pre-existing materials.

A widely accepted 20th-century translation of the Hebrew text by the Jewish Publication Society offers:

> When God began to create heaven and earth, and the earth then was welter and waste and darkness over the deep and God's breath hovering over the water, God said, "Let there be light." And there was light. And God saw the light, that it was good, and God divided the light from the darkness...

interpretable as the use of pre-existing materials, opposed to *creatio ex nihilo*.

Gen:1:8-9 also says:

> Let the waters under the heavens be gathered together so that dry land will appear

again showing pre-existing materials (*the deep* exists, prior to God beginning to create heaven and earth, and also *land* exists (as opposed to *earth*.)[18] [19] [20]

Thomas Jay Oord (born 1965), a Christian philosopher and theologian, argues that Christians should abandon the doctrine of creation *ex nihilo*. Oord points to the work of biblical scholars, such as Jon D. Levenson, who point out that the doctrine of *creatio ex nihilo* does not appear in Genesis. Oord speculates that God created our particular universe billions of years ago from primordial chaos. This chaos did not predate God, however, for God would have created the chaotic elements as well.[21] Oord suggests that God can create all things without creating from absolute nothingness.[22]

Oord offers nine objections to *creatio ex nihilo*:

1. Theoretical problem: One cannot conceive absolute nothingness.
2. Biblical problem: Scripture – in Genesis, 2 Peter, and elsewhere – suggests creation from something (water, deep, chaos, etc.), not creation from absolutely nothing.
3. Historical problem: The Gnostics Basilides and Valentinus first proposed *creatio ex nihilo* on the basis of assuming the inherently evil nature of creation, and in the belief that God does not act in history. Early Christian theologians adopted the idea to affirm the kind of absolute divine power that many Christians now reject.
4. Empirical problem: We have no evidence that our universe originally came into being from absolutely nothing.
5. Creation-at-an-instant problem: We have no evidence in the history of the universe after the big bang that entities can emerge instantaneously from absolute nothingness. As the earliest philosophers noted, out of nothing comes nothing (*ex nihilo, nihil fit*).
6. Solitary power problem: *Creatio ex nihilo* assumes that a powerful God once acted alone. But power, as a social concept, only becomes meaningful in relation to others.
7. Errant revelation problem: The God with the capacity to create something from absolutely nothing would apparently have the power to guarantee an unambiguous and inerrant message of salvation (for example: inerrant Bible). An unambiguously clear and inerrant divine revelation does not exist.

8. Evil problem: If God once had the power to create from absolutely nothing, God essentially retains that power. But a God of love with this capacity appears culpable for failing to prevent genuine evil.
9. Empire Problem: The kind of divine power implied in *creatio ex nihilo* supports a theology of empire, based upon unilateral force and control of others.

A few early Jewish and Christian theologians and philosophers, including Philo, Justin, Athenagoras, Hermogenes, Clement of Alexandria, and, later, Johannes Scotus Eriugena made statements that seem to indicate that they did not hold to the concept of the creation-out-of-nothing. Philo, for instance, postulated pre-existent matter[23] alongside God.

Process theologians argue that humans have always related a God to some "world" or another.

Some also claim that rejecting *creatio ex nihilo* provides the opportunity to affirm that God has everlastingly created and related with some realm of non-divine actualities or another (compare continuous creation). According to this alternative God-world theory, no non-divine thing exists without the creative activity of God, and nothing can terminate God's necessary existence.

Joseph Smith, founder of the Latter Day Saint movement, dismissed creation *ex nihilo*, and introduced revelation that specifically countered this concept.[24] [25] The Church of Jesus Christ of Latter-day Saints teaches that matter is both eternal and infinite and that it can be neither created nor destroyed.[26] Latter-day Saint apologists have commented on Colossians 1:16 that the "Greek text does not teach ex nihilo, but creation out of pre-existing raw materials, since the verb *ktidzo* 'carried an architectural connotation...as in *to build* or *establish* a city....Thus, the verb presupposes the presence of already existing material.'"[27]

While the idea of God everlastingly relating with creatures may seem strange, even its opponents in Christian history – like Thomas Aquinas – admitted it as a logical possibility.

Cosmological arguments

Physicists Paul Steinhardt (Princeton University) and Neil Turok (Cambridge University) offer an alternative to *ex nihilo* creation. Their proposal stems from the ancient idea that space and time have always existed in some form. Using developments in string theory, Steinhardt and Turok suggest the Big Bang of our universe as a bridge to a pre-existing universe, and speculate that creation undergoes an eternal succession of universes, with possibly trillions of years of evolution in each. Gravity and the transition from Big Crunch to Big Bang characterize an everlasting succession of universes. However, this view does not take into account the problems of infinite regression.

Hindu views

The Vedanta schools of Hinduism reject the concept of creation *ex nihilo* for several reasons, for example:

1. both types of revelatory texts (*śruti*[28] and *smṛti*) designate matter as eternal although completely dependent on God — the Absolute Truth (*param satyam*)
2. believers then have to attribute all the evil ingrained in material life to God, making Him partial and arbitrary, which does not logically accord with His nature

The Bhagavad Gita (BG) states the eternality of matter and its transformability clearly and succinctly: "Material nature and the living entities should be understood to be beginningless. Their transformations and the modes of matter are products of material nature."[29] The opening words of Krishna in BG 2.12-13 also imply this, as do the doctrines referred to in BG 16.8 as explained by the commentator Vadiraja Tirtha.[30]

Computer science

Some computing environments use the tag *ex nihilo* to describe various techniques for creating data structures or objects. In prototype-based programming languages, a programmer sets up an object "ex nihilo" if it does not use another object as its prototype.[31]

Military organization

A unit raised *ex nihilo* forms without the use of significant components from other units. Thus, when a military authority sets up a unit composed entirely of personnel transferred as individuals from other units, one can speak of raising *ex nihilo*. Alternatives to this method, (also known as "cutting a unit from whole cloth") include expanding a skeleton (cadre) unit, assembling a large unit from components taken from other units, and the splitting of an existing unit into two or more skeleton units for subsequent filling out with additional personnel. German-speakers call this last-named method "calving" (*das Kalben*). French-speakers refer to it as "doubling" (*dédoublement*), but only, as the name suggests, when forming two new units on the framework of one old one.

See also

- Archbishop Ussher, whose Ussher chronology calculated a time for a Genesis *creatio ex nihilo*
- Big Bang
- Emergence
- Ex nihilo nihil fit
- "Ex Nihilo", sculpture by Frederick Hart
- Infinite regression
- M-theory
- Natural theology
- Nihilism
- Rabbinical creation story
- Turtles all the way down
- Quantitative easing

Suggested reading

- Thomas Jay Oord, Science of Love: The Wisdom of Well-Being (Philadelphia: Templeton Foundation Press, 2005), especially chapter 2.
- Jon D. Levenson, Creation and the Persistence of Evil: The Jewish Drama of Divine Omnipotence (Princeton, N.J.: Princeton University Press, 1994; New York: Harper & Row, 1987).
- Sjoerd L. Bonting, Chaos Theology: A Revised Creation Theology [Ottawa: Novalis, 2002].
- Huchingson, James Edward (2001). *Pandemonium tremendum : chaos and mystery in the life of God*. Cleveland, Ohio: Pilgrim Press. ISBN 0829814191.
- David Ray Griffin, "Creation out of Chaos and The Problem of Evil" in Davis, Stephen T., ed (2001) [1981]. *Encountering Evil: Live Options in Theodicy* (new ed.). Louisville, Ky: Westminster John Knox Press. ISBN 066422251X.
- Keller, Catherine (2003). *Face of the deep: a theology of becoming* [32]. Routledge. ISBN 9780415256490. Retrieved 2009-10-04.
- Lodahl, Michael E. (2001). "Creation out of Nothing? Or is Next to Nothing Enough?". in Stone, Bryan P.; Oord, Thomas Jay. *Thy nature and thy name is love: Wesleyan and process theologies in dialogue*. Nashville: Kingswood. ISBN 0687052203.

- Theissen, Gerd; translated by John Bowden (2007) [1987]. *The shadow of the Galilean: the quest of the historical Jesus in narrative form*. Minneapolis, MN: Fortress Press. ISBN 9780800639006.

References

[1] Yonge, Charles Duke (1854). "Appendices A Treatise Concerning the World (1): But what can be worse than this, or more calculated to display the want of true nobility existing in the soul, than the notion of causes in general being secondary and created causes, combined with an ignorance of the one first cause, the uncreated God, the Creator of the universe, who for these and innumerable other reasons is most excellent, reasons which because of their magnitude human intellect is unable to apprehend?" The Works of Philo Judaeus: the contemporary of Josephus. London: H. G. Bohn. http://cornerstonepublications.org/Philo.

[2] Plato Laws Book X, Public Domain-Project Gutenberg. “ATHENIAN: Then I suppose that I must repeat the singular argument of those who manufacture the soul according to their own impious notions; they affirm that which is the first cause of the generation and destruction of all things, to be not first, but last, and that which is last to be first, and hence they have fallen into error about the true nature of the Gods… Then we must say that self-motion being the origin of all motions, and the first which arises among things at rest as well as among things in motion, is the eldest and mightiest principle of change, and that which is changed by another and yet moves other is second.”

[3] May, Gerhard (2004). *Creatio ex nihilo [Creation from nothing]* (http://books.google.com/books?hl=en&lr=&id=LoS05gQUDhEC). Continuum International. p. xii. ISBN 9780567083562. . Retrieved 2009-11-23. "If we look into the early Christian sources, it becomes apparent that the thesis of *creatio ex nihilo* in its full and proper sense, as an ontological statement, only appeared when it was intended, in opposition to the idea of world-formation from unoriginate matter, to give expression to the omnipotence, freedom and uniqueness of God."

[4] May, Gerhard (1978) (in German). *Schöpfung aus dem Nichts. Die Entstehung der Lehre von der creatio ex nihilo [Creation from Nothingness: the origin of the doctrine of creatio ex nihilo]*. AKG 48. Berlin/New York: de Gruyter. p. 151f. ISBN 3110072041.

[5] Siegfried, Francis (1908). "Creation" (http://www.newadvent.org/cathen/04470a.htm). *The Catholic Encyclopedia, volume 4*. New York: Robert Appleton Company. . Retrieved 2008-09-30. "Probably the idea of creation never entered the human mind apart from Revelation. Though some of the pagan philosophers attained to a relatively high conception of God as the supreme ruler of the world, they seem never to have drawn the next logical inference of His being the absolute cause of all finite existence. [...] The descendants of Sem and Abraham, of Isaac and Jacob, preserved the idea of creation clear and pure; and from the opening verse of Genesis to the closing book of the Old Testament the doctrine of creation runs unmistakably outlined and absolutely undefiled by any extraneous element. "In the beginning God created the heavens and the earth." In this, the first, sentence of the Bible we see the fountain-head of the stream which is carried over to the new order by the declaration of the mother of the Machabees: "Son, look upon heaven and earth, and all that is in them: and consider that God made them out of nothing" (2 Maccabees 7:28). One has only to compare the Mosaic account of the creative work with that recently discovered on the clay tablets unearthed from the ruins of Babylon to discern the immense difference between the unadulterated revealed tradition and the puerile story of the cosmogony corrupted by polytheistic myths. Between the Hebrew and the Chaldean account there is just sufficient similarity to warrant the supposition that both are versions of some antecedent record or tradition; but no one can avoid the conviction that the Biblical account represents the pure, even if incomplete, truth, while the Babylonian story is both legendary and fragmentary (Smith, "Chaldean Account of Genesis", New York, 1875)."

[6] Weber, Max (1978). Roth, Guenther; Wittich, Claus. eds. *Economy and society: an outline of interpretive sociology* (http://books.google.com/books?id=pSdaNuIaUUEC). **1**. Berkeley: University of California Press. p. 521. ISBN 0-520-03500-3. . Retrieved 2010-05-31.

[7] Ra, Summum Bonum Amen (2004) [1975]. "Chapter 2" (http://www.summum.us/philosophy/ebook/ebook.htm). *SUMMUM: Sealed Except to the Open Mind*. Salt Lake City: Summum. . Retrieved 2006-12-15.

[8] Moorton, Richard F (2001). "Hesiod as Precursor to the Presocratic Philosophers: A Voeglinian View" (http://www.artsci.lsu.edu/voegelin/EVS/Panel42001.htm). . Retrieved 2008-12-04. "First, says Hesiod, there came to be Chaos, and then Earth, Tartarus (which Voegelin curiously neglects in his account), and Eros. For Voegelin this is a creatio ex nihilo, which points the finger of questioning towards the yet undifferentiated beyond. If he is right, the Greek philosophers who followed were unanimous in retreating from this seeming violation of the principle of sufficient reason to the principle that ex nihilio nihil fit.[sic]"

[9] Yonge, Charles Duke (1854). "Appendices A Treatise Concerning the World (1), On the Creation (16-19, 26-30), Special Laws IV (187), On the Unchangeableness of God (23-32)". The Works of Philo Judaeus: the contemporary of Josephus. London: H. G. Bohn. http://cornerstonepublications.org/Philo.

[10] Clontz, T.E. and J. (2008). "The Comprehensive New Testament with complete textual variant mapping and references for the Dead Sea Scrolls, Philo, Josephus, Nag Hammadi Library, Pseudepigrapha, Apocrypha, Plato, Egyptian Book of the Dead, Talmud, Old Testament, Patristic Writings, Dhammapada, Tacitus, Epic of Gilgamesh. Cornerstone Publications. ISBN 978-0-977873-71-5. (p. 473 Philo[On Dreams, That they Are God-Sent (2.8) cf. {Genesis 37:5-11}; Special Laws IV (187) cf. {Genesis 1:1-31}]; p. 494 Philo[Appendices A Treatise Concerning the World (1) cf. {Genesis 1:1, Deuteronomy 10:17}]

[11] The Nicene and Post Nicene Fathers First Series, Volume 1 The Confessions and Letters of Augustine with a Sketch of his Life and Work, 1896, Philip Schaff, Augustine Confessions - Book XI.11-30, XII.7-9

[12] Commentaries on The First Book of Moses Called Genesis, by John Calvin, Translated from the Original Latin, and Compared with the French Edition, by the Rev. John King, M.A, 1578, Volume 1, Genesis 1:1-31 see http://www.ccel.org/ccel/calvin/calcom01.vii.i.html - “In the beginning. To expound the term “beginning,” of Christ, is altogether frivolous. For Moses simply intends to assert that the world was not perfected at its very commencement, in the manner in which it is now seen, but that it was created an empty chaos of heaven and earth. His language therefore may be thus explained. When God in the beginning created the heaven and the earth, the earth was empty and waste. He

moreover teaches by the word “created,” that what before did not exist was now made; for he has not used the term רצי, (yatsar,) which signifies to frame or forms but ארב, (bara,) which signifies to create. Therefore his meaning is, that the world was made out of nothing. Hence the folly of those is refuted who imagine that unformed matter existed from eternity; and who gather nothing else from the narration of Moses than that the world was furnished with new ornaments, and received a form of which it was before destitute.”

[13] John Wesley's notes on the whole Bible the Old Testament, Notes On The First Book Of Moses Called Genesis, by John Wesley, p.14 see http://www.ccel.org/ccel/wesley/notes.ii.ii.ii.i.html - “Observe the manner how this work was effected; God created, that is, made it out of nothing. There was not any pre-existent matter out of which the world was produced. The fish and fowl were indeed produced out of the waters, and the beasts and man out of the earth; but that earth and those waters were made out of nothing. Observe when this work was produced; In the beginning — That is, in the beginning of time. Time began with the production of those beings that are measured by time. Before the beginning of time there was none but that Infinite Being that inhabits eternity.”

[14] Henry, Matthew. *Commentary on the whole Bible* (http://www.ccel.org/ccel/henry/mhc1.html). Christian Classics Ethereal Library. **1 (Genesis to Deuteronomy)** ([online] ed.). Grand Rapids, Michigan: Calvin College. Retrieved 2010-04-09. "The manner in which this work was effected: God created it, that is, made it out of nothing. There was not any pre-existent matter out of which the world was produced. The fish and fowl were indeed produced out of the waters and the beasts and man out of the earth; but that earth and those waters were made out of nothing. By the ordinary power of nature, it is impossible that any thing should be made out of nothing; no artificer can work, unless he has something to work on."

[15] Walton, John H. (2009). *The Lost World of Genesis One: Ancient Cosmology and the Origins Debate* (http://books.google.com/books?id=6qZLAz3TckgC). InterVarsity Press. p. 44. ISBN 9780830837045. . Retrieved 2010-04-09. "[...] the absence of reference to materials, rather than suggesting material creation out of nothing, is better exoplained as indication that *bārā* is not a material activity but a functional one."

[16] http://en.wikisource.org/wiki/Bible_(King_James)/Genesis

[17] Coogan, Michael (2001) [1973]. "Genesis" (http://books.google.com/books?id=5KFTOJsFBzsC). *The New Oxford Annotated Bible* (3 ed.). Oxford University Press. p. 11 HB. ISBN 9780195284782. . Retrieved 2009-11-23.

[18] Alter, Robert (2004). Robert Alter. ed. *The five books of Moses: a translation with commentary* (http://books.google.com/books?id=pKHRaOIpAnsC). Norton. pp. 1064. ISBN 9780393019551. .

[19] Alter, Robert (1997) [1996]. *Genesis: translation and commentary* (http://books.google.com/books?id=QMLGGh0MxYkC&dq) (reprint ed.). W.W. Norton. pp. 324. ISBN 9780393316704. . Retrieved 2009-08-12.

[20] Fox, Everett (1995). *The five books of Moses : Genesis, Exodus, Leviticus, Numbers, Deuteronomy ; a new translation with introductions, commentary, and notes*. New York: Schocken. ISBN 0805240616.

[21] http://books.google.com/books?id=DsPwO1YDeNIC&pg=PA240&dq=Thomas+Jay+Oord&lr=

[22] Keller, Catherine (2003) *Face of the deep: a theology of becoming* (http://books.google.com/books?id=DsPwO1YDeNIC) Routledge p. 240 ISBN 9780415256490 . Retrieved 2009-10-04 "Thomas Jay Oord has advocated an 'open theology' that 'embraces the hypothesis that God did not create the world out of absolutely nothing, i.e., *ex nihilo*. [...]' *Matching Theology and Piety: An Evangelical Process Theology of Love', PhD dissertation (Claremont Graduate University, 1999), p. 284."*

[23] Wolfson, Harry Austryn (1976). *The philosophy of the Kalam* (http://books.google.com/books?hl=en&lr=&id=fuv8J-g7EdAC). Structure and growth of philosophic systems from Plato to Spinoza. **4**. Harvard University Press. pp. 779. ISBN 9780674665804. . Retrieved 2010-02-25. "It can be further shown that Philo and some of the Church Fathers who have adopted the Platonic theory of creation out of a pre-existent matter made that matter to have been created out of nothing [...]"

[24] Doctrine and Covenants 93:29 (http://scriptures.lds.org/en/dc/93/29#29); Doctrine and Covenants 131:7-8 (http://scriptures.lds.org/en/dc/131/7-8#7-8); Abraham 3:24 (http://scriptures.lds.org/en/abr/3/24#24)

[25] Creatio ex nihilo - FAIRMormon (http://en.fairmormon.org/index.php/Creatio_ex_nihilo)

[26] "Gospel Topics: Creation" (http://lds.org/portal/site/LDSOrg/menuitem.3933737ad2ff28132eb22a86942826a0/?vgnextoid=bbd508f54922d010VgnVCM1000004d82620aRCRD&locale=0&index=3&sourceId=c81d0bbce1d98010VgnVCM1000004d82620a____). *Gospel Library*. The Church of Jesus Christ of Latter-day Saints. . Retrieved 2009-01-08. "Creation

Under the direction of Heavenly Father, Jesus Christ created the heavens and the earth (see Mosiah 3:8; Moses 2:1). From scripture revealed through the Prophet Joseph Smith, we know that in the work of the Creation, the Lord organized elements that had already existed (see Abraham 3:24). He did not create the world "out of nothing," as some people believe."

[27] Creation in Colossians 1:16 - FAIRMormon (http://en.fairmormon.org/index.php/Creation_in_Colossians_1:16)

[28] But compare King, Richard; Gaudapāda Ācārya (1995). *Early Advaita Vedānta and Buddhism: the Mahāyāna context of the Gaudapādīya-kārikā* (http://books.google.com/books?id=p1bASTAOhjoC). State University of New York Suny series in religious studies. SUNY Press. p. 58. ISBN 9780791425138. . Retrieved 2010-05-31. "[...] the *Upanisads* do not have a definitive point of view, even within the same *Upanisad*. GK III.23 notes for instance that the *sruti* equally upholds the view that creation occurs from a pre-existent being (*sat*) and that it proceeds from non-existence. creation is most frequently understood to be a transformation (*parinama*) or an emanation from a pre-existent reality. Creation from non-being (*asat*), however, is put forward as a possibility in *Chandogya Upanisad* III.19 and *Taittiriya Upanisad* II.7. This is not necessarily a *creatio ex nihilo*, but in all likelihood denotes an emergence of being from the pregnant and undifferentiated chaos known as non-being (*asat*). Nevertheless, the equating of non-being with nothingness may have been intended and it is

certainly criticized on those grounds in *Chandogya Upanisad* VI.2. The predominant Brahmanical creation theme, however, describes an emanation from or transformation of "*sat*," whether envisaged as an abstract impersonal reality as in *Taittiriya Upanisad* II.i, or from a personal creator, as in *Prasna Upanisad* I.4."

[29] Bhagavad Gita 13.19 or 20 (http://vedabase.net/bg/13/20/en)

[30] See Sri Vadiraja's commentary on the Bhagavad Gita (http://dvaita.info/pipermail/dvaita-list_dvaita.info/2007-April/002780.html)

[31] http://www.lirmm.fr/~dony/postscript/proto-book.pdf

[32] http://books.google.com/books?id=DsPwO1YDeNIC

Ex aequo et bono

Ex aequo et bono (Latin for "according to the right and good" or "from equity and conscience") is a legal term of art. In the context of arbitration, it refers to the power of the arbitrators to dispense with consideration of the law and consider solely what they consider to be fair and equitable in the case at hand.

Article 38(2) of the Statute of the International Court of Justice provides that the court may decide cases ex aequo et bono, but only where the parties agree thereto. Through 2007, ICJ has never decided such a case.

Article 33 of the United Nations Commission on International Trade Law's Arbitration Rules (1976) provides that the arbitrators shall consider only the applicable law, unless the arbitral agreement allows the arbitrators to consider *ex aequo et bono*, or amiable compositeur, instead.[1] This rule is also expressed in many national and subnational arbitration laws, for example s. 22 of the Commercial Arbitration Act 1984 (NSW).

On the other hand, the constituent treaty of the Eritrea-Ethiopia Claims Commission explicitly forbids this body to interpret *ex aequo et bono*.

Notes

[1] 33 - UNCITRAL Arbitration Rules (1976) (http://www.jus.uio.no/lm/un.arbitration.rules.1976/33.html)

Books

- John Bouvier, *A law dictionary*, Philadelphia, Childs & Peterson, 1858
- Josephine K. Mason, *The Role of Ex Aequo et Bono in International Border Settlement: A Critique of the Sudanese Abyei Arbitration* (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1553574), Social Science Research Network, 2010

See also

- Equity (law) - similar concept in common law jurisdictions

Ex contractu

Ex contractu, Latin for "from a contract," is a legal term that indicates a consequence of a contract. Ex contractu is often to denote the source of a legal action (often as opposed to ex delicto).

It is often said that damages ex contractu will lie for nonfeasance, misfeasance and malfeasance; whereas damages ex delicto will only lie for misfeasance and malfeasance.

Ex factis jus oritur

Ex factis jus oritur (Latin: the law arises from the facts) is a principle of international law. The phrase is based on the simple notion that certain legal consequences attach to particular facts.[1] Its rival principle is *Ex injuria jus non oritur*, in which illegal acts cannot create law.[2]

See also

- Facts on the ground

References

[1] Gérard Kreijen (2002). *State, sovereignty, and international governance* (http://books.google.com/books?id=Eu9ryZOi9nYC&pg=PA103&dq=Ex+factis+jus+oritur&lr=&as_brr=3&client=opera&hl=fi&cd=1#v=onepage&q=Ex factis jus oritur&f=false). Oxford University Press. .

[2] Tim Hillier (1998). *Sourcebook on public international law* (http://books.google.com/books?id=Kr0sOuIx8q8C&pg=PA217&dq=ex+injuria+jus+non+oritur+illegal&lr=&as_brr=3&client=opera). Routledge. .

Ex injuria jus non oritur

Ex injuria jus non oritur (Latin: law does not arise from injustice) is a principle of international law.[1] The phrase implies that "illegal acts cannot create law".[2] Its rival principle is *ex factis jus oritur*, in which the existence of facts creates law.[3]

References

[1] "Glossary of International Law Terms" (https://courses.law.washington.edu/allen/A576a_Wi08/public/Glossary_HTML.htm). University of Washington School of Law. . Retrieved 2009-05-06.

[2] Brigitte Stern (1998). *Dissolution, continuation, and succession in Eastern Europe* (http://books.google.com/books?id=NffZzO5uFuUC&pg=PA21&dq=ex+injuria+jus+non+oritur+illegal&lr=&as_brr=3&client=opera). Martinus Nijhoff Publishers. .

[3] Tim Hillier (1998). *Sourcebook on public international law* (http://books.google.com/books?id=Kr0sOuIx8q8C&pg=PA217&dq=ex+injuria+jus+non+oritur+illegal&lr=&as_brr=3&client=opera). Routledge. .

Ex nunc

Ex nunc is a Latin phrase meaning *from now on*. Used as a legal term to signify that something is valid only for the future and not the past. The opposite is ex tunc.

See also

- List of legal Latin terms

Ex parte

Ex parte is a Latin legal term meaning "from (by or for) one party" (English pronunciation: /ˌɛks ˈpɑrti/). An *ex parte* decision is one decided by a judge without requiring all of the parties to the controversy to be present. In Australian Law that a person shall not be deprived of any interest in liberty or property without due process of law. In practice this has been interpreted to require adequate notice of the request for judicial relief and an opportunity to be heard concerning the merits of such relief. A court order issued on the basis of an *ex parte* proceeding, therefore, will necessarily be temporary and interim in nature, and the person(s) affected by the order must be given an opportunity to contest the appropriateness of the order before it can be made permanent.

The phrase has also traditionally been used in the captions of petitions for the writ of habeas corpus, which were (and in some jurisdictions, still are) styled as "*Ex parte* Doe", where Doe was the name of the petitioner who was alleged to be wrongfully held. As the Supreme Court's description of nineteenth century practice in *Ex parte Milligan* shows, however, such proceedings were not *ex parte* in any significant sense. The prisoner's *ex parte* application sought only an order requiring the person holding the prisoner to appear before the court to justify the prisoner's detention; no order requiring the freeing of a prisoner could be given until after the jailer was given the opportunity to contest the prisoner's claims at a hearing on the merits.

See also

- *Ex parte Quirin*
- *Ex parte Milligan*
- *Ex parte Endo*
- Inter partes
- Temporary injunction

Ex post facto

An ***ex post facto* law** (from the Latin for "from after the action") or **retroactive law,** is a law that retroactively changes the legal consequences (or status) of actions committed or relationships that existed prior to the enactment of the law. In reference to criminal law, it may criminalize actions that were legal when committed; or it may aggravate a crime by bringing it into a more severe category than it was in at the time it was committed; or it may change or increase the punishment prescribed for a crime, such as by adding new penalties or extending terms; or it may alter the rules of evidence in order to make conviction for a crime more likely than it would have been at the time of the action for which a defendant is prosecuted. Conversely, a form of *ex post facto* law commonly known as an amnesty law may **decriminalize** certain acts or alleviate possible punishments (for example by replacing the death sentence with life-long imprisonment) retroactively.

A law may have an *ex post facto* effect without being technically ex post facto. For example, when a law repeals a previous law, the repealed legislation no longer applies to the situations it once did, even if such situations arose before the law was repealed. The principle of prohibiting the continued application of these kinds of laws is also known as *Nullum crimen, nulla poena sine praevia lege poenali*, particularly in European continental systems.

Generally speaking, *ex post facto* penal laws are seen as a violation of the rule of law as it applies in a free and democratic society. Most common law jurisdictions do not permit retroactive criminal legislation, though new precedent generally applies to events that occurred prior to the judicial decision. Ex post facto laws are expressly forbidden by the United States Constitution. In some nations that follow the Westminster system of government, such as the United Kingdom, *ex post facto* laws are technically possible as the doctrine of parliamentary supremacy allows Parliament to pass any law it wishes. However, in a nation with an entrenched bill of rights or a written constitution, *ex post facto* legislation may be prohibited.

Ex post facto laws by country

Australia

Australia has no strong constitutional prohibition on *ex post facto* laws, although narrowly retroactive laws might violate the constitutional separation of powers principle. Australian courts normally interpret statutes with a strong presumption that they do not apply retroactively.

Retroactive laws designed to prosecute what was perceived to have been a blatantly unethical means of tax avoidance were passed in the early 1980s by the Fraser government (see Bottom of the harbour tax avoidance). Similarly, the retroactive effect of legislation criminalizing certain war crimes retroactively have been held to be constitutional (see Polyukhovich v Commonwealth).

The government will sometimes make a press release that it intends to change the tax law with effect from the date and time of the press release, before legislation is introduced into parliament.

Brazil

According to the 5th Article, section XXXVI of Brazilian Constitution, laws cannot have "ex post facto" effects that affect acquired rights, accomplished juridical acts and *res judicata*.

The same article, in section XL prohibits ex post facto criminal laws. Like France, there is an exception, when retroactive criminal laws benefits the accused person.

Canada

In Canada, *ex post facto* criminal laws are constitutionally prohibited by section 11(g) of the Charter of Rights and Freedoms. Also, under section 11(i) of the Charter, if the punishment for a crime has varied between the time the crime was committed and the time of a conviction, the convicted person is entitled to the lesser punishment.

Finland

Finland used *ex post facto* legislation in 1945, after the World War Two in trials of the war responsibilities in Finland. A law which made the pre-war politics criminal was passed in order to get the leaders nominated by Stalin sentenced. Generally ex post facto jurisprudence is considered violating the Romano-German judicial system, and are banned by the Constitution of Finland. Still, ex post facto laws may be used in civil cases, especially concerning vehicle taxes.

France

The expression "Ex post facto law" translates to "loi rétroactive" in French. In France, any *ex post facto* criminal law may be applied only if the retroactive application benefits the accused person (called retroactivity "in mitius"). An example of this rule would be a case where a weaker sentence is now applicable but was not previously applicable. See also the Declaration of the Rights of Man and of the Citizen.

Germany

Article 103 of the German basic law requires that an act may only be punished if it has already been punishable by law at the time it was committed (specifically: by *written* law, Germany following civil law).

Some scholars assert that the Nuremberg Trials following World War II were based on *ex post facto* law, because the Allies did not negotiate the London Charter, defining crimes against humanity and creating the International Military Tribunal, until well after the acts charged. Others, including the International Military Tribunal, argued that the London Charter merely restated and provided jurisdiction to prosecute offenses that were already made unlawful by the Kellogg-Briand Pact, the Covenant of the League of Nations, and the various Hague Conventions.

The problem of ex post facto law was also relevant in the 1990s as there was a discussion about the trials against East German soldiers who killed fugitives on the Inner-German border (Mauerschützen-Prozesse (Wall-shooter's trial)).

India

In India without using the expression "Ex post facto law" the underlying principle has been adopted in the Article 20 (1) of the Indian Constitution in the following words:

"No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which have been inflicted under the law in force at the time of commission of the offence."

Indonesia

Article 28I of the Indonesian constitution prohibits trying citizens under retroactive laws in any circumstance. This was tested in 2004 when the conviction of one of the Bali bombers under retroactive anti-terrorist legislation was quashed.

Iran

Ex post facto laws, in all contexts, are prohibited by Article 169 (Chapter 11) of Iran's constitution.

Italy

Article 25, paragraph 2, of the Italian Constitution establishing that "nobody can be punished but according to a law come into force before the deed was committed", prohibits indictment pursuant a retroactive law. Article 11 of preliminary provisions to the Italian Civil Code and Article 3, paragraph 1, of the Statute of taxpayer's rights prohibit retroactive laws on principle. Such provisions can be derogated, however, by acts having force of the ordinary law.

Ireland

The imposition of retroactive criminal sanctions is prohibited by Article 15.5.1° of the constitution of Ireland. Retroactive changes of the civil law have also been found to violate the constitution when they would have resulted in the loss in a right to damages before the courts, the Irish Supreme Court having found that such a right is a constitutionally protected property right.

Japan

Article 39 of the constitution of Japan prohibits the retroactive application of laws. Article 6 of Criminal Code of Japan further state that if a new law comes into force after the deed was committed, the lighter punishment must be given.

New Zealand

Section 7 of the Interpretation Act 1999 stipulates that enactments do not have retrospective effect. The New Zealand Bill of Rights Act 1990 also affirms New Zealand's commitment to the ICCPR and UNDHR with s 26 preventing the application of retroactive penalties. This is further reinforced under s 6(1) of the current Sentencing Act 2002 which provides, "[p]enal enactments not to have retrospective effect to disadvantage of offender" irrespective of any provision to the contrary. Section 26 of the Bill of Rights and the previous sentencing legislation the Criminal Justice Act 1985 caused significant digression among judges when the New Zealand Parliament introduced legislation that had the effect of enacting a retrospective penalty for crimes involving an element of home invasion. Ultimately the discrepancy was restricted with what some labelled artificial logic in the cases of R v Pora and R v Poumako.

Norway

Article 97 of the Norwegian constitution prohibits any law to be given retroactive effect. The prohibition applies to both criminal and civil laws, but in some civil cases, only particularly unreasonable effects of retroactivity will be found unconstitutional.[1]

Pakistan

Article 12 of the constitution of Pakistan prohibits any law to be given retroactive effect by stating:[2]

- 12.1 - No law shall authorize the punishment of a person:-
- 12.1.a - for an act or omission that was not punishable by law at the time of the act or omission; or
- 12.1.b - for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

Philippines

The 1987 Constitution of the Philippines categorically prohibits the passing of any ex post facto law. Article III (Bill of Rights), Section 22 specifically states: "No ex post facto law or bill of attainder shall be enacted."

Russia

Ex post facto punishment in criminal and administrative law is prohibited by art.54 of Constitution; *Ex post facto* tax laws by art.57 of Constitution.

Spain

Article 9.3 of the Spanish Constitution guarantees the principle of non-retroactivity of punitive provisions that are not favorable to or restrictive of individual rights. Therefore, "ex post facto" criminal laws or any other retroactive punitive provisions are constitutionally prohibited.

South Africa

Prohibited in criminal law by clause 35.(3)(l) of the Constitution of the Republic of South Africa; an exception exists for offenses which were illegal under international law at the time of commission.

Sweden

In Sweden, retroactive penal sanctions and other retroactive legal effects of criminal acts due the State are prohibited by chapter 2, section 10 of the Instrument of Government (*Regeringsformen*). Retroactive taxes or charges are not prohibited, but they can have retroactive effect reaching back only to the time when a new tax bill was proposed by the government. The retroactive effect of a tax or charge thus reaches from that time until the bill is passed by the parliament.

As the Swedish Act of Succession was changed in 1979, and the throne was inherited regardless of sex, the inheritance right was withdrawn from all the descendants of Charles XIV John (king 1818-44) except the current king Carl XVI Gustaf. Thereby, the heir-apparent title was transferred from the new-born Prince Carl Philip to his older sister Crown Princess Victoria.

The Swedish Parliament voted in 2004 to abolish inheritance tax by January 1, 2005. However, in 2005 they retro-actively decided to move the date to December 17, 2004. The main reason was abolishing inheritance tax for the many Swedish victims of the 2004 Indian Ocean earthquake, which took place on December 26.

Turkey

Ex post facto punishment is prohibited by Article 38 of the Constitution of Turkey.

United Kingdom

In the United Kingdom, *ex post facto* laws are strictly frowned upon, but are permitted by virtue of the doctrine of parliamentary sovereignty. Historically, all acts of Parliament before 1793 were *ex post facto* legislation, inasmuch as their date of effect was the first day of the session in which they were passed. This situation was rectified by the Acts of Parliament (Commencement) Act 1793.

Ex post facto criminal laws are prohibited by Article 7 of the European Convention on Human Rights, to which the United Kingdom is a signatory, but parliamentary sovereignty, in theory, takes priority even over this.

In recent years, the HM Revenue & Customs office in the United Kingdom has used ex post facto laws to prosecute alleged tax evaders [3] .

United States

In the United States, the federal government is prohibited from passing *ex post facto* laws by clause 3 of Article I, section 9 of the U.S. Constitution and the states are prohibited from the same by clause 1 of Article I, section 10. This is one of the very few restrictions that the United States Constitution made to both the power of the federal and state governments prior to the Fourteenth Amendment. Over the years, when deciding *ex post facto* cases, the United States Supreme Court has referred repeatedly to its ruling in the *Calder v. Bull*, 3 U.S. 386 (1798), in which Justice Samuel Chase established four categories of unconstitutional *ex post facto* laws. The case dealt with Article I, section 10, since it dealt with a Connecticut state law.

However, not all laws with *ex post facto* effects have been found to be unconstitutional. One current U.S. law that has an *ex post facto* effect is the Adam Walsh Child Protection and Safety Act of 2006. This law, which imposes new registration requirements on convicted sex offenders, gives the United States Attorney General the authority to apply the law retroactively.[4] The U.S. Supreme Court ruled in *Smith v. Doe* (2003) that forcing sex offenders to register their whereabouts at regular intervals and the posting of personal information about them on the Internet does not violate the constitutional prohibition against *ex post facto* laws, because compulsory registration of offenders who completed their sentences before new laws requiring compliance went into effect does not constitute any kind of punishment.[5]

Another example is the Domestic Violence Offender Gun Ban, where firearms prohibitions were imposed on those convicted of misdemeanor domestic violence offenses and subjects of restraining orders (which do not require a criminal conviction). These individuals can now be sentenced to up to 10 years in a federal prison for possession of a firearm, regardless of whether or not the weapon was legally possessed at the time the law was passed. Among those that it is claimed the law has affected is a father who was convicted of a misdemeanor of child abuse for spanking his child, since anyone convicted of child abuse now faces a lifetime firearms prohibition. The law has been legally upheld because it is considered regulatory, not punitive—it is a status offense.

Finally, *Calder v. Bull* expressly stated that a law that "mollifies" a criminal act was merely retrospective and not an *ex post facto* law.

A large "exception" to the *ex post facto* prohibition can be found in administrative law, as federal agencies may apply their rules retroactively if Congress has authorized them to do so. Retroactive application is disfavored by the courts for a number of reasons,[6] but Congress may grant agencies this authority through express statutory provision. Furthermore, when an agency engages in adjudication, it may apply its own policy goals and interpretation of statutes retroactively, even if it has not formally promulgated a rule on a subject.

Retroactive taxes are not *ex post facto* laws. Calder v. Bull, 3 U.S. 386, 390-91 (1798). Substantive due process challenges to retroactive tax laws are given rational basis review. United States v. Carlton.

Treatment by international organizations and treaties

Universal Declaration of Human Rights and related treaties

Article 11, paragraph 2 of the Universal Declaration of Human Rights provides that no person be held guilty of any criminal law that did not exist at the time of offence nor suffer any penalty heavier than what existed at the time of offence. It does however permit application of either domestic or international law.

Very similar provisions are found in Article 15, paragraph 1 of the International Covenant on Civil and Political Rights, replacing the term "penal offence" with "criminal offence". It also adds that if a lighter penalty is provided for after the offence occurs, that lighter penalty shall apply retroactively. Paragraph 2 adds a provision that paragraph 1 does not prevent trying and punishing for an act that was criminal under according to the general principles of law recognized by the community of nations. Specifically addressing the use of the death penalty, article 6, paragraph 2 provides in relevant part that a death sentence may only be imposed "...for the most serious crimes in accordance with the law in force at the time of the commission of the crime...."

African Charter on Human and Peoples' Rights

Article 2, paragraph 7 of the African Charter on Human and Peoples' Rights provides in part that "[n]o one may be condemned for an act or omission which did not constitute a legally punishable offense at the time it was committed. No penalty may be inflicted for an offense for which no provision was made at the time it was committed."

American Declaration of the Rights and Duties of Man

Article 25 of the American Declaration of the Rights and Duties of Man provides in part that "[n]o person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law." The right to be tried in accordance to "pre-existing law" is reiterated in article 26.

Arab Charter on Human Rights

Article 15 of the Arab Charter on Human Rights provides that "[n]o crime and no penalty can be established without a prior provision of the law. In all circumstances, the law most favorable to the defendant shall be applied."

European Convention on Human Rights

Most European states, and all European Union states, are bound by the European Convention on Human Rights. Article 7 of the convention mirrors the language of both paragraphs of Article 15 of the International Covenant on Political and Civil Rights, with the exception that it does not include that a subsequent lighter penalty must apply.

Quotations

- "The sentiment that ex post facto laws are against natural right is so strong in the United States, that few, if any, of the State constitutions have failed to proscribe them. The federal constitution indeed interdicts them in criminal cases only; but they are equally unjust in civil as in criminal cases, and the omission of a caution which would have been right, does not justify the doing what is wrong. Nor ought it to be presumed that the legislature meant to use a phrase in an unjustifiable sense, if by rules of construction it can be ever strained to what is just." (Thomas Jefferson, Letter to Isaac McPherson, August 13, 1813)

Grammatical form and usage

The phrase isn't grammatically correct in Latin, as it consists of the preposition *ex*, the preposition *post*, and a noun with the wrong grammatical case to agree with *post*. Indeed, the Latin for this phrase is actually two words, *ex postfacto*, literally, *out of a postfactum (an after-deed)*, or more naturally, *from a law passed afterward*.

Therefore, *ex post facto* or *ex postfacto* is natively an adverbial phrase, a usage demonstrated by the sentence "*He was convicted* ex post facto *(*i.e*., from a law passed after his crime)*." The law itself would rightfully be a *postfactum* law (*lex postfacta*); nevertheless, despite its redundant or circular nature, the phrase *an ex post facto law* is used.

In Poland the phrase *lex retro non agit* ("the law does not operate retroactively") is often used.[7]

See also

- Nulla poena sine lege - the principle that no one may be punished for an act which is not against the law.

References

[1] Norwegian Supreme Court case 2009/1575 http://www.domstol.no/upload/HRET/saknr2009-1663-plenum.pdf
[2] The Constitution of Pakistan (http://www.pakistani.org/pakistan/constitution/part2.ch1.html)
[3] "Will retrospective taxes affect us all?" (http://news.bbc.co.uk/2/hi/business/8496921.stm). *BBC News*. February 5, 2010. . Retrieved May 2, 2010.
[4] "Library of Congress text of H.R.4472" (http://thomas.loc.gov/cgi-bin/query/z?c109:H.R.4472:). .
[5] "Ex Post Facto Laws" (http://law.onecle.com/constitution/article-1/59-ex-post-facto-laws.html). .
[6] "Bowen v. Georgetown University Hospital" (http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=488&page=204). .
[7] Mattila, Heikki E. S.; Christopher Goddard (2006). *Comparative Legal Linguistics*. Ashgate Publishing. pp. 154. ISBN 9780754648741.

Ex rel

Ex rel is an abbreviation of the Latin phrase "*ex relatione*" meaning "by the relation of" (or, loosely translated, "on behalf of"). The term is a legal phrase most commonly used when a government brings a cause of action upon the request of a private party who has some interest in the matter. The private party is called the *relator* in such a case. Governments typically accept applications and commence litigation for *ex rel* actions only if the interest advanced by the private party is similar to the interest of the government. The term can also be used when a relative or party in privity brings suit on another person's behalf. For example, the Terri Schiavo appeal to the United States Supreme Court was titled *Schiavo ex rel. Schindler v. Schiavo*.

Ex tunc

Ex tunc is a legal term derived from Latin, and means "from the outset". It can be contrasted with ex nunc, which means "from now on". One example usage of the term can be found in contract law, where avoidance of a contract can lead to it either being void ex nunc, i.e. from then on, or ex tunc, in which case it is treated as though it had never come into existence.

Ex turpi causa non oritur actio

Ex turpi causa non oritur actio (Latin for "from a dishonorable cause an action does not arise") is a legal doctrine which states that a claimant will be unable to pursue a cause of action, if it arises in connection with his own illegal act. Particularly relevant in the law of contract, tort and trusts,[1] *ex turpi causa* is also known as the "illegality defence", since a defendant may plead that even though, for instance, he broke a contract, conducted himself negligently or broke an equitable duty, nevertheless a claimant by reason of her own illegality cannot sue.

Development

In the early case of *Holman v Johnson*[2] Lord Mansfield CJ set out the rationale for the illegality doctrine.

> The objection, that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed; but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice, as between him and the plaintiff, by accident, if I may say so. The principle of public policy is this; *ex dolo malo non oritur actio*. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own standing or otherwise, the cause of action appears to arise *ex turpi causa*, or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground the court goes; not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So if the plaintiff and defendant were to change sides, and the defendant was to bring his action against the plaintiff, the latter would then have the advantage of it; for where both were equally in fault, *potior est conditio defendentis*.

English law

In the law of tort, the principle would prevent a criminal from bringing a claim against (for example) a fellow criminal. In *National Coal Board v England*[3] Lord Asquith said,

> If two burglars, Alice and Bob, agree to open a safe by means of explosives, and Alice so negligently handles the explosive charge as to injure Bob, Bob might find some difficulty in maintaining an action against Alice.

It is not absolute in effect. For example, in *Revill v Newberry*[4] an elderly allotment holder was sleeping in his shed with a shotgun, to deter burglars. On hearing the plaintiff trying to break in, he shot his gun through a hole in the shed, injuring the plaintiff. At first instance, the defendant successfully raised the defence of *ex turpi* to avoid the claim. However, the Court of Appeal allowed the plaintiff's appeal, holding that the defendant was negligent to have shot blindly at body height, without shouting a warning or shooting a warning shot into the air, and that the response was out of all proportion to the threat.

The precise scope of the doctrine is not certain. In some cases, it seems that the illegality prevents a duty of care arising in the first place. For example, in *Ashton v Turner*[5] the defendant crashed a car in the course of getting away from the scene of a burglary, injuring the plaintiff. Ewbank J held that the court may not recognise a duty of care in such cases as a matter of public policy. Similarly, in *Pitts v Hunt*[6] the Court of Appeal rationalised this approach, saying that it was impossible to decide the appropriate standard of care in cases where the parties were involved in

illegality.

In other cases, the courts view *ex turpi* as a defence where otherwise a claim would lie, again on grounds of public policy. In *Tinsley v Milligan*[7] Nicholls LJ in the Court of Appeal spoke of the court having to "weigh or balance the adverse consequences of granting relief against the adverse consequences of refusing relief". The plaintiff was ultimately successful in *Tinsley v Milligan* in the House of Lords, which allowed the claim on the grounds that the plaintiff did not need to rely on the illegality.

The recent case of *Gray v Thames Trains*[8] upheld the basic rule of public policy that disallowed recovery of anything stemming from Plaintiff's own wrongdoing.

- *Hewison v Meridian Shipping Services Pte Ltd* [2002] EWCA Civ 1821 [9]
- *Moore Stephens v Stone Rolls Ltd* [2009] UKHL 39 [10]

See also

- Acts of the claimant
- Contributory negligence
- *Volenti non fit injuria*

References

[1] Winfield & Jolowicz on Tort, 15th edition, 866, suggest that the doctrine should be purely confined to contract
[2] (1775) 1 Cowp 341, 343
[3] [1954] AC 403
[4] [1996] 1 All ER 291
[5] [1981] QB 137
[6] [1990] 3 All ER 344
[7] [1992] Ch 310
[8] [2009]3 WLR 167
[9] http://www.bailii.org/ew/cases/EWCA/Civ/2002/1821.html
[10] http://www.bailii.org/uk/cases/UKHL/2009/39.html

Felo de se

Felo de se, Latin for "felon of himself", is an archaic legal term meaning suicide. In early English common law, an adult who committed suicide was literally a felon, and the crime was punishable by forfeiture of property to the king and what was considered a shameful burial – typically with a stake through his heart and with a burial at a crossroad.[1] A child or mentally incompetent person, however, who killed himself was not considered a *felo de se* and was not punished post-mortem for his actions. The term is not commonly used in modern legal practice.

"Felo de se" is also the name of a poem by *fin de siècle* poet, Amy Levy.

References

[1] Macdonald, M. "The Secularization of Suicide in England, 1660-1800", *Past and Present* 111, (1998).

Fiat iustitia, et pereat mundus

" **Fiat iustitia, et pereat mundus**" is a Latin phrase. It means: "*Let there be justice, though the world perish.*"

It was the motto of Ferdinand I, Holy Roman Emperor[1] [2] [3] , probably originating from Philipp Melanchthon's 1521 book *Loci communes*, and it characterizes an attitude, which wants to provide justice at any price. It is actually about half a century older than its first documented use in English literature.

A famous use is by Immanuel Kant, in his 1795 *Perpetual Peace* (Zum ewigen Frieden. Ein philosophischer Entwurf.), to summarize the counter-utilitarian nature of his moral philosophy, in the form *Fiat iustitia, pereat mundus,* which he paraphrases as "Let justice reign even if all the rascals in the world should perish from it".[4] [5] [6]

In Germany nowadays the phrase may be cited ironically in order to criticize a legal opinion or law practice as seeking to conserve law maxims at any price even if this means social damage.[7]

The phrase has not been traced to Classical Rome and may first appear in Philipp Melanchthon's 1521 book *Loci communes*.

See also

- Fiat justitia
- Fiat justitia ruat caelum, a similar phrase.

References

[1] (in German I) (http://www.imperiumromanum.com/sprache/sentenzen/sentenzen_06.htm)
[2] (in German II) (http://www.sprichwoerter.net/content/view/2063/80/)
[3] (in German III) (http://rz-home.de/~bwach/spr_lat.html)
[4] Perpetual Peace: A Philosophical Sketch: Appendix 1 (http://www.constitution.org/kant/append1.htm)
[5] Project for a Perpetual Peace, p. 61 (http://books.google.com/books?id=LykHAAAAQAAJ&pg=PA61&dq=pereat+mundus+inauthor:Kant&lr=&as_brr=0&ei=pcfnSO-_GYPsswPPuKnLBg)
[6] Immanuel Kant's Werke, revidirte Gesammtausg, p. 456 (http://books.google.com/books?id=QskIAAAAQAAJ&pg=PA456&dq=pereat+mundus+inauthor:Kant&lr=lang_de&as_brr=0&ei=GMjnSKCcEYScswPputXqBg)
[7] Muriel Kasper. *Reclams Lateinisches Zitaten-Lexikon*. Reclam. p. 108. ISBN 3-15-010478-5.

Fiat justitia

“ **Fiat justitia**” is a Latin phrase. It means: “*Let justice be done*.”

Famous modern uses

"Fiat Justitia" appears at the bottom of the 1835 portrait of Chief Justice of the United States John Marshall by Rembrandt Peale, which hangs in a conference room at the Supreme Court Building in Washington. It is also the motto of the University of California, Hastings College of the Law and the Massachusetts Bar Association, and appears on the official seals of both institutions.

"Fiat Justitia" is the motto of Britain's Royal Air Force Police.

See also

- Fiat justitia ruat caelum
- Fiat iustitia, et pereat mundus

Fiat justitia ruat caelum

Fiat justitia ruat caelum is a Latin legal phrase, meaning "May justice be done though the heavens fall." The maxim signifies the belief that justice must be realized regardless of consequences. According to the 19th century abolitionist politician Charles Sumner, it does not come from any classical source. [1] However, it has also been ascribed to Lucius Calpurnius Piso Caesoninus (d. 43 B.C.), which may be a confusion; see "Piso's justice",

Classical forms

The ancient metaphor of the falling sky

The falling sky clause occurs in the passage of Terence, suggesting that it was a common saying in his time, *“Quid si redeo ad illos qui aiunt, ‘Quid si nunc cœlum ruat?’”* — “What if I have recourse to those who say, ‘What now if the sky were to fall?’”.[2] Similarly, the fable "The Sky Is Falling" is among Aesop's Fables.

This concern recalls a passage in Arrian’s Campaigns of Alexander, Book I, 4, where ambassadors of the Celtae from the Adriatic sea, tall men of haughty demeanor, upon being asked by Alexander what in the world they feared most, answered that their worst fear was that the sky might fall on their heads. Alexander, who hoped to hear himself named, was disappointed by an answer that implied that nothing within human power could hurt them, short of a total destruction of nature.

In a similar vein, Theognis of Megara urges “May the great broad sky of bronze fall on my head / (That fear of earth-born men) if I am not / A friend to those who love me, and a pain / And irritation to my enemies.” [3] Whereas Aristotle asserts in his *Physics*, B. IV, that it was the early notion of ignorant nations that the sky was supported on the shoulders of Atlas, and that when he let go of it, it would fall.

On the other hand, Horace opens one of his odes with a depiction of a Stoic hero who will submit to the ruin of the universe around him: "Si fractus illabatur orbis, / impavidum ferient ruinae" — "Should the whole frame of Nature round him break, / In ruin and confusion hurled, / He, unconcerned, would hear the mighty crack, / And stand secure amidst a falling world." (*Odes* 3.3.7-8, translated by Joseph Addison.)

Seneca: "Piso's justice"

In *De Ira* (On Anger), Book I, Chapter XVIII, Seneca tells of Gnaeus Piso, a Roman governor and lawmaker, when he was angry, ordering the execution of a soldier who had returned from leave of absence without his comrade, on the ground that if the man did not produce his companion, he had killed him. As the condemned man was presenting his neck to the executioner's sword, there suddenly appeared the very comrade who was supposed to have been murdered. The centurion in charge of the execution halted the proceedings and led the condemned man back to Piso, expecting a reprieve. But Piso mounted the tribunal in a rage, and ordered three soldiers to be led to execution. He ordered the death of the man who was to have been executed, because the sentence had already been passed; he also ordered the death of the centurion who was charged with the original execution, for failing to perform his duty; finally, he ordered the death of the man who had been supposed to have been murdered, because he had been the cause of death of two innocent men.

In subsequent retellings of this legend, this principle became known as “Piso’s justice”, which is when sentences made or carried out of retaliation intentions are technically correct, but morally wrong, as could be a negative interpretation of the meaning for *Fiat justitita ruat caelum*.

However, no form of the phrase *fiat justitia* appears in *De Ira,* though Brewer's incorrectly states that it does.[4] The phrase is sometimes attributed to a different Piso, Lucius Calpurnius Piso Caesoninus, possibly a confusion with this case.

Modern origins

The exact phrase as used for approval of justice at all cost – usually seen in a positive sense – appears to originate in modern jurisprudence. In English law, William Watson in “Ten Quodlibetical Quotations Concerning Religion and State” (1601) “You go against that general maxim in the laws, which is ‘Fiat justitia et ruant coeli.’” This is its first known appearance in English literature.

The maxim was used by William Prynne in “Fresh Discovery of Prodigious Wandering New-Blazing Stars” (1646), by Nathaniel Ward in “Simple Cobbler of Agawam” (1647), and frequently thereafter, but it was given its widest celebrity by William Murray, 1st Baron Mansfield's decision in 1770 on the case concerning the outlawry of John Wilkes (and not, as is commonly believed, in Somersett's Case, the 1772 case concerning the legality of slavery in England).

The maxim is given in various forms:

- “Fiat justitia et ruant coeli” (Watson);
- “Fiat justitia et coelum ruat” (John Manningham, Diary, 11 April, 1603);
- “Fiat justitia, ruat coelum” (Lord Mansfield).[5]

Famous modern uses

Crest of the Drew family of Weymouth, Dorset, 1870

More recently, Judge James Edwin Horton referred to the maxim when he recalled his decision to overturn the conviction of Haywood Patterson in the infamous Scottsboro Boys trial. In 1933, Judge Horton set aside the death sentence of Haywood Patterson, one of nine black men who were wrongfully convicted of raping two white women in Alabama. Judge Horton quoted the phrase when explaining why he made his decision, even though he knew it would mean the end of his judicial career. [6]

Similarly, Lord Mansfield, in reversing the outlawry of John Wilkes in 1770, used the phrase to reflect upon the duty of the Court.

The phrase is engraved on the wall behind the bench in the Supreme Court of Georgia and over the lintel of the Bridewell Garda station in Dublin.

The Tennessee Supreme Court uses the phrase as its motto; it appears in the seal of the Court and is inlaid into the floor of the lobby of the court's building in Nashville.

The character of Mr Brooke attempts to quote the phrase ("fiat justitia, ruat ... something or other"), attributing it to Horace, in chapter 38 of the novel *Middlemarch*, published in 1874.

In the fourth story of The Chronicles of Captain Blood by Rafael Sabatini, titled "The War Indemnity", the "classical-minded" Captain Blood quotes a variant of the phrase; "Fiat officium, ruat ccelum" (let duty be done though the heavens fall) when the captain-general of Antigua decides to arrest him rather than accepting his assistance repelling an impending Spanish attack.[7]

During World War II, the 447th Bomb Group of the Eighth Air Force used the phrase as its motto, which appeared on the group's official unit markings.

In the Oliver Stone 1991 film *JFK*, New Orleans District Attorney Jim Garrison (Kevin Costner) says the variation, "Let justice be done, though the heavens fall," in reference to his investigation of the assassination of President Kennedy.

See also

- Fiat justitia
- Fiat iustitia, et pereat mundus, a similar phrase
- The Sky Is Falling (fable)

References

[1] "The Position and Duties of the Merchant: Address Before the Mercantile Library Association of Boston, Nov. 13, 1854." in *The Works of Charles Sumner*, Volume III, Boston: Lee and Shephard, 1875, p. 507. (http://books.google.com/books?id=ADXg6KnTP2kC&pg=PA507#PPR1,M1)

[2] *Heautontimorumenos*, Act IV, scene 3, 719 (http://www.perseus.tufts.edu/cgi-bin/ptext?doc=Perseus:text:1999.02.0089&query=scene=#14&chunk=act)

[3] (*Elegies* 869-872 (http://hodoi.fltr.ucl.ac.be/concordances/theognis_elegiae_01/lecture/18.htm), translated by Dorothea Wender.)

[4] Brewer's 1898: Piso's Justice. (http://www.bartleby.com/81/13317.html)

[5] *R v. Wilkes*, (1768) 4 Burr 2527, 98 E.R. 327 (347); *Somersett v. Stewart* (1772) Lofft. 1; 98 ER 499 (509)

[6] Profile of Judge James Horton. Jr., Scottsboro Judge (http://www.law.umkc.edu/faculty/projects/ftrials/trialheroes/essayhorton.html)

[7] *The Chronicles of Captain Blood*, Rafael Sabatini, 1931 (http://gutenberg.net.au/ebooks07/0701201h.html)

Fieri facias

A ***fieri facias***, usually abbreviated ***fi. fa.*** (Latin *that you cause to be made*) is a writ of execution after judgment obtained in a legal action for debt or damages.[1] The term is used in English law for such a writ issued in the High Court. Some jurisdictions in the United States also employ this a writ, such as the Commonwealth of Virginia.[2]

It is addressed to the sheriff or High Court Enforcement Officer, and commands him to make good the amount out of the goods of the person against whom judgment has been obtained.[3]

As of March 2008 ***fi. fa.*** can be sought on judgment debts in excess of £600. Whilst ***fi. fa.*** can be used to enforce judgments obtained in the County Court, judgment debts of less than £5,000 are usually enforced by way of a warrant of execution.

Hong Kong statute (High Court Ordinance (Cap 4) s 21D(1)) provides that money and banknotes, Government stock, bonds and other securities for money are amenable to attachment and sale though fieri facias. But with reference to the English case *Alleyne v Darcy* (1855) 5 I Ch R 56, securities for money do not include life insurance policies.

This writ was once so common that ***fieri facias*** became a slang term for a sheriff, with a pun on the "fiery [ruddy] face" of habitual drunkenness, or for anyone with a ruddy complexion.

Under U.S. law a judgment creditor could file a ***fi. fa.*** with the land records of the locality in which the debtor is believed to own real property. Even though the sheriff may not actually foreclose on the property, the recorded ***fi. fa.*** will act as an encumbrance on the title of the property, which can prevent the property from being sold or refinanced without satisfying the related judgment.

The writ of ***fieri facias*** will be renamed a **writ of control** when s62(4) of the Tribunals, Courts and Enforcement Act 2007 comes into force. Such date has yet to be announced.

External links

- Lect Law Library [4]
- A Dictionary of the Vulgar Tongue [5]

References

[1] Henry C. Black, *Black's Law Dictionary*, rev. 4th ed. 1968.
[2] *E.g.*, Va. Code § 8.01-466.
[3] *E.g.*, Henry C. Black, *Black's Law Dictionary*, rev. 4th ed. 1968.
[4] http://www.lectlaw.com/def/f112.htm
[5] http://www.harvestfields.ca/etextLinks/31/00.htm

Forum non conveniens

Forum non conveniens (Latin for "inappropriate forum") (**FNC**) is a (mostly) common law legal doctrine whereby courts may refuse to take jurisdiction over matters where there is a more appropriate forum available to the parties. As a doctrine of the conflict of laws, *forum non conveniens* applies between courts in different countries and between courts in different jurisdictions in the same country.

A concern often raised in applications of the doctrine is forum shopping, or picking a court merely to gain an advantage in the proceeding. The underlying principles, such as basing respect given to foreign courts on reciprocal respect or comity, also apply in civil law systems in the form of the legal doctrine of *lis alibi pendens*.

Forum non conveniens is not exclusive to common law nations: the maritime courts of the Republic of Panama, although not a common law jurisdiction, also have such power under more restrained conditions.[1]

Explanation

A country, state, or other jurisdiction enacts laws which are interpreted and applied through a system of courts. The laws applied by a particular system of courts or legal system are termed the *lex fori*, or law of the forum. As a matter of civil procedure, courts must decide whether and in what circumstances they will accept jurisdiction over parties and subject matter when a lawsuit begins. This decision will be routine, or not raised at all, if the relevant elements of the case are within the territorial jurisdiction of the court. If one or more of the parties resides outside the territorial jurisdiction or there are other factors which might make another forum more appropriate, the question of jurisdiction must be settled.

Historical origin

Scholars and jurists seem to find a Scottish origin prior to the first American use of the concept.[2] [3] [4] [5] Some writers see the doctrine of FNC as having developed from an earlier doctrine of *forum non competens* ("non-competent forum"). Many early cases in the U.S. and Scotland involving FNC were cases under admiralty law. FNC thus may ultimately have a civil law origin, as has been asserted by several writers, since admiralty law is based in civil law concepts.

The doctrine of FNC originated in the United States in Willendson v Forsoket 29 Fed Cas 1283 (DC Pa 1801) (No 17,682) where a federal district court in Pennsylvania declined to exercise jurisdiction over a Danish sea captain who was being sued for back wages by a Danish seaman, stating that "[i]f any differences should hereafter arise, it must be settled by a Danish tribunal." In Scotland, the concept is first recorded in *MacMaster v MacMaster* (Judgment of 7 June 1833, Sess, Scot 11 Sess Cas, First Series 685.)

United Kingdom

The doctrine has limited application in most civil law jurisdictions which prefer *lis alibi pendens*, although the principle behind FNC is acknowledged. As a member of the European Union, the United Kingdom signed the Brussels Convention. The Civil Jurisdiction and Judgments Act (1982) as amended by the Civil Jurisdiction and Judgments Act (1991)) states:

> "Nothing in this Act shall prevent any court in the UK from staying, sisting [staying or stopping a process, or summoning a party[6]], striking out or dismissing any proceedings before it on the ground of *forum non conveniens* or otherwise, where to do so is not inconsistent with the 1968 [Brussels] Convention or, as the case may be, the Lugano Convention."

The case of *Owusu v Jackson and Others*[7] before the European Court of Justice, was concerned with the relationship between Article 2 of the Brussels Convention and the scope of FNC within the European Community. In *Owusu*, the English Court of Appeal asked the ECJ whether it could stay a matter brought to it under Article 2

Brussels Convention pursuant to the English FNC rules. The Court held that the Brussels Convention was a mandatory set of rules designed to harmonise and so produce a predictable system throughout the EU. If states were able to derogate from the Convention using their domestic rules of civil procedure, this would deny a uniform result to proceedings based on forum selection. Hence, at 46. the ECJ held:

> the Brussels Convention precludes a court of a Contracting State from declining the jurisdiction conferred on it by Article 2 of that convention on the ground that a court of a non-Contracting State would be a more appropriate forum for the trial of the action even if the jurisdiction of no other Contracting State is in issue or the proceedings have no connecting factors to any other Contracting State.[8]

However, some UK commentators argue that the FNC rules may still apply to cases where the other proceedings are not in a Member state but this remains uncertain. What is certain is that a Scottish Court may sist its proceedings in favour of the Courts of England or Northern Ireland on the ground of FNC, since this is settling intra-UK jurisdiction.[9]

Australia

In the jurisdictions where the FNC rule survives, a court will usually dismiss a case when the judge determines that the dispute would be better adjudicated in a different forum. Courts have been split in their applications of the rule. In *Oceanic Sun Line Special Shipping Co v Fay* (1988) 165 CLR 197 and *Voth v Manildra Flour Mills* (1990) 71 CLR 538 the High Court of Australia refused to adopt the "most suitable forum" approach and instead devised its own "clearly inappropriate forum" test. Nevertheless, the Australian courts balanced the foreign and local factors, and a dismissal would only be granted if the defendant could show that he was "oppressed" or "harassed" by the plaintiff's choice of Australia for legal action. This retained the rationale of the traditional doctrine, making it impossible for Australian defendants to obtain a dismissal from their own courts on FNC grounds. In *Regie National des Usines Renault SA v Zhang* (2002) 210 CLR 491, the High Court affirmed the "clearly inappropriate forum" test as Australian law, while stating that even where the law of a foreign country had to be applied to decide a case, Australia would not be a "clearly inappropriate" forum for hearing the matter.[10] However, with the advent of the Civil Procedure Act (2005), this common law position in Australia has changed.

Canada

The doctrine of FNC in Canada was considered in *Amchem Products Inc. v. British Columbia Worker's Compensation Board*, [1993] 1 S.C.R. 897. The Court held that the test for striking out a claim for FNC is where "there is another forum that is clearly more appropriate than the domestic forum." If the forums are both found to be equally convenient, the domestic forum will always win out.

Convenience is weighed, using a multi-factored test that includes elements such as: the connection between the plaintiff's claim and the forum, the connection between the defendant and the forum, unfairness to the defendant by choosing the forum, unfairness to the plaintiff in not choosing the forum, involvement of other parties to the suit (i.e. location of witnesses), and issues of comity such as reciprocity and standard of adjudication.

The Supreme Court has underlined that FNC inquiries are similar to but distinct from the "real and substantial connection" test used in challenges to jurisdiction. The most important difference is that applying FNC is a discretionary choice between two forums, each of which could legally hear the issue.

The law of the province of Quebec, Canada is slightly different. The Quebec Civil Code 1994, at art. 3135 c.c.q., provides:

> *"Even though a Quebec authority has jurisdiction to hear a dispute, it may exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another country are in a better position to decide."*

The practical effects are identical to any other jurisdiction but the wording used by the code is different. For decisions applying art. 3135 c.c.q., see *H.L. Boulton & Co. S.C.C.A. v. Banque Royale du Canada* (1995) R.J.Q. 213 (Quebec. Supr. Ct.); *Lamborghini (Canada) Inc. v. Automobili Lamborghini S.P.A.* (1997) R.J.Q. 58 (Quebec. C.A.); *Spar Aerospace v. American Mobile Satellite* (2002) 4 S.C.R. 205, and *Grecon Dimter Inc. v. J.R. Normand Inc.* (2004) R.J.Q. 88 (Quebec. C.A.)

United States

The defendant may move to dismiss an action on the ground of FNC. Invoking this doctrine usually means that the plaintiff properly invoked the jurisdiction of the court, but it is inconvenient for the court and the defendant to have a trial in the original jurisdiction. The court must balance convenience against the plaintiff's choice of forum. In other words, if the plaintiff's choice of forum was reasonable, the defendant must show a compelling reason to change jurisdiction. If a transfer would simply shift the inconvenience from one party to the other, the plaintiff's choice of forum should not be disturbed.

Generally, a corporation sued in the jurisdiction of its headquarters is not entitled to seek an FNC dismissal. Thus if an American corporation is sued in an area where it only transacts business but not where it has its headquarters, and the court dismisses based upon FNC, the plaintiff may refile the action in the jurisdiction of the corporation's headquarters.

In deciding whether to grant the motion, the court considers:

- The location of potential witnesses. The defendant must make a full and candid showing, naming the potential witnesses for the defense, specifying their location, specifying what their testimony may be and how crucial it is for the defense, and setting forth how exactly they may be inconvenienced by having to testify in the court chosen by plaintiff.
- The location of relevant evidence and records. The defendant must identify the records; explain who is in charge of the records; address necessity, language, and translation problems; address the volume of such records; address the law governing these records; and rule out the existence of duplicate records in the jurisdiction chosen by the plaintiff. The mere fact that records need to be translated is not sufficient grounds to invoke FNC.
- Possible undue hardship for the defendant. The defendant must explain what the hardship is and how material the costs are. If there are costs involved, they need to be spelled out. If there is a difficulty in getting witnesses out of a foreign court and into the original court, this needs to be revealed to the court. The defendant must explain why the use of Letters Rogatory or other judicial reciprocity tools are not sufficient and cannot replace actual transfer of the case. The standard that the defendant must meet is "overwhelming hardship" if they are required to litigate in the forum's State.
- Availability of adequate alternative forums for the plaintiff. Merely pointing out that the plaintiff could have sued somewhere else is not sufficient to succeed on an FNC motion.
- The expeditious use of judicial resources. In practice, this is just boilerplate language that comes along with the application. However, sometimes the court chosen by the plaintiff may be logistically or administratively unfit or ill-equipped for the case; for example, a case may involve a large number of torts.
- The choice of law applicable to the dispute. If all other factors weigh in favor of keeping the case in the jurisdiction where it was filed, then the court may choose between application of local law (*lex fori*) or relevant foreign law. Thus, the mere fact that foreign law may apply to the event, circumstances, accident, or occurrence is not a strong reason to dismiss the case on FNC grounds.
- Questions of public policy. In analyzing the factors, the subject matter of the complaint may touch on a sensitive issue that is important to the laws of either the original jurisdiction or the alternative forum. Those public policy issues must be pinpointed, analyzed and briefed in a way that makes it clear why this issue overrides the other factors. For example, an employee suing a foreign corporation in a state of employment, may enjoy the public policy to protect local employees from foreign abusers. See the Federal Employers Liability Act (FELA) for

further reference.

Additional factors include:

- The location where the cause of action arose. In most states, defendant must usually show that the cause of action arose outside of the jurisdiction.
- The identities of the parties. Who is suing whom? Is the plaintiff suing an individual defendant or a small company without financial means as a method to oppress the defendant with financial and legal costs by litigating in a remote court? Is the defendant a conglomerate making the FNC application simply to force the plaintiff to bear expensive costs of travel and retainer of foreign lawyers? A plaintiff who is a resident in the state where action was filed is normally entitled to have his case heard in his home state.
- Vexatious motive. Where there is no evidence that the plaintiff had improper intent in bringing the case specifically in a particular forum, courts usually deny the FNC motion.
- Jurisprudential development and political conditions at the foreign forum. Is the court going to send the plaintiff to a land where the law is underdeveloped, uncivilized, or where there is no *equal protection* or *due process*? Is the court going to send the plaintiff to another court in a country where violence is rampant or in the middle of a war? A suit will not be dismissed if the foreign court does not permit litigation of the subject matter of the complaint, no live testimony of the plaintiff is required by appearance, or if the foreign law is otherwise deficient in its protocols or procedures.

The determination of the court may not be arbitrary or abusive as this is a drastic remedy to be applied with caution and restraint.

As for the transfer of a trial to a jurisdiction outside of the U.S., courts will only grant the transfer if a foreign court is "more appropriate", and there may be a real opportunity to obtain justice there.

In New York, for example, there is a strong presumption in favor of the plaintiff's choice of forum. See Gulf Oil v. Gilbert, 330 U.S. 501, 508 (1947); R. Maganlal & Co., 942 F.2d 164, 167 (2nd Cir. 1991); WIWA v. Royal Dutch Petroleum Co., 226 F.3d 88, 101 (2d Cir. 2000); and Maran Coal Corp. V. Societe Generale de Surveillance S.A., No. 92 CIV 8728, 1993 US.Dist. LEXIS 12160 at *6 (S.D.N.Y. September 2, 1993). A defendant must show compelling evidence in order to disturb the choice of forum. The burden of proof is on the defendant: Strategic Value Master Fund, Ltd. v. Cargill Fin. Serv. Corp., 421 F.2d 741, 754 (S.D.N.Y. 2006). The court must also consider the defendant's vast resources compared with the plaintiff's limited resources as an aggrieved individual: See Guidi v. Inter Continental Hotels Corp., 95 CIV 9006, 2003 U.S.Dist. LEXIS 85972 (S.D.N.Y. November 29, 2009), and WIWA: "defendants have not demonstrated that these costs [of shipping documents and witnesses] are excessively burdensome, especially in view of defendant's vast resources". Also, Presbyterian Church of Sudan v. Talisman Energy, Inc., 244 F.Supp.2d 289 (S.D.N.Y. 2003) at 341: "A countervailing factor is the relative means of the parties".

In 2006, the 2nd Circuit Federal Court in New York issued a decision in the famous Coca Cola case. Coca Cola took over assets of Jews expelled from Egypt in the 1950s and was sued in New York. Bigio v. Coca Cola Company, 448 F.3d 176 (2d Cir. 2006), *certiorari* to Sup. Ct. denied. In that case, the plaintiffs were Canadians and non-residents of New York. The court denied Coca Cola's FNC motion and the U.S. Supreme Court denied *certiorari*. The 2nd Circuit stated that the fact that the New York court would need to apply "modest application" of Egyptian law was not a problem because "courts of this Circuit are regularly called upon to interpret foreign law without thereby offending the principles of international comity". Also, the fact that there were witnesses abroad was not a problem either. They could be flown into the U.S. or Letters Rogatory could be issued to the Egyptian courts to collect their testimony. Further, it was held that in an FNC scenario, a court applies the balance of conveniences, but preference (and weight) must be given to the fact that plaintiffs chose this particular forum for "legitimate reasons". The fact that plaintiffs could sue in Canada was not relevant because Coca Cola was a U.S. company and it was "perfectly reasonable to sue in the US".

There have been efforts by State legislatures to limit the availability of the doctrine to make local jurisdictions more plaintiff-friendly. In Texas, for example, parties in product liability cases may not invoke the rule.

European Union

The doctrine of FNC gained little footing in the civil law world, which prefers the approach of *lis pendens* (see Articles 21-23 Brussels Convention). The civil law jurisdictions generally base jurisdiction on the residence of the defendant and on choice of law rules favouring the habitual residence of the parties, the *lex situs*, and the *lex loci solutionis* (applying *actor sequitur forum rei*). This reflects an expectation that a defendant should be sued at his "own" courts, modified to reflect different priorities in certain types of case. As an example of this expectation, Article 2 Brussels I Regulation provides:

> Subject to the provisions of this Convention, persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State.
>
> Persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.

But this is subject to the substantial exceptions contained in Articles 3-6, the limitations on insurance actions in Articles 7-12, and consumer contracts in Articles 13-15. Article 16 also grants exclusive jurisdiction to specified jurisdictions as the *lex situs* of immovable property and a *res*, and for the status of companies, the validity of public registers with particular reference to the registration and validity of patents, and the enforcement of judgments. Subsequent articles allow forum selection clauses and other forms of agreement between the parties to confer jurisdiction on a given forum. The Brussels Regime therefore represents a harmonised set of rules for the determination of all questions of jurisdiction throughout the EU excluding FNC.

Hypothetical

An Israeli businessman sues an American national with a domicile in New York State, in a court of that latter state for breach of contract. The contract was for the performance of construction services in Israel, the loss alleged to flow from the breach was sustained in Israel, all the potential witnesses live in Israel, the proper law is Israeli law, and all relevant documentation is in Hebrew. Although the New York court could base jurisdiction on the defendant's domicile and residence, it might apply FNC, reasoning that an Israeli court would be a more convenient forum. It is alleged that a key factor will be whether the defendant has any assets in Israel. If not, the case will have to return to New York as a foreign judgment for enforcement. This need to return to New York in any event might persuade the New York court to accept the initial jurisdiction.

In reality, a New York defendant would rarely make an FNC motion seeking voluntarily to send the case to a foreign country. This would mean that the defendant would have to travel to Israel for pretrial conferences every time his affidavits must be cross-examined, rather than take the subway. He would also have to hire foreign lawyers, which means less control over their work because of language and communication problems, lack of familiarity with the foreign system, less physical access to legal advice, and also taking a risk that the foreign systems contain unpredictable legal pitfalls. In addition, a foreign court might show favoritism to the foreign plaintiff and against the New York defendant. Thus, in reality a New York defendant would almost always prefer to defend the case on familiar turf. One mechanism is to ask the New York Court to instruct the Israeli plaintiff to deposit a bond to secure costs and fees to secure recovery if the case is unsuccessful. Also, the availability of future recovery in a foreign Court is not a critical factor in the FNC analysis, as foreign judgments can be returned to New York for domestication under the principle of comity by making a motion in lieu of complaint to recognize the foreign judgment.

Shipping

The issue of FNC arises in shipping cases since different parties may be involved as charterers or consignees and because of the international nature of the law of the sea and maritime trade. Despite several different conventions dealing with aspects of international trade, jurisdictional disputes are common. Moreover, in some instances, a case in the United States may be initiated under U.S. state law when Admiralty (which is a Federal jurisdiction) would be the more appropriate forum. If this occurs, the case may be removed to the Federal Courts or to the courts of another state on FNC grounds.

For example, suppose that a container ship comes into port in Miami, Florida, USA. The ship, which is Liberian-registered, is wanted as security for various debts incurred by its Master while in Denmark. Made aware of the ship's presence, a local lawyer moves to impose a lien which involves a form of arrest by means of *de novo* proceedings *in rem*. The local Federal district sitting in Admiralty determines that the ship's Master had ostensible authority as an agent to pledge the credit of the ship's owners (who are English). It also determines that neither the ship nor its owners have violated American law in any way, and the local court is not in a good position to hear witnesses who are all resident in other states. Further, major liability in demurrage to the innocent charterers, forwarders, etc. will be incurred if the ship is detained without just cause, so it would not be unreasonable for the Federal Court to decline jurisdiction. Whether there is subsequent litigation in another state will depend on the tactics of the creditors. Without a lien over the ship or the ability to obtain some form of control over the assets of the debtor, making a claim for money owing may not be cost-effective. But if there have already been proceedings on the issue of liability before a court of competent jurisdiction in another state so that the action in Miami is purely by way of enforcement, the Miami jurisdiction, whether it be state or federal would be the *forum conveniens* because the ship is physically within the jurisdiction.

References

[1] ARRUE MONTENEGRO, Carlos Alberto. *Le forum non conveniens à l'assaut des compétences exorbitantes : l'expérience panaméenne*, Université Paris II, 2006, p. 85. (http://catalogue.ppl.nl/DB=1/SET=1/TTL=1/SHW?FRST=2

[2] http://www.mssc.state.ms.us/decisions/Publishedopinions/96-01284.HTM

[3] http://www.judicium.it/news/pistis01.html#_edn1

[4] http://works.bepress.com/context/graydon_staring/article/1008/type/native/viewcontent/

[5] http://supreme.justia.com/us/454/235/case.html

[6] http://www.scotcourts.gov.uk/library/publications/docs/glossary.pdf

[7] http://www.bailii.org/eu/cases/EUECJ/2005/C28102.html

[8] http://www.waltonsandmorse.com/Decisions2.jsp?decisionsID=9

[9] Cumming v Scottish Daily Record and Sunday Mail Ltd, The Times June 8, 1995; Collins: 1995

[10] Lindell: 2002

- Lindell, Geoffrey. (2002). "Regie National des Usines Renault SA v. Zhang: choice of law in torts and another farewell to Phillips v Eyre but the Voth test retained for forum non conveniens in Australia." October, Melbourne Journal of International Law.
- Dakoutros, Andrew LLB LLM Barrister (2002) Forum non conveniens, forum shopping. Report on Forum Non Conveniens (http://sites.google.com/site/lawsdigest/main-page/forumnonconveniens)
- Tedioli, Francesco, " Sull'incompatibilità tra la dottrina del forum non conveniens e la Convenzione di Bruxelles del 27 settembre 1968 (http://www.tedioli.com/forum_non_conveniens_rivista_giuridica_sarda.pdf)", Rivista giuridica sarda, 2/2005, 547-570, pt. 2.

External links

- www.jus.uio.no (http://www.jus.uio.no/lm/brussels.jurisdiction.and.enforcement.of.judgments.in.civil.and.commercial.matters.convention.1968/doc.html) - The Brussels Convention
- *Forum Non Conveniens* Dismissal: The Quieter Side of Section 1782 Discovery (http://www.sherby.co.il/200803ILQ.pdf)

Fructus (Roman law)

Fructus (Latin for "fruits") was a legal term used in Roman law to describe products which originate from both natural sources (e.g. the natural produce of gardens, reproduction of animals, etc.) and legal transactions (e.g. loan interest).

Types of fructus

- Fructus naturales - fruits which originate naturally (e.g. apples grown on an apple tree)
- Fructus civiles - profits obtained through legal transactions (e.g. loan interest)
- Fructus consumpti - fruits which have been consumed (e.g. an apple which has been eaten)
- Fructus extantes - fruits not consumed (as oppose to fructus consumpti)
- Fructus pendentes - fruits not separated from the object which they originate from (e.g. apples still hanging on the tree)
- Fructus percepti - fruits which have been taken possession of by separating them from the object which produced them (as opposed to fructus pendentes)
- Fructus percipiendi - fruits which would have but have not been produced at fault of the holder of the fruit-producing object
- Fructus separati - fruits separated from the object which produced them (e.g. berries gathered from a tree)

Fructus naturales

In property law, ***fructus naturales*** are the natural fruits of the land on which they arise, such as agricultural produce and wild game. In many common law legal systems, *fructus naturales*' are considered to be part of the real property, and not separate chattels in relation to any legal conveyance of the property.

This term originates from the term fructus naturales used in the Roman law.

Functus officio

Functus officio, Latin for "having performed his office," is a legal term used to describe a public official, court, governing body, statute, or other legal instrument that retains no legal authority because his or its duties and functions have been completed. The term is most commonly used by a higher court as a justification for vacating or overruling all or part of a lower court's opinion. For example, if a plaintiff in a United States federal court, after filing a complaint but failing to serve it on the defendant, then files an amended complaint, the plaintiff cannot then serve the initial complaint on the defendant, because the filing of the amended complaint renders the original "functus officio." In *Chandler v Alberta Association of Architects*[1] , Sopinka J. wrote in relation to the principle of *functus officio*: "The general rule (is) that a final decision of a court cannot be reopened.... "The rule applied only after the formal judgment had been drawn up, issued and entered, and was subject to two exceptions: where there had been a slip in drawing it up, and where there was an error in expressing the manifest intention of the court."

[1] [1989] 2 S.C.R. 848

Habeas corpus

Habeas corpus (pronounced /ˌheɪbiːəs ˈkɔrpəs/; Latin: "(We command) that you have the body")[1] is a writ, or legal action, through which a person can seek relief from unlawful detention, or the relief of another person. The writ of *habeas corpus* protects persons from harming themselves, or from being harmed by the judicial system. Originally a feature of English law, the writ of *habeas corpus* has historically been an important legal instrument safeguarding individual freedom against arbitrary state action.

A writ of *habeas corpus ad subjiciendum*, also "The Great Writ", is a summons with the force of a court order, addressed to the custodian (e.g. a prison official) demanding that a prisoner be taken before the court, and with proof of authority allowing the court to determine if that custodian has lawful authority to detain the person; if not, the person shall be released from custody. The prisoner, or another person in his or her behalf (e.g. if the prisoner is detained incommunicado), may petition the court, or a judge, for a writ of *habeas corpus ad subjiciendum*.

The right to petition for a writ of habeas corpus has long been celebrated as the most efficient safeguard of the liberty of the subject. The British jurist Albert Venn Dicey wrote that the Habeas Corpus Acts "declare no principle and define no rights, but they are for practical purposes worth a hundred constitutional articles guaranteeing individual liberty." In most countries, however, the procedure of habeas corpus can be suspended in time of national emergency. In most civil law jurisdictions, comparable provisions exist, but they may not be called "habeas corpus."[2] The writ of habeas corpus is one of what are called the "extraordinary", "common law", or "prerogative writs", which were historically issued by the courts in the name of the monarch to control inferior courts and public authorities within the kingdom. The most common of the other such prerogative writs are *quo warranto*, *prohibito*, *mandamus*, *procedendo*, and *certiorari*. When the original 13 American Colonies declared independence and became a constitutional republic in which the people are the sovereign, any person, in the name of the people, acquired authority to initiate such writs.

The due process for such petitions is not simply civil or criminal, because they incorporate the presumption of nonauthority. The official who is the respondent has the burden to prove his authority to do or not do something. Failing this, the court must decide for the petitioner, who may be any person, not just an interested party. This differs from a motion in a civil process in which the movant must have standing, and bears the burden of proof.

Derivation and form

The right of habeas corpus is referred to in full in legal texts as ***habeas corpus ad subjiciendum*** or more rarely ***ad subjiciendum et recipiendum***. The name derives from the operative words of the writ in Medieval Latin:

> *Praecipimus tibi quod corpus A.B. in prisona nostra sub custodia tua detentum, ut dicitur, una cum die et causa captionis et detentionis suae, quocumque nomine praedictus A.B. censeatur in eadem, habeas coram nobis ... ad subjiciendum et recipiendum ea quae curia nostra de eo adtunc et ibidem ordinare contigerit in hac parte. Et hoc nullatenus omittatis periculo incumbente. Et habeas ibi hoc breve.'*
>
> We command you, that the body of A.B. in Our prison under your custody detained, as it is said, together with the day and cause of his taking and detention, by whatsoever name the said A.B. may be known therein, you have at our Court ... to undergo and to receive that which our Court shall then and there consider and order in that behalf. Hereof in no way fail, at your peril. And have you then there this writ.

The word *habeas* in the writ is not in the indicative mood ("You have ..."), but in the subjunctive (specifically the volitive subjunctive): "We command *that you have* ...". The full name of the writ is often used to distinguish it from similar ancient writs:

- *Habeas corpus ad deliberandum et recipiendum*, a writ for bringing an accused from a different county into a court in the place where a crime had been committed for purposes of trial, or more literally to return holding the body for purposes of “deliberation and receipt” of a decision;
- *Habeas corpus ad faciendum et recipiendum*, also called *habeas corpus cum causa*, a writ of a superior court to a custodian to return with the body being held by the order of a lower court "with reasons", for the purpose of “receiving” the decision of the superior court and of “doing” what it ordered;
- *Habeas corpus ad prosequendum*, a writ ordering return with a prisoner for the purpose of “prosecuting” him before the court;
- *Habeas corpus ad respondendum*, a writ ordering return to allow the prisoner to “answer” to new proceedings before the court;
- *Habeas corpus ad satisfaciendum*, a writ ordering return with the body of a prisoner for “satisfaction” or execution of a judgment of the issuing court; and
- *Habeas corpus ad testificandum*, a writ ordering return with the body of a prisoner for the purposes of “testifying”.

That the basic form of the writs of habeas corpus, now written in English, has changed little over the centuries can be seen from the following examples:

> VICTORIA by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to J.K., Keeper of our Gaol of Jersey, in the Island of Jersey, and to J.C. Viscount of said Island, Greeting.
>
> We command you that you have the body of C.C.W. detained in our prison under your custody, as it is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called or known, in our Court before us, at Westminster, on the 18th day of January next, to undergo and receive all and singular such matters and things which our said Court shall then and there consider of him in this behalf; and have there then this Writ.
>
> Witness Thomas, Lord DENMAN, at Westminster, the 23rd day of December in the 8th year of Our reign.

> The United States of America, Second Judicial Circuit, Southern District of New York, ss.:
>
> We command you that the body of Charles L. Craig, in your custody detained, as it is said, together with the day and cause of his caption and detention, you safely have before Honorable Martin T. Manton, United States Circuit Judge for the Second Judicial Circuit, within the circuit and district aforesaid, to do and receive all and singular those things which the said judge shall then and there consider of him in this behalf; and have you then and there this writ.
>
> Witness the Honorable Martin T. Manton, United States Circuit Judge for the Second Judicial Circuit, this 24th day of February, 1921, and in the 145th year of the Independence of the United States of America.

History of habeas corpus in England

The foundations for Habeas Corpus were established by the Magna Carta of 1215. Blackstone cites the first recorded usage of *habeas corpus ad subjiciendum* in 1305, during the reign of King Edward I. However, other writs were issued with the same effect as early as the reign of Henry II in the 12th century. Blackstone explained the basis of the writ, saying:

> The King is at all times entitled to have an account, why the liberty of any of his subjects is restrained, wherever that restraint may be inflicted.

The procedure for the issuing of writs of habeas corpus was first codified by the Habeas Corpus Act 1679, following judicial rulings which had restricted the effectiveness of the writ. A previous act had been passed in 1640 to overturn a ruling that the command of the King was a sufficient answer to a petition of habeas corpus.

Then, as now, the writ of habeas corpus was issued by a superior court in the name of the Sovereign, and commanded the addressee (a lower court, sheriff, or private subject) to produce the prisoner before the Royal courts of law. A habeas corpus petition could be made by the prisoner himself or by a third party on his behalf and, as a result of the Habeas Corpus Acts, could be made regardless of whether the court was in session, by presenting the petition to a judge.

Since the 18th century the writ has also been used in cases of unlawful detention by private individuals, most famously in *Somersett's Case* (1771), where the black slave Somersett was ordered to be freed, the famous words being quoted (or misquoted, see Somersett's Case):

> The air of England has long been too pure for a slave, and every man is free who breathes it.

The privilege of habeas corpus has been suspended or restricted several times during English history, most recently during the 18th and 19th centuries. Although internment without trial has been authorised by statute since that time, for example during the two World Wars and the Troubles in Northern Ireland, the procedure of habeas corpus has in modern times always technically remained available to such internees. However, as habeas corpus is only a procedural device to examine the lawfulness of a prisoner's detention, so long as the detention was in accordance with an Act of Parliament, the petition for habeas corpus would be unsuccessful. Since the passage of the Human Rights Act 1998, the courts have been able to declare an Act of Parliament to be incompatible with the European Convention on Human Rights. However, such a declaration of incompatibility has no immediate legal effect until it is acted upon by the government.

The wording of the writ of habeas corpus implies that the prisoner is brought to the court for the legality of the imprisonment to be examined. However, rather than issuing the writ immediately and waiting for the return of the writ by the custodian, modern practice in England is for the original application to be followed by a hearing with both parties present to decide the legality of the detention, without any writ being issued. If the detention is held to be unlawful, the prisoner can usually then be released or bailed by order of the court without having to be produced before it. It is also possible for individuals held by the state to petition for judicial review, and individuals held by non-state entities to apply for an injunction.

Scotland's approach

The Parliament of Scotland passed law to have similar effect to Habeas Corpus in 1701, *the Act for preventing wrongful imprisonment and against undue delays in trials*, now known as the Criminal Procedure Act 1701 c.6 [3] (being the short title given by Statute Law Revision (Scotland) Act 1964). This Act is still in force although certain parts have been repealed.

Australia

The writ of habeas corpus as a procedural remedy is part of Australia's English law inheritance.[4]

In 2005, the Australian parliament passed the Australian Anti-Terrorism Act 2005. Some legal experts questioned the constitutionality of the act, due in part to limitations it placed on habeas corpus.[5]

Canada

Habeas corpus rights are part of the British Common Law tradition inherited by Canada. They existed in case law before they were enshrined in the Constitution Act 1982, via Section Ten of the Charter of Rights and Freedoms:[6]

> *Everyone has the right to on arrest or detention... c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.*

Suspension of the writ in Canadian history occurred famously during the October Crisis, during which the War Measures Act was invoked by Prime Minister Pierre Trudeau at the request of the Quebec government. The Act was also used to justify German, Slavic, and Ukrainian Canadian internment during the First World War, and Japanese Canadian internment during the Second World War. Both internments were eventually recognized by acts of parliament as historical wrongs.

India

The Indian judiciary in a catena of cases has effectively resorted to the writ of habeas corpus only to secure release of a person from illegal detention.

The Indian judiciary has dispensed with the traditional doctrine of *locus standi*. If a detained person is not in a position to file a petition, it can be moved on his behalf by any other person. The scope of habeas relief has expanded in recent times by actions of the Indian judiciary.[7] The habeas writ was used in the Rajan criminal case.

Ireland

In Ireland the principle of habeas corpus is guaranteed by Article 40, Section 4 of the Irish constitution. This guarantees "personal liberty" to each individual and outlines a detailed habeas corpus procedure, without actually mentioning the Latin term. However, it also provides that habeas corpus is not binding on the Defence Forces during a state of war or armed rebellion.

The state inherited habeas corpus as part of the common law when it seceded from the United Kingdom in 1922, but the principle was also guaranteed by Article 6 of the Constitution of the Irish Free State in force from 1922 to 1937. A similar provision was included when the current constitution was adopted in 1937. Since that date *habeas corpus* has been restricted by two constitutional amendments, the Second Amendment in 1941 and the Sixteenth Amendment in 1996.

Before the Second Amendment, an individual detained had the constitutional right to apply to any High Court judge for a writ of habeas corpus and to as many High Court judges as they wished. Since the Second Amendment, a prisoner has a right to apply to only one judge, and, once a writ has been issued, the President of the High Court has authority to choose the judge or panel of three judges who will decide the case. The amendment also added a

requirement that when the High Court believed someone's detention to be invalid due to the unconstitutionality of a law, it must refer the matter to the Irish Supreme Court and may release the individual on bail only in the interim.

In 1965, the Supreme Court ruled in the *O'Callaghan* case that the provisions of the constitution meant that an individual charged with a crime could be refused bail only if they were likely to flee or to interfere with witnesses or evidence. Since the Sixteenth Amendment, it has been possible for a court to take into account whether a person has committed serious crimes while on bail in the past.

Israel

In the areas of the West Bank administered by the Israeli army since 1967, Military Order 378 is the basis of Palestinian prisoners' access to judicial review. It allows for arrest without warrant and subsequent detention for a period not exceeding 18 days before a court hearing.[8] In April 1982 the office of the Chief of Staff, Rafael Eitan, issued a document which called a policy of re-arresting detainees shortly after their arrest:

"When it is necessary, use legal measures which enable imprisonment for interrogation for a period stated in the law, and release them for one or two days and then re-imprison them."[9]

Israeli soldiers used the Hebrew word *tertur* to describe the new policy in which this practice was recommended.[10]

The 1987 Landau Commission into Israel's security services "Methods of Investigation" recommended that the length of time a prisoner could be held without judicial supervision should be reduced to eight days. In its 1991 report on the Military Justice System Amnesty International noted "that even the proposed eight-day maximum period of detention without judicial supervision falls far short of the safeguards provided by Israeli law in this respect. It is also inconsistent with international standards of judicial access."[11]

A 1991 report by Amnesty International quotes Article 78 (a) to (e) of Military Order No. 378 as authorizing soldiers "to arrest and detain any person suspected of committing a security offence for 96 hours without a warrant. After this, two seven-day extensions may be granted by police officers before the detainee need be brought before a Judge for the first time."[12] The report notes that in Israel and East Jerusalem the law is that a person "shall be bought before a Judge as soon as possible, but not later than 48 hours after his arrest." In special situations an extension of a maximum of a further 48 hours is allowed.[13]

Malaysia

In Malaysia, the right of habeas corpus, short of the name, is enshrined in the Federal Constitution. Article 5(2) provides that "Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him."

As there are several statutes, for example, the Internal Security Act 1960, that still permit detention without trial, the procedure is usually effective in such cases only if it can be shown that there was a procedural error in the way that the detention was ordered.

New Zealand

While habeas corpus is generally used on the government, it can also be used on individuals. In 2006, a child was allegedly kidnapped by his maternal grandfather after a custody dispute. The father filed habeas corpus against the mother, the grandfather, the grandmother, the great grandmother, and another person alleged to have assisted in the kidnap of the child. The mother did not present the child to the court and was imprisoned for contempt of court.[14] She was released when the child's grandfather came forward with him in late January 2007.

Philippines

In the Bill of Rights in the Filipino Constitution, habeas corpus is listed near-identically to the U.S. Constitution in Article 3, Section 15:

"The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it."

In 1971, after the Plaza Miranda bombing, the Marcos Administration, under Ferdinand Marcos lifted the writ of Habeas Corpus in an effort to stifle the oncoming insurgency, having blamed the CPP for the events of August 21. After widespread protests against this, however, the Marcos Administration decided to bring back the writ. Many consider this to be a prelude to Martial Law.

In December 2009, the privilege of the writ of Habeas Corpus was suspended in Maguindanao as the province was declared under martial law. This is in response to the inhumane Maguindanao massacre[15] .

Poland

An act similar to Habeas corpus was adopted in Poland as early as in 1430. Neminem captivabimus, short for *neminem captivabimus nisi iure victum*, (Latin, "We shall not arrest anyone without a court verdict") was one of the basic rights in Poland and Polish-Lithuanian Commonwealth, stating that the king can neither punish nor imprison any member of the *szlachta* without a viable court verdict. Its purpose is to release someone who has been arrested unlawfully. *Neminem captivabimus* has nothing to do with whether the prisoner is guilty, only with whether due process has been observed.

Spain

In 1526 the Fuero Nuevo of Señorío de Vizcaya establishes the hábeas corpus in its territory. The present Spanish Constitution states that *A habeas corpus procedure shall be provided for by law to ensure the immediate handing over to the judicial authorities of any person illegally arrested*. The law which regulates the procedure is the *Law of Habeas Corpus of 24 May 1984* which provides that a person imprisoned may, on his own or through a third person, allege his Habeas Corpus right and request to appear before a judge. The request must specify the grounds on which the detention is considered to be unlawful which can be, for example, that the imprisoner does not have the legal authority, or that the prisoner's constitutional rights were violated or that he was subject to mistreatment, etc. The judge may then request additional information if needed and may issue an Habeas Corpus order at which point the holding authority has 24 hours to bring the prisoner before the judge.

United States

The United States Constitution specifically included the English common law procedure in the Suspension Clause, located in Article One, Section 9. It states:

> The privilege of the writ of **habeas corpus** shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it.

The writ of *habeas corpus ad subjiciendum* is a civil, not criminal, ex parte proceeding in which a court inquires as to the legitimacy of a prisoner's custody. Typically, habeas corpus proceedings are to determine whether the court which imposed sentence on the defendant had jurisdiction and authority to do so, or whether the defendant's sentence has expired. Habeas corpus is also used as a legal avenue to challenge other types of custody such as pretrial detention or detention by the United States Bureau of Immigration and Customs Enforcement pursuant to a deportation proceeding.

Scope

The writ of Habeas Corpus was originally understood to apply only to those held in custody by officials of the Executive Branch of the federal government and not to those held by state governments, which independently afford habeas corpus pursuant to their respective constitutions and laws. The United States Congress granted all federal courts jurisdiction under 28 U.S.C. § 2241 [16] to issue writs of habeas corpus to release prisoners held by any government entity within the country from custody in the following circumstances:

- Is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
- Is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or
- Is in custody in violation of the Constitution or laws or treaties of the United States; or
- Being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or
- It is necessary to bring said persons into court to testify or for trial.

In the 1950s and 1960s, decisions by the Warren Supreme Court greatly expanded the use and scope of the federal writ, and the most publicized use of the writ of Habeas corpus in modern times has been to allow federal courts to review death penalty proceedings; however, far more non-capital habeas petitions are reviewed by the federal courts. In the last thirty years, decisions by the Burger and Rehnquist Courts have somewhat narrowed the writ, though the number of habeas petitions filed has continued to rise.

The Antiterrorism and Effective Death Penalty Act of 1996 further limited the use of the federal writ by imposing a one-year statute of limitations and dramatically increasing the federal judiciary's deference to decisions previously made in state court proceedings either on direct appeal from the conviction and sentence, or in a state court habeas corpus action and the associated second round of state appeal (both of which, in the usual case, occur before a federal habeas petition is filed).

Suspension during the Civil War and Reconstruction

On September 24, 1862, President Abraham Lincoln suspended habeas corpus in Maryland and parts of Midwestern states.

> Whereas, It has become necessary to call into service, not only volunteers, but also portions of the militia of the States by draft, in order to suppress the insurrection existing in the United States, and disloyal persons are not adequately restrained by the ordinary processes of law from hindering this measure, and from giving aid and comfort in various ways to the insurrection. Now, therefore, be it ordered, that during the existing insurrection, and as a necessary measure for suppressing the same, all rebels and insurgents, their aiders and abettors within the United States, and all persons discouraging volunteer enlistments, resisting militia drafts, or guilty of any disloyal practice affording aid and comfort to the rebels against the authority of the United States, shall be subject to martial law, and liable to trial and punishment by courts-martial or military commission.
>
> Second: That the writ of habeas corpus is suspended in respect to all persons arrested, or who are now, or hereafter during the rebellion shall be, imprisoned in any fort, camp, arsenal, military prisons, or other place of confinement, by any military authority, or by the sentence of any court-martial or military commission.
>
> In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed. Done at the City of Washington, this Twenty-fourth day of September, in the year of our Lord one thousand eight hundred and sixty-two, and of the Independence of the United States the eighty-seventh.
>
> ABRAHAM LINCOLN. By the President.

WILLIAM H. SEWARD, Secretary of State.

In the early 1870s, President Ulysses S. Grant suspended habeas corpus in nine counties in South Carolina, as part of federal civil rights action against the Ku Klux Klan under the 1870 Force Act and 1871 Ku Klux Klan Act.

Suspension during World War II and its aftermath

In 1942, the Supreme Court ruled in Ex parte Quirin that unlawful combatant saboteurs could be denied habeas corpus and tried by military commission, making a distinction between lawful and unlawful combatants. The writ was suspended in Hawaii during World War II, pursuant to a section of the Hawaiian Organic Act, when martial law was declared in Hawaii in the aftermath of the Japanese attack on Pearl Harbor. The period of martial law in Hawaii ended in October 1944, *Duncan v. Kahanamoku*, 327 U.S. 304 (1946), held that assuming that the initial imposition of martial law in December 1941 was lawful due to the Pearl Harbor attack and threat of imminent invasion, because by 1944 the imminent threat had receded and civilian courts could again function in Hawaii, the Organic Act did not authorize the military to continue to keep civilian courts closed.

The 1950 case Johnson v. Eisentrager denied access to habeas corpus for nonresident aliens captured and imprisoned abroad in a US-administered foreign court.

Domestic terrorism and AEDPA

In 1996, following the Oklahoma City bombing, Congress passed (91–8–1 in the Senate, 293–133–7 in the House) and President Clinton signed into law the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The AEDPA was to "deter terrorism, provide justice for victims, provide for an effective death penalty, and for other purposes."

The AEDPA contained one of the few limitations on habeas corpus. For the first time, its Section 101 set a statute of limitations of one year following conviction for prisoners to seek the writ. It limits the power of federal judges to grant relief unless the state court's adjudication of the claim resulted in a decision that was (1) contrary to, or involved an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States; or (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. It generally but not absolutely barred second or successive petitions, with several exceptions. Petitioners who had already filed a federal habeas petition were required first to secure authorization from the appropriate United States Court of Appeals, to ensure that such an exception was at least facially made out.

War on Terror

The November 13, 2001, Presidential Military Order gave the President of the United States the power to detain persons without a national affiliation and suspected of connection to terrorists or terrorism as unlawful combatants. As such, it asserted that a person could be held indefinitely without charges being filed against him or her, without a court hearing, and without entitlement to a legal consultant. Although these provisions were in opposition to habeas corpus, it is still debated as to whether the President had the authority to indefinitely hold the terrorist suspects.

In *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), the Supreme Court reaffirmed the right of United States citizens to seek writs of habeas corpus even when declared enemy combatants.

In *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), Salim Ahmed Hamdan petitioned for a writ of habeas corpus, challenging that the military commissions set up by the Bush administration to try detainees at Guantánamo Bay "violate both the Uniform Code of Military Justice and the four Geneva Conventions." In a 5–3 ruling, the Supreme Court rejected Congress's attempts to strip the courts of jurisdiction over habeas corpus appeals by detainees at Guantánamo Bay. Congress had previously passed the Department of Defense Appropriations Act of 2006 which stated in Section 1005(e), "Procedures for Status Review of Detainees Outside the United States":

> “(1) Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantánamo Bay, Cuba.
>
> “(2) The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of whether the status determination ... was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government's evidence), and to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.”

On 29 September 2006, the House and Senate approved the Military Commissions Act of 2006 (MCA), a bill that would remove habeas corpus for any person determined to be an “unlawful enemy combatant" engaged in hostilities or having supported hostilities against the United States”[17] [18] by a vote of 65–34. (This was the result on the bill to approve the military trials for detainees; an amendment to remove the unavailability of *habeas corpus* failed 48–51.[19]) President Bush signed the Military Commissions Act of 2006 into law on October 17, 2006. The declaration of a person as an "unlawful enemy combatant" is at the discretion of the US executive branch of the administration, and there is no right of appeal, with the result that this potentially eliminates habeas corpus for any non-citizen.

With the MCA's passage, the law altered the language from “alien detained ... at Guantánamo Bay”:

> “Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.” §1005(e)(1), 119 Stat. 2742.

On 20 February 2007, the U.S. Court of Appeals for the District of Columbia Circuit upheld this provision of the MCA in a 2–1 decision of the Case *Boumediene v. Bush*. The Supreme Court let the Circuit Court's decision stand by refusing to hear the detainees' appeal. On June 29, 2007, the U.S. Supreme Court reversed its April 2007 decision and agreed to hear the appeals of Guantanamo detainees who are seeking habeas corpus review of their detentions.[20]

Under the MCA, the law restricts habeas appeals for only those aliens detained as "enemy combatants," or awaiting such determination. Left unchanged is the provision that, after such determination is made, it is subject to appeal in U.S. Court, including a review of whether the evidence warrants the determination. If the status is upheld, then their imprisonment is deemed lawful.

There is, however, no legal time limit which would force the government to provide a Combatant Status Review Tribunal (CSRT) hearing. Prisoners are legally prohibited from petitioning any court for any reason before a CSRT hearing takes place.

On January 17, 2007, Attorney General Gonzales asserted in Senate testimony that while habeas corpus is "one of our most cherished rights," the United States Constitution does not expressly guarantee habeas rights to United States residents or citizens.[21] As such, the law could be extended to U.S. citizens and held if left unchecked.

As Robert Parry writes in the Baltimore Chronicle & Sentinel:

> “Applying Gonzales's reasoning, one could argue that the First Amendment doesn't explicitly say Americans have the right to worship as they choose, speak as they wish or assemble peacefully.
>
> Ironically, Gonzales may be wrong in another way about the lack of specificity in the Constitution's granting of habeas corpus rights. Many of the legal features attributed to habeas corpus are delineated in a positive way in the Sixth Amendment...[22]”

To date, there has been at least one confirmed case in which non-American civilians have been incorrectly classified as enemy combatants.[23]

On June 7, 2007, the Habeas Corpus Restoration Act of 2007 was approved by the Senate Judiciary Committee with an 11–8 vote split along party lines, with all but one Republican voting against it.[24] Although the Act would restore statutory habeas corpus to enemy combatants, it would not overturn the provisions of the AEDPA which set a statute of limitations on habeas corpus claims from ordinary civilian federal and state prisoners.

On June 11, 2007, a federal appeals court ruled that Ali Saleh Kahlah al-Marri, a legal resident of the United States, could not be detained indefinitely without charge. In a two-to-one ruling by the Fourth Circuit Court of Appeals, the Court held the President of the United States lacks legal authority to detain al-Marri without charge; all three judges ruled that al-Marri is entitled to traditional habeas corpus protections which give him the right to challenge his detainment in a U.S. Court.

On June 12, 2008, the United States Supreme Court ruled 5–4 in Boumediene v. Bush that terror suspects detained by the United States in Guantanamo Bay detainment camp have the right to seek a writ of habeas corpus in US Federal Court.[25]

In July 2008, the Richmond-based 4th Circuit Court rules: "if properly designated an enemy combatant pursuant to the legal authority of the President, such persons may be detained without charge or criminal proceedings for the duration of the relevant hostilities."[26]

On October 7, 2008, US District Court judge Ricardo M. Urbina ruled that 17 Uyghurs, Muslims from China's northwestern Xinjiang region, must be brought to appear in his court in Washington, DC, three days later: "Because the Constitution prohibits indefinite detentions without cause, the continued detention is unlawful."[27]

On January 21, 2009, US President Barack Obama issued an executive order regarding the Guantanamo Bay Naval Base and the individuals held there. This order asserted that "[they] have the constitutional privilege of the writ of habeas corpus".[28]

Differences in post-trial actions

Habeas corpus is an action often taken after sentencing by a defendant who seeks relief for some perceived error in his criminal trial. There are a number of such post-trial actions and proceedings, their differences being potentially confusing, thus bearing some explanation. Some of the most common are an appeal to which the defendant has as a right, a writ of certiorari, a writ coram nobis and a writ of habeas corpus.

An appeal to which the defendant has a right cannot be abridged by the court which is, by designation of its jurisdiction, obligated to hear the appeal. In such an appeal, the appellant feels that some error has been made in his trial, necessitating an appeal. A matter of importance is the basis on which such an appeal might be filed: generally appeals as a matter of right may only address issues which were originally raised in trial (as evidenced by documentation in the official record). Any issue not raised in the original trial may not be considered on appeal and will be considered estoppel. A convenient test for whether a petition is likely to succeed on the grounds of error is confirming that (1) a mistake was indeed made (2) an objection to that mistake was presented by counsel and (3) that mistake negatively affected the defendant's trial.

A writ of certiorari, otherwise known simply as cert, is an order by a higher court directing a lower court to send record of a case for review, and is the next logical step in post-trial procedure. While states may have similar processes, a writ of cert is usually only issued, in the United States, by the Supreme Court, although some states retain this procedure. Unlike the aforementioned appeal, a writ of cert is not a matter of right. A writ of cert will have to be petitioned for, the higher court issuing such writs on limited bases according to constraints such as time. In another sense, a writ of cert is like an appeal in its constraints; it too may only seek relief on grounds raised in the original trial.

A petition for a writ coram nobis, is a post-judgment attack on the outcome of the case. It is made to the trial court and claims that there are errors requiring the court to set aside the verdict and/or the sentence. Use of the writ coram nobis varies from jurisdiction to jurisdiction. However, in most jurisdictions it is limited to situations where a direct appeal was not previously possible—usually because the issue was simply unknown at the time of appeal (that is, a "latent" issue) or because the issue otherwise could not be raised on appeal because of procedural barriers. A common basis for coram nobis petitions is the claim of ineffective assistance of counsel where the alleged ineffectiveness is not shown on the record of the court. In such cases, direct appeal is usually impossible because the critical events are not visible on the record where the appellate court can see them. Thus, a prompt coram nobis petition might be an important vehicle for a defendant to use.

A writ of habeas corpus is often the last opportunity for the defendant to find relief against his guilty conviction. Habeas corpus may be pursued if a defendant is unsatisfied with the outcome of his appeal and has been refused (or did not pursue) a writ of cert, at which point he may petition one of several courts for a writ of habeas corpus. Again, these are granted at the discretion of the court and require a petition. Like appeals or writs of cert, a writ of habeas corpus may overturn a defendant's guilty conviction by finding some error in the original trial. The major difference is that writs of habeas corpus may, and often, focus on issues that lay outside the original premises of the trial, i.e., issues that could not be raised by appeal or writs of cert. These often fall in two logical categories: (1) that the trial lawyer was ineffectual or incompetent or (2) that some constitutional right has been violated.

As one moves farther down the chain of post-trial actions, relief becomes progressively more unlikely. Knowing the differences between these actions and their intended use are an important tool in increasing one's chances for a favorable outcome. Use of a lawyer is therefore often considered advisable to aid one attempting to traverse the complex post-trial landscape.

Further reading on historical background and other topics

- Asha Bandele "Habeas Corpus is a legal Entitlement", a poem in *Absence in the Palms of My Hands & Other Poems*. New York: Harlem River Press. 1996.
- A.H. Carpenter. "Habeas Corpus in the Colonies." *The American Historical Review*. Vol. 8., No. 1 (October 1902), pages 18–27.
- Louis Fisher. 2003. *Nazi Saboteurs on Trial: A Military Tribunal and American Law*. University Press of Kansas. ISBN 0-7006-1238-6.
- Michael Dobbs. 2004. *Saboteurs: The Nazi Raid on America*. Vintage. ISBN 1-4000-3042-0.
- Peter Irons. 1999. *A People's History of the Supreme Court*. Viking. ISBN 0-670-87006-4. Political context for *Ex Parte Milligan* explained on Pp. 186–189.
- Helen A. Nutting. "The Most Wholesome Law—The Habeas Corpus Act of 1679." *The American Historical Review*. Vol. 65., No. 3 (April 1960), pages 527–543.
- Geoffrey R. Stone. 2004. *Perilous Times, Free Speech in Wartime From the Sedition Act to the War on Terrorism*. Norton. ISBN 0-393-05880-8.
- Cary Federman. 2006. *The Body and the State: Habeas Corpus and American Jurisprudence*. SUNY. ISBN 0-7914-6703-1.
- Eric M. Freedman. 2001. Habeas Corpus: Rethinking the Great Writ of Liberty (NYU Press) ISBN 0-8147-2717-4
- Donald E. Wilkes, Jr. [29], The Georgia Death Penalty Habeas Corpus Reform Act of 1995 [30] (1995) & Habeas Corpus: The Great Writ Hit [31] (2006) & Habeas Corpus Uncorpsed [32] (2008) & Habeas Corpus and Baseball [33] (2006) & The Writ of Habeas Corpus in Georgia [34] (2007) & Writ of Habeas Corpus [35], from The New Georgia Encyclopedia [36] (2009).

See also

- Habeas Corpus Restoration Act of 2007
- Military Commissions Act of 2006
- Edward Hyde, 1st Earl of Clarendon
- Neminem captivabimus
- Arbitrary arrest and detention
- Philippine Habeas Corpus Cases
- Habeas Corpus (play) The Play by the English author Alan Bennett
- List of legal Latin terms
- subpoena duces tecum
- subpoena ad testificandum
- Murder conviction without a body
- Habeas Data

External links

- Amnesty International page on Habeas Corpus Restoration Act of 2007 [37]
- Barristermagazine.com [38]
- Inmatelaw.org [39]
- LectLaw.com [40]
- Petition for Habeas Corpus April 16, 1843 [41] From Texas Tides [42]
- This American Life: 331: Habeas Schmabeas 2007 [43]
- Find Habeas [44]

References

[1] *Oxford English Dictionary*. **4**. Oxford University Press. p. 849.

[2] Google books scan of book Introduction to the Study of the Law of the Constitution By Albert Venn Dicey (http://books.google.com/books?pg=PR3&dq=INTRODUCTION+TO+THE+STUDY+OF+THE+LAW+OF+THE+CONSTITUTION+A.+V.+Dicey&ei=Y2YfR-rMApGepgKuqZWzBg&id=kz40AAAAIAAJ&output=text)

[3] http://www.statutelaw.gov.uk/content.aspx?ActiveTextDocId=1519689

[4] Clark, David and Gerard McCoy (1998), "Habeas Corpus" (Federation Press)

[5] Submission to the Australian Senate (http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/2004-07/terrorism/submissions/sub41.pdf)

[6] "The Constitution Act, 1982; Part I, Section 7: Legal Rights" (http://laws.justice.gc.ca/en/const/annex_e.html#legal). Canadian Department of Justice. . Retrieved 2008-06-29.

[7] Writ Of Habeas Corpus For Securing Liberty - Author - ABS-CBN News (http://www.legalserviceindia.com/articles/wha.htm)

[8] INTERNATIONAL COMMISSION OF JURISTS and LAW IN THE SERVICE OF MAN, "Torture and intimidation in the West Bank - the case of AL-FARA'A prison." Page 4.

[9] LAW IN THE SERVICE OF MAN, page 3.

[10] Newsweek, 14 February 1983. Quoted in LAW.. page 3.

[11] Amnesty International,"Israel and the Occupied Territories: The military justice system in the Occupied Territories: detention, interrogation and trial procedures." July 1991. AI Index: MDE 15/34/91. Page 36. Landau Commission para 4.17.

[12] Amnesty International. "Israel and Occupied Territories: the military justice system in the Occupied Territories - detention, interrogation and trial ractices." 1991. MDE 15/34/91. page 20.

[13] AI, page 20: Article 27 (b) 1982 Criminal Procedure Law; Article 16 (b) 1969 Criminal Procedure (Arrest and Searches) Ordinance (New Version) - cites an example of reason for an extension as the Judge being ill.

[14] New Zealand Herald newspaper (http://www.nzherald.co.nz/section/1/story.cfm?c_id=1&ObjectID=10407667)

[15] Arroyo proclaims martial law in Maguindanao - ABS-CBN News Online (http://www.abs-cbnnews.com/nation/12/04/09/arroyo-orders-martial-law-maguindanao)

[16] http://www.law.cornell.edu/uscode/28/2241.html

[17] Search Results - THOMAS (Library of Congress) (http://thomas.loc.gov/cgi-bin/query/z?c109:S.3930:)

[18] Klein, Rick (29 September). "Senate's passage of detainee bill gives Bush a win: Democrats say GOP capitulate" (http://www.boston.com/news/nation/washington/articles/2006/09/29/senates_passage_of_detainee_bill_gives_bush_a_win/). Boston Globe. .
[19] Search Results - THOMAS (Library of Congress) (http://thomas.loc.gov/cgi-bin/bdquery/z?d109:SP5087:)
[20] "Supreme Court to hear Guantanamo Bay detainee habeas cases" (http://jurist.law.pitt.edu/paperchase/2007/06/supreme-court-to-hear-guantanamo-bay.php). JURIST. 2007-06-29. . Retrieved 2008-06-29.
[21] "Gonzales says the Constitution doesn't guarantee habeas corpus" (http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/01/24/MNGDONO11O1.DTL&hw=gonzales+habeas+corpus&sn=001&sc=1000). San Francisco Chronicle. 2007-01-24. . Retrieved 2008-06-29.
[22] Gonzales Questions Habeas Corpus | BaltimoreChronicle.com (http://baltimorechronicle.com/2007/011907Parry.shtml)
[23] "Guantanamo prisoner 'incorrectly' detained" (http://www.abc.net.au/news/newsitems/200409/s1195161.htm). ABC News. 2004-09-09. . Retrieved 2008-06-29.
[24] "Panel OKs Bill For Guantanamo Detainees" (http://web.archive.org/web/20070614212445/http://www.cbsnews.com/stories/2007/06/07/ap/politics/main2900699.shtml). CBS News. 2007-06-07. Archived from the original (http://www.cbsnews.com/stories/2007/06/07/ap/politics/main2900699.shtml) on 2007-06-14. . Retrieved 2008-06-30.
[25] "Boumediene et al. v. Bush, President of the United States, et al." (http://www.supremecourt.gov/opinions/07pdf/06-1195.pdf) (PDF). Supreme Court of the United States. 2008-06-12. . Retrieved 2008-06-29.
[26] "Al-Marri and the power to imprison U.S. citizens without charges" (http://www.salon.com/opinion/greenwald/2008/07/16/al_marri/). Salon.com. 2008-07-16. . Retrieved 2008-07-16.
[27] http://in.reuters.com/article/worldNews/idINIndia-35845620081008?sp=true
[28] http://www.whitehouse.gov/the_press_office/ClosureOfGuantanamoDetentionFacilities/
[29] http://www.law.uga.edu/academics/profiles/wilkes.html
[30] http://www.law.uga.edu/academics/profiles/dwilkes_more/10georgia.html
[31] http://www.law.uga.edu/academics/profiles/dwilkes_more/54corpse.html
[32] http://www.law.uga.edu/academics/profiles/dwilkes_more/62uncorpsed.pdf
[33] http://www.law.uga.edu/academics/profiles/dwilkes_more/50baseball.html
[34] http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1064&context=fac_pm
[35] http://www.georgiaencyclopedia.org/nge/Article.jsp?path=/GovernmentPolitics/Government/StateGovernment/ConstitutionalHistory&id=h-3741
[36] http://www.georgiaencyclopedia.org/nge/Home.jsp
[37] http://denouncetorture.amnestyusa.org/site/c.huITL9MVJxE/b.2607193/k.BDCC/Habeas_corpus_Restoration_Act_of_2007__Background.htm
[38] http://www.barristermagazine.com
[39] http://www.inmatelaw.org
[40] http://www.lectlaw.com/def/h001.htm
[41] http://tides.sfasu.edu/AN18/SHHIV_40.php?culture=2&chrono=5&index=0
[42] http://tides.sfasu.edu/
[43] http://www.thislife.org/Radio_Episode.aspx?episode=331
[44] http://www.findhabeas.com

Habeas Data

The literal translation from Latin of **Habeas Data** is “[we command] you have the data”. Habeas Data is a constitutional right granted in several countries in Latin-America. It shows variations from country to country, but in general, it is designed to protect, by means of an individual complaint presented to a constitutional court, the image, privacy, honour, information self-determination and freedom of information of a person.

Habeas Data can be brought up by any citizen against any manual or automated data register to find out what information is held about his or her person. That person can request the rectification, actualisation or even the destruction of the personal data held. The legal nature of the individual complaint of Habeas Data is that of voluntary jurisdiction, this means that the person whose privacy is being compromised can be the only one to present it. The Courts do not have any power to initiate the process by themselves.

History

Habeas Data is an individual complaint before a Constitutional Court. The first such complaint is the Habeas Corpus (which is roughly translated as “[we command] you have the body”). Other individual complaints include the writ of mandamus (USA), amparo (Spain, Mexico and Argentina), and respondeat superior (Taiwan).

The Habeas Data writ itself has a very short history, but its origins can be traced to certain European legal mechanisms that protected individual privacy. This cannot come as a surprise, as Europe is the birthplace of the modern Data Protection. In particular, certain German constitutional rights can be identified as the direct progenitors of the Habeas Data right. In particular, the right to information self-determination was created by the German Constitutional Tribunal by interpretation of the existing rights of human dignity and personality . This is a right to know what type of data are stored on manual and automatic databases about an individual, and it implies that there must be transparency on the gathering and processing of such data. The other direct predecessor of the Habeas Data right is the Council of Europe’s 108th Convention on Data Protection of 1981. The purpose of the convention is to secure the privacy of the individual regarding the automated processing of personal data. To achieve this, several rights are given to the individual, including a right to access their personal data held in an automated database.[1]

The first country to implement Habeas Data was the Federal Republic of Brazil. In 1988, the Brazilian legislature voted to introduce a new Constitution, which included a novel right never seen before: the Habeas Data individual complaint. It is expressed as a full constitutional right under article 5, LXXI, Title II, of the Constitution.

Following the Brazilian example, Colombia incorporated the Habeas Data right to its new Constitution in 1991. After that, many countries followed suit and adopted the new legal tool in their respective constitutions: Paraguay in 1992, Peru in 1993, Argentina in 1994, and Ecuador in 1996[2]

Implementation

- Brazil: The 1988 Brazilian Constitution stipulates that: “Habeas Data shall be granted: a) to ensure the knowledge of information related to the person of the petitioner, contained in records or databanks of government agencies or of agencies of a public character; b) for the correction of data, when the petitioner does not prefer to do so through a confidential process, either judicial or administrative”.
- Paraguay: The 1992 Paraguay constitution follows the example set by Brazil, but enhances the protection in several ways. The Article 135 of the Paraguayan constitution states: “Everyone may have access to information and data available on himself or assets in official or private registries of a public nature. He is also entitled to know how the information is being used and for what purpose. He may request a competent judge to order the updating, rectification, or destruction of these entries if they are wrong or if they are illegitimately affecting his rights.”

- Argentina: the Argentinian version of Habeas Data is the most complete to date. The article 43 of the Constitution, amended on the 1994 reform, states that: “Any person shall file this action to obtain information on the data about himself and their purpose, registered in public records or data bases, or in private ones intended to supply information; and in case of false data or discrimination, this action may be filed to request the suppression, rectification, confidentiality or updating of said data. The secret nature of the sources of journalistic information shall not be impaired.”[3]
- Philippines: On August 25, 2007, Chief Justice Reynato Puno (at the College of Law alumni of Silliman University in Dumaguete City) announced that the Supreme Court of the Philippines was drafting the writ of Habeas Data. By invoking the truth, the new remedy will not only compel military and government agents to release information about the desaparecidos but require access to military and police files. Reynato Puno announced earlier on the draft of the *writ of amparo* -- the Spanish for protection -- which will prevent military officials in judicial proceedings to simply issue denials on cases of disappearances or extrajudicial executions. With the writ of habeas corpus, the writ of Habeas Data and the *writ of amparo* will further help those looking for missing loved ones.[4]

See also

- Habeas Corpus

External links

- HabeasData.org [5]
- Alfa-Redi's Habeas Data directory [6]
- HabeasData Group - LinkedIN [7]

References

[1] Andres Guadamuz, "Habeas Data: The Latin American response to data protection" (http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2000_2/guadamuz), Journal of Information, Law & Technology 2000(2).

[2] Andres Guadamuz, "Habeas Data vs. the European Data Protection Directive" (http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2001_3/guadamuz), The Journal of Information, Law & Technology 2001(3).

[3] Pablo Palazzi, "El Habeas Data en el Derecho Argentino" (http://www.alfa-redi.org/rdi-articulo.shtml?x=179), Alfa-Redi No.4, November 1998.

[4] Inquirer.net, SC drafting writ of habeas data invoking right to truth (http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=85704)

[5] http://www.habeasdata.org/

[6] http://www.alfa-redi.org/area_tematica.shtml?x=154

[7] http://www.linkedin.com/groups?gid=1866359

Homo sacer

Homo sacer (Latin for "the sacred man" or "the accursed man") is an obscure figure of Roman law: a person who is banned, may be killed by anybody, but may not be sacrificed in a religious ritual.[1] The person is excluded from all civil rights, while his/her life is deemed "holy" in a negative sense.

There is a similarity to the legend of Cain in Jewish mythology.

Homo sacer according to Agamben

Italian philosopher Giorgio Agamben used this concept for his book *Homo Sacer: Sovereign Power and Bare Life*. Agamben describes the *homo sacer* as an individual who exists in the law as an exile. There is, he thinks, a paradox. It is only because of the law that society can recognize the individual as *homo sacer*, and so the law that mandates the exclusion is also what gives the individual an identity.

Agamben holds that life exists in two capacities. One is natural biological life (Greek: *Zoë*) and the other is political life (Greek: *bios*). This *zoe* is related by Agamben himself to Hannah Arendt's description of the refugee's "naked life" in *The Origins of Totalitarianism* (1951). The effect of *homo sacer* is, he says, a schism of one's biological and political lives. As "bare life", the *homo sacer* finds himself submitted to the sovereign's state of exception, and, though he has biological life, it has no political significance.

Agamben says that the states of homo sacer, political refugees, and those persecuted in the Holocaust and other sites are similar. As support for this, he mentions that the Jews were stripped of their citizenship before they were placed in concentration camps.

Thus, Agamben argues, "the so-called sacred and inalienable rights of man prove to be completely unprotected at the very moment it is no longer possible to characterize them as rights of the citizens of a state", following in this Hannah Arendt's reasoning concerning the 1789 Declaration of the Rights of Man and of the Citizen, which tied human rights to civil rights. Although human rights were conceived of as the ground for civil rights, the privation of those civil rights (as, for example, in the case of stateless people or refugees) made them comparable to "savages", many of whom were exterminated, as Arendt showed, during the New Imperialism period. Arendt's thought is that respect of human rights depends on the guarantee of civil rights, and not the other way around, as argued by the liberal natural rights philosophers.

Agamben, further in his work, describes the status of those prisoners at Guantanamo Bay, Cuba under confinement by the United States as being contemporary examples similar to the Jews during the Holocaust.

See also

- Burakumin
- Civil death
- Dalit
- Hague Conventions
- Non-person
- Roe v. Wade
- Stateless person
- Third Geneva Convention
- Unlawful combatant

References

[1] Agamben, Giorgio. Heller-Roazen, trans. *Homo Sacer: Sovereign Power and Bare Life* Stanford, CA: Stanford University Press, 1998. 72.

- Agamben, Giorgio (1998), *Homo Sacer: Sovereign Power and Bare Life*, Stanford, CA: Stanford University Press, ISBN 978-0804732185. Trans. Daniel Heller-Roazen.

External links

- *Homo sacer y violencia divina en el caso judío: lo insacrificable sometido a castigo* de Ely Orrego (http://www.caip.cl//index.php?option=com_remository&Itemid=54&func=fileinfo&id=1)
- Pirates, Terrorists, Homo Sacer (http://www.theoria.ca/theoria/archives/2005/08/20/) August 20, 2005
- Interview with Giorgio Agamben – Life, A Work of Art Without an Author: The State of Exception, the Administration of Disorder and Private Life (http://www.germanlawjournal.com/article.php?id=437) By Ulrich Raulff, German Law Journal No. 5 - Special Edition, 1 May, 2004)
- The Refugee & the Decline of the Nation State (http://www.uow.edu.au/law/LIRC/Projects/refugee/tsonisRefugee.html) A paper delivered by Andonis Tsonis at 'Forms of Legal Identity', 19th Annual Law & Society Conference, Melbourne, 10 - 12 December 2001
- Knight of the Living Dead (http://www.nytimes.com/2007/03/24/opinion/24zizek.html) March 24, 2007 *New York Times* Op-Ed piece by Slavoj Zizek on Terrorism and normalization of torture.

Hostis humani generis

Hostis humani generis (Latin for "enemy of mankind") is a legal term of art, originating from the admiralty law, and referring to the peculiar status, before the public international law, of maritime pirates, since time immemorial, and slavers, since the 18th century. It is also used in the present to describe the status of torturers.

A comparison can be made between this concept and the common law "writ of outlawry," which declared a person outside of the King's law, a literal out-law, and subject to the violence of anyone. The ancient Roman civil law concept of proscription, and the status of homo sacer conveyed by proscription may also be similar.

Background

Being one of the most ancient fields of continuous human endeavor, along with that of war, farming, hunting and gathering, and prostitution, the high sea has its own customs and usages, its own rules and articles, and thus, its own laws. Unlike land, above the high-tide mark, where title, ownership, and sovereignty is created by use and possession, no nation may claim as its territory the high sea, for continuous use and possession of it is impossible; as such, no nation may thus forbid trespass through the high sea. The high sea, since it cannot be owned by anyone, it is held to belong to all mankind, and every nation is held to have a separate and equal right to have its ships navigate over it; this is the concept of *mare liberum*, or the freedom of the seas. As the sea is the common property of all, the perils of the sea and of navigation are shared in by all mariners, and all nations. As such, there exists a law of amity and reciprocity amongst the seafaring powers, especially in regards to matters related to the protection of life, and, to a lesser extent, property; for instance, the law is clear regarding the obligation of every mariner to assist sailors who are shipwrecked, or the obligation of every harbormaster to provide safe harbor to any vessel in need during a storm, regardless of the flag she flies.

Perhaps the oldest of the laws of the sea is the prohibition of piracy, as the peril of being set upon by pirates, who are motivated by their own needs rather than by national allegiance, is shared by the vessels and mariners of all nations, and thus represents a crime upon all nations; as such, since the time of the Ancient Romans, pirates have been held to be individuals waging a private warfare, a private campaign of sack and pillage, against not only their victims, but

against all nations, and thus, pirates hold the peculiar status of being regarded as "hostis humani generis", the enemies of mankind. Since piracy anywhere is a peril to every mariner and ship everywhere, it is held to be the universal right and the universal duty of all nations, regardless of whether their ships have been beset by the particular pirate captured, to capture, try by a regularly constituted court-martial or admiralty court (in extreme circumstances, by means of a drumhead court-martial convened by the officers of the capturing ship), and, if found guilty, to execute the pirate via means of hanging from the yard-arm of the capturing ship, an authoritative Custom of the Sea[1] .

Though summary battlefield punishment, meaning hanging without trial, was conducted by certain nations at certain times with regards to pirates, it was regarded as not preferable and somewhat irregular (but completely lawful, if the attenuation of due process was dictated by urgent military necessity), as individuals captured with pirates could potentially have a defense to charges of piracy, such as coercion.[2] For instance, in early 1831, the 250-strong crew of a pirate captured off Ascension was brought to said isle and summarily hanged, as they were acting in a rebellious manner and threatening to overthrow the 30-man crew of HM *Falcon*, a British sloop-of-war, who took them captive. As the summary punishment in this case was due to military necessity, rather than whim, there was clear evidence of the offense, and it was done proximate in time and location to the battlefield, it was merely irregular, and not a violation of the custom of the sea.[2]

In these more civilized times, much of the customary law of the sea has been codified. Piracy is the broadest exception to the principle that a ship on the high seas is subject to the protection of, and jurisdiction of, her flag state. Piracy is considered an offense of universal jurisdiction, such that any state may board and seize a ship engaged in piracy, and any state may try a pirate and impose sanctions according to that state's own law. Piracy is defined in Article 101 of the 1982 Convention on the Law of the Sea, and the 1958 Convention on the High Seas also regulates this exercise of jurisdiction.

The tradition of classing the pirate as "hostis humani generis" has been expanded to one other particular class of seafaring criminal, that of the slaver, who, by trafficking in human flesh upon the high seas, is similarly held to be in a state of war against all mankind. As such, these treaties, as well as the customary international law, allow states to act similarly against slavers.

Though the tradition of privateering has certainly been in decline over the past several centuries, and international treaties are held to have abolished it, privateering, or the use of private ships as raiders of commerce of the enemies of the sovereign whose flag the privateer flies, is not considered piracy, but warfare against a particular national enemy, and do not represent a crime against the customary international law, provided they adhere to the law of naval warfare.

Theorized extended usages of the term

The land and airborne analogues of pirates, bandits and hijackers are not subject to universal jurisdiction in the same way as piracy; this is despite strong arguments that they should be. Instead these crimes, along with terrorism, torture, crimes against internationally protected persons and the financing of terrorism are subject to the *aut dedere aut judicare* principle (meaning prosecute or extradite). In the current global climate of international terrorism some commentators have called for terrorists of all sorts to be treated "hostis humani generis".

Other commentators have called for the extension of this hypothetical connection of "hostis humani generis" from pirates to hijackers to terrorists all the way to that of "unlawful enemy combatants". Unlawful enemy combatants, or persons captured in war who do not fight on behalf of a recognized sovereign state, have become an increasingly common phenomenon in contemporary wars, such as War in Afghanistan, Iraq War, and First Chechen War. ("Unlawful enemy combatants" have fought in wars of historical interest, including the American Revolutionary War.) These commentators opine that because unlawful enemy combatants do not fight for a recognized sovereign state, they are therefore "hostis humani generis", and can be put on trial using a military commission and subjected to capital punishment, for things like throwing a grenade at soldiers in a battle, or shooting and killing a soldier in a

firefight. However, this definition of "unlawful enemy combatants" would appear to be contrary to the Third Geneva Convention which contains provisions for those fighting for an unrecognised state to receive protection as Prisoners of War.

One prominent advocate of this theory, former Deputy Assistant Attorney General of the United States John Yoo, the author of a memorandum[3] regarding the conditions of "unlawful enemy combatants" held in Guantanamo Bay, Abu Ghraib, the Salt Pit at Bagram Air Force Base, and other locales, recently emphasized the continuing relevance of the term, and his interpretation of it, stating: "Why is it so hard for people to understand that there is a category of behavior not covered by the legal system? **What were pirates?** They weren't fighting on behalf of any nation. **What were slave traders?** Historically, there were people so bad that they were not given protection of the laws. There were no specific provisions for their trial, or imprisonment. **If you were an illegal combatant, you didn't deserve the protection of the laws…**"[4] [5] (Although Mr. Yoo does not use the term openly, by referring to pirates and slave traders, and declaring them outside the law, he makes an unmistakable reference to "hostis humani generis".)

Actual extended usages of the term

As John Yoo points out, the term "hostis humani generis" and the peculiar status of the "enemies of mankind" that it conveys continues to be relevant up until the present day. However, the only actual extension of "hostis humani generis" blessed by courts of law has been its extension to torturers. This has been done by decisions of U.S. and international courts; specifically, in a case tried in the United States in 1980, *Filártiga v. Peña-Irala*, 630 F.2d 876, the United States 2nd Circuit Court ruled that it could exercise jurisdiction over agents of the Government of Paraguay (in their individual capacity[6]) who were found to have committed the crime of torture against a Paraguayan citizen, using its jurisdiction under the *Offenses Clause*[7] of the Constitution of the United States, the Alien Tort Claims Act, and customary international law. In deciding this, the court famously stated that "Indeed, for purposes of civil liability, the torturer has become like the pirate and slave trader before him hostis humani generis, an enemy of all mankind." This usage of the term *hostis humani generis* has been reinforced by the ruling of the International Criminal Tribunal for the Former Yugoslavia in the conviction of a torturer in Prosecutor v. Furundžija[8] [9] , marking its acceptance as a peremptory norm, part of the customary international law, held as jus cogens, applying erga omnes, upon any and every state and human individual without exception or reservation whatsoever.

See also

- Homo sacer
- Outlawry
- Torture
- Universal jurisdiction

References

[1] Ward, ed, Graham (Excerpt published 2006-02-21). Submission to the HMAS *Sydney* II Commission of Inquiry. ed. *Under The Brave Black Flag: Pirates and Mutineers* (http://www.defence.gov.au/sydneyii/SUBM/SUBM.007.0057.pdf). Australia: Ministry of Defense. pp. 6th pg. in excerpt. . Retrieved 2009-05-10.

[2] Brantly, ed., W.T. (1831-02-19). "(The) Summary Method" (http://books.google.com/books?id=j7UqAAAAYAAJ&printsec=titlepage#PRA1-PA125,M1). *The Columbian Star & Christian Index* (Philadelphia, PA, USA: Martin & Bolden) **IV** (8): 125. . Retrieved 2009-05-10.

[3] ""DOJ Yoo Memorandum"" (http://www.aclu.org/pdfs/safefree/yoo_army_torture_memo.pdf). .

[4] ""Outsourcing Torture: The Secret History of America's "Extraordinary Rendition" Program by Jane Mayer, New Yorker, Feb. 8 2005"" (http://www.commondreams.org/headlines05/0208-13.htm). .

[5] ""PBS Frontline: The Torture Question"" (http://www.pbs.org/wgbh/pages/frontline/torture/interviews/yoo.html). .

[6] Under the legal principles of the United States, the government of a nation, as a legal body, cannot be held liable for willful or intentional acts against its constitution, the law of nations, or its internal laws. This is because a government is a creature created by action of positive law, and

therefore, as a creature of law, cannot act in a matter inimical to the very thing that gives it meaning. However, this poses a problem: what if a government does act unlawfully? How can this conduct be punished? Over the years, the courts have created a legal fiction so as to give relief to victims of unlawful governmental acts. This fiction supposes that these unlawful acts are not engaged, conspired, or otherwise directed by the government in question, but by the individual officers of a government who carried out the unlawful acts. Therefore, even though a government may not be held liable for acts committed in its name, individual government agents who commit acts against the Constitution or the law of nations can be held personally liable. (Indeed, their liability is heightened, as they acted under color of law, gravely aggravating the magnitude of the offense; see *Ex parte Young*, 209 U.S. 123 (1908), as well as *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971).) This provides an incentive to government agents not to "just follow orders" when those "orders" are criminal.

[7] Article 1, Section 8, Clause 10 of the Constitution of the United States, which provides that the Congress is granted the power to "[t]o define and punish Piracies and Felonies on the high Seas, and Offenses against the Law of Nations"; this clause both expressly provides that the Congress may codify customary international law into federal law, and implicitly recognizes this law, or, as it has been known, since time immemorial, as the Law of Nations, as a source of law outside of the Constitution, like the common law is.

[8] "Decision of ICTY in Prosecutor v. Furundžija" (http://www.un.org/icty/furundzija/trialc2/judgement/index.htm). 1998-12-10. . Retrieved 2008-09-10.

[9] Janis, M. and Noyes, J. "International Law: Cases and Commentary (3rd ed.)", Page 148 (2006)

Idem sonans

Idem sonans is a legal doctrine whereby a person's identity is presumed known despite the misspelling of his or her name. The presumption lies in the similarity between the Phonology, or sounds of the correct name and the name as written. Such similar-sounding words are called a homonym, while similar-sounding phrases or names would be a holorime.

In Latin it roughly means "Sounding the same" or "Same Item." [1] Some examples are Seagrave/Segrave, Hutson/Hudson, Coonrad/Conrad, Keen/Keene, and Diadema/Deadema. [1]

Remnants of this common law doctrine exist today in the United States in the Uniform Commercial Code. Name changes can mislead searchers of official records of titles or liens. Article 9 of the UCC states that a financing statement shall not perfect a valid security interest if a name change would be "seriously misleading."[2] . A creditor may gain priority over other creditors in the event of a bankruptcy by filing a financing statement. The financing statement contains information relevant to the secured transaction and puts other creditors on notice that the filer has a secured interest in the property. Should the filer use a debtor name that is substantially different from the debtor's actual name, the purpose of filing the financing statement is defeated. On the other hand, if there is a minor difference in spelling or an *idem sonans*, the error is not fatal, but only if it is not seriously misleading. The actual search results may reveal a debtor with a similar name and address which would put the researcher on notice to investigate further, which is the purpose of the filing in the first place. The legal effect of an *idem sonans* is that the minor name difference shall have no bearing on the priority of debtors.

There is some movement away from this doctrine under modern New York Common law, especially in Conveyancing.[3] That means that a creditor filing a judgment lien or a title abstract company searching title to real property by a deed filed in an office of a county clerk must search by exact name, and can not rely on *idem sonans*.[4]

United Kingdom

Under UK jurisdiction, there has been an incredibly small amount of judicial activity here. The old judgement of *R v Davis*[5] provides:

> "If two names spelt differently necessarily sound alike, the court may, as matter of law, pronounce them to be idem sonantia; but if they do not necessarily sound alike, the question whether they are idem sonantia is a question of fact for the jury".

The modern case of *Re Vidiofusion Ltd*[6] establishes a four stage test when a name of a company is spelled differently in writing:

- No Company of a similar name

- *Idem Sonantia* - similar pronuniciation
- No marked vision difference (judge gave example of Jackson/Jaxon being too dissimilar visually)
- Misspelling does not substantially change the placement of the name if placed in a alphabetical list.

See also

- Identification (disambiguation)
- Notary public
- Acknowledgement
- Affirmation
- Genealogy
- Real property
- Title search

External links

- The Game of Your Name [7]

References

[1] Find Law Definition (http://www.law-dictionary.org/IDEM+SONANS.asp?q=IDEM+SONANS)
[2] UCC 9-402 (http://www.law.cornell.edu/ucc/9/9-402.html)
[3] Collect Law website (http://www.collectlaw.com/html/laws.htm), citing *Big Fur v. Gross*, N.Y.L.J., August 12, 1998, p. 23, col. 3; and *Grygorewicz vs. Domestic and Foreign Discount Corp.*, 179 Misc. 1017 (Sup. Ct. Kings Co. 1943).
[4] *Id.*
[5] (1851) 15 JP 450
[6] [1975] 1 All ER 76
[7] http://www.geocities.com/tthor.geo/names.html

Ignorantia juris non excusat

Ignorantia juris non excusat or ***Ignorantia legis neminem excusat*** (Latin for "ignorance of the law does not excuse" or "ignorance of the law excuses no one") is a legal principle holding that a person who is unaware of a law may not escape liability for violating that law merely because he or she was unaware of its content. In the United States, exceptions to this general rule are found in cases such as Lambert v. California (knowledge of city ordinances) and Cheek v. United States (willfulness requirement in U.S. federal tax crimes).

European law countries with a tradition of Roman law use the expression *nemo censetur ignorare legem*: nobody is taught to ignore the law.

Explanation

The rationale of the doctrine is that if ignorance were an excuse, a person charged with criminal offenses or a subject of a civil lawsuit would merely claim that he or she is unaware of the law in question to avoid liability, even though the person really does know what the law in question is. Thus, the law imputes knowledge of all laws to all persons within the jurisdiction no matter how transiently. Even though it would be impossible, even for someone with substantial legal training, to be aware of every law in operation in every aspect of a state's activities, this is the price paid to ensure that willful blindness cannot become the basis of exculpation. Thus, it is well settled that persons engaged in any undertakings outside what is common for a normal person, such as running a nuclear power plant, will make themselves aware of the laws necessary to engage in that undertaking. If they do not, they cannot complain if they incur liability.

The doctrine assumes that the law in question has been properly published and distributed, for example, by being printed in a government gazette, made available over the internet, or printed in volumes available for sale to the public at affordable prices.

In the Criminal Law, although ignorance may not clear a defendant of guilt, it can be a consideration in sentence, particularly where the law is unclear or the defendant sought advice from law enforcement or regulatory officials. For example, in one Canadian case, a person was charged with being in possession of gambling devices after they had been advised by customs officials that it was legal to import such devices into Canada. Although the defendant was convicted, the sentence was an absolute discharge.

In addition, there were, particularly in the days before satellite communication and cellular phones, persons who could genuinely be ignorant of the law due to distance or isolation. For example, in a case in British Columbia, a pair of hunters were acquitted of game offenses where the law was changed during the period they were in the wilderness hunting. In reaching this decision, the court refused to follow an early English law case in which a seaman on a clipper before the invention of radio was convicted even though the law had been changed while he was at sea (Bailey (1800) Russ & Ry 1).

Translation

Presumed knowledge of the law is the principle in jurisprudence that one is bound by a law even if one does not know of it. It has also been defined as the "prohibition of ignorance of the law".

The concept comes from Roman law, and is expressed in the brocard *ignorantia legis non excusat*.

The essential public character of a law requires that the law must apply to anyone in the jurisdiction where the law applies. Thus, no one can justify his conduct on the grounds that he was not aware of the law.

Generally, a convention exists (by some called "the essential preliminary rule") by which the laws are issued and rendered accessibile by methods, authors and means that are simple and well known: the law is readable in certain places (some systems prescribe that a collection of the laws is copied in every local city council), is made by certain

authorities (usually sovereign, government, parliament, and derivative bodies), and enters into effect in certain ways (many systems for instance prescribe a certain number of days - often 15 - after issue). This is commonly intended as a constitutional regulation, and in fact many constitutions or statutes exactly describe the correct procedures.

However, some recent interpretations weaken this concept. Particularly in civil law, regard can be had to the difficulty of being informed of the existence of a law considering the lifestyle of the average citizen. On the penal side, the quality of the knowledge of the law can affect the evaluation of the animus nocendi or the mens rea, in that certain subjective conditions can weaken personal responsibility.

The theme was widely discussed, also for political reasons, at the time of the Enlightenment and in the 18th century, given the heavy proportion of illiterate citizens in European countries (who would have some difficulties being aware of all the laws in a country). It was then argued that both the presumed knowledge and the heavily increasing corpus of national legislation were working in favour of lawyers rather than citizens. (The equivalent modern day claim being that the law is a trade secret and the public process a business owned and operated by the legal profession.)

In recent times, some authors have considered this concept as an extension of (or at least as analogous to) the other ancient concept (typical of criminal law) that no one can be punished under a law that was issued after the action was committed (non-retroactivity of the law. See ex post facto). This interpretation is however disputed, given that the matter would hierarchically more properly refer to a constitutional doctrine rather than to a civil or penal one.

Some modern criminal statutes contain language such as stipulating that the act must be done "knowingly and wittingly" or "with unlawful intent," or some similar language.

Into law

This principle is also stated into law:

- Canada: Criminal Code (RSC 1985, c. C-46), section 19[1]

See also

- Mistake of law

References

[1] CanLII - Criminal Code (http://canlii.ca/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html)

In absentia

In absentia is Latin for "in the absence". In legal use it usually pertains to a defendant's right to be present in court proceedings in a criminal trial.

In absentia in common law legal systems

In common law legal systems, conviction of a person *in absentia*, that is in a trial in which they are not present to answer the charges, is held to be a violation of natural justice. Specifically, it violates the second principle of natural justice, audi alteram partem. By contrast in some civil law legal systems, such as Italy, trial in absentia is permitted.

In absentia under United States law

For more than 100 years, courts in the United States have held that, according to the United States Constitution, a criminal defendant's right to appear in person at their trial, as a matter of due process is protected under the Fifth, Sixth, and Fourteenth Amendments.

In 1884, the United States Supreme Court held that

> the legislature has deemed it essential to the protection of one whose life or liberty is involved in a prosecution for felony, that he shall be personally present at the trial, that is, at every stage of the trial when his substantial rights may be affected by the proceedings against him. If he be deprived of his life or liberty without being so present, such deprivation would be without that due process of law required by the Constitution. *Hopt v. Utah* 110 US 574, 28 L Ed 262, 4 S Ct 202 (1884).

A similar holding was announced by the Arizona Supreme Court in 2004 (based on Arizona Rules of Criminal Procedure):

> A voluntary waiver of the right to be present requires true freedom of choice. A trial court may infer that a defendant's absence from trial is voluntary and constitutes a waiver if a defendant had personal knowledge of the time of the proceeding, the right to be present, and had received a warning that the proceeding would take place in their absence if they failed to appear. The courts indulge every reasonable presumption against the waiver of fundamental constitutional rights. *State v. Whitley*, 85 P.3d 116 (2004)

Although United States Congress codified this right by approving Rule 43 of the Federal Rules of Criminal Procedure in 1946 and amended the Rule in 1973, the right is not absolute.

Rule 43 provides that a defendant shall be present

- at the arraignment,
- at the time of the plea,
- at every stage of the trial including the impaneling of the jury and the return of the verdict and
- at the imposition of sentence.

However, the following exceptions are included in the Rule:

- the defendant waives his right to be present if he voluntarily leaves the trial after it has commenced,
- if he persists in disruptive conduct after being warned that such conduct will cause him to be removed from the courtroom,
- a corporation need not be present, but may be represented by counsel,
- in prosecutions for misdemeanors, the court may permit arraignment, plea, trial, and imposition of sentence in the defendant's absence with his written consent, and
- the defendant need not be present at a conference or argument upon a question of law or at a reduction of sentence under Rule 35 of the Federal Rules of Criminal Procedure.

Indeed, several U.S. Supreme Court decisions have recognized that a defendant may forfeit the right to be present at trial through disruptive behavior,[1] or through his or her voluntary absence after trial has begun.[2]

In 1993, the Supreme Court revisited Rule 43 in the case of *Crosby v. United States*.[3] The Court unanimously held, in an opinion written by Justice Harry Blackmun, that Rule 43 does not permit the trial *in absentia* of a defendant who is absent at the beginning of trial.

> This case requires us to decide whether Federal Rule of Criminal Procedure 43 permits the trial *in absentia* of a defendant who absconds prior to trial and is absent at its beginning. We hold that it does not. ...The Rule declares explicitly: "The defendant shall be present . . . at every stage of the trial . . . *except as otherwise provided by this rule*" (emphasis added). The list of situations in which the trial may proceed without the defendant is marked as exclusive not by the "expression of one" circumstance, but rather by the express use of a limiting phrase. In that respect the language and structure of the Rule could not be more clear."

However, the *Crosby* Court reiterated an 80-year-old precedent that

> Where the offense is not capital and the accused is not in custody, . . . if, *after the trial has begun in his presence*, he voluntarily absents himself, this does not nullify what has been done or prevent the completion of the trial, but, on the contrary, operates as a waiver of his right to be present and leaves the court free to proceed with the trial in like manner and with like effect as if he were present. *Diaz v. United States*, 223 U.S. at 455 [1912] (emphasis added).

Some state laws provide for automatic retrial of fugitives who are arrested after being convicted *in absentia.*[4]

Examples

Examples of people convicted *in absentia* are:

- Fouzia Yousaf Gillani, wife of Current Prime Minster of Pakistan Syed Yousuf Raza Gillani. (Found guilty on 10 March 2001 for Fraud of over 171.163 Million Rupees Pakistan) has been cleard of all charges due to her husbands current political seat.
- Cesare Battisti, thriller author and former member of the Italian militant group Armed Proletarians for Communism, sentenced to life. (Arrested on March 18, 2007 in Brazil.)
- Krim Belkacem, Algerian Berber resistance fighter and politician. (Assassinated on October 18, 1970 in West Germany.)
- Heinrich Boere, a Dutch or German convicted by a Dutch court in 1949 of murders on the part of the World War II German occupation authorities in the Netherlands. German courts refused to extridite Boere to the Netherlands due to his possibly having German citizenship.
- Martin Bormann, Nazi official and Hitler's private secretary, sentenced to death at the Nuremberg war crimes trials. (Disappeared on May 2, 1945. Remains were uncovered in late 1972 in West Berlin.)
- Dési Bouterse, Suriname's former military leader, sentenced to 16 years in prison and fined $2.18 million in the Netherlands for cocaine trafficking.
- Ahmed Chalabi, former Iraqi oil minister, convicted in Jordan for bank fraud.
- Ira Einhorn, anti-war activist and murderer, who challenged his conviction in Pennsylvania. (Escaped to Europe, but was extradited from France back to the US on July 20, 2001.)
- John Factor, a British-born American gangster and con man, charged with securities fraud in England and tried and sentenced to 24 years in prison *in absentia* after fleeing back to the United States.
- Charles de Gaulle, sentenced first to four years in prison and later to death in 1940 for treason against the Vichy Regime.
- Boleslavs Maikovskis, Latvian Nazi collaborator sentenced to death by a Soviet court in 1965 (while living in the United States).[5]
- Mengistu Haile Mariam, former dictator sentenced to death in Ethiopia for genocide.

- Jamal Jafaar Mohammed, sentenced to death by a Kuwaiti court for the 1983 Kuwait bombings. He is currently serving in Iraq's parliament as a member of Prime Minister Nouri al-Maliki's Islamic Dawa Party.
- Abu Musab al-Zarqawi, sentenced to death in Jordan. (Killed on June 7, 2006 in Iraq.)
- Andrew Luster, convicted of date rape after fleeing mid-trial.
- Filiberto Ojeda Ríos, convicted in the US after fleeing
- Bernardo Provenzano, Sicilian Mafia boss convicted of numerous murders during his 42 years as a fugitive.
- Michael Townley, Chilean DINA agent, has been convicted in 1993 by an Italian court in carrying out the 1975 Rome murder attempt on Bernardo Leighton.[6] (Currently living under the United States Federal Witness Protection Program.)
- Shalom Weiss, sentenced to the longest federal prison term in United States history for fraud, money laundering and other crimes. (Extradited by Austria on June 20, 2002.)[7] [8]
- Irakli Okruashvili, Defense Minister of Georgia from 2004 to 2006 and a personal friend of Georgian president Mikheil Saakashvili. Okruashvili returned to prominence when he formed an opposition party to the Georgian government and accused it of corruption and plotting assassinations. He was arrested days later on charges of extortion, bribe taking, and abuse of power, and released on $6 million bail pending trial. He flew to Europe, supposedly to seek medical treatment, but tried to find political asylum. He was denied asylum in Germany, but received it in France, which refused an extradition request from Georgia. He was tried In absentia, found guilty, and sentenced to 11 years imprisonment.[9]

See also

- List of Latin phrases
- Right to a fair trial
- Death in absentia
- Default judgment (a civil counterpart)

References

[1] Illinois v. Allen, 397 U.S. 337 (1970)
[2] Taylor v. United States, 414 U.S. 17 (1973)
[3] 506 U.S. 255
[4] http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/news/pakistan/09-cases-against-pms-wife-withdrawn-by-nab--szh-11
[5] Thomas, Robert McG. "Boleslavs Maikovskis, 92; Fled War-Crimes Investigation". (http://www.nytimes.com/1996/05/08/nyregion/boleslavs-maikovskis-92-fled-war-crimes-investigation.html) *The New York Times*. 8 May 1996. Retrieved 4 December 2009.
[6] "Agent of Chilean Secret Service Convicted of Murder Attempt". UPI. 1993-03-11.
[7] http://www.cnn.com/2007/WORLD/meast/02/05/iraq.lawmaker/index.html
[8] http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/02/06/wiraqmp106.xml
[9] Russia Today - Georgian ex-minister gets 11 year sentence (28 March 2008)

In re

In re, Latin for "in the matter [of]", is a legal term used to indicate that a judicial proceeding may not have formally designated adverse parties or is otherwise uncontested. The term is commonly used in case citations of probate proceedings, for example, In re Marriage Cases; it is also used in juvenile courts, as, for instance, *In re Gault*.

In rem

In rem is Latin for "in a thing". In a lawsuit, an action *in rem* is directed towards some specific piece of property, rather than being a claim for, say, monetary compensation against a person (which is an *in personam* or personal action). It focuses on proprietary title to property. Land is an example of a case where, when the title (e.g. who owns a house) is in dispute, an *in rem* action is used to deliver the land itself back to the rightful owner.

The distinction between an *in rem* action and an *in personam* action is relevant to which jurisdiction a court case may need to be filed, for the purposes of conflict of laws and civil procedure. An *in rem* action means that the right jurisdiction would be where the property actually is.

See also

- Jurisdiction in rem
- Jus ad rem, a term of the civil law, meaning "a right to a thing" -- distinguished from *jus in re*, which is dominion over a thing as against all persons.

In camera

In camera (Latin: "in a chamber")[1] is a legal term meaning "**in private**".[1] It is also sometimes termed **in chambers** or ***in curia***.

In camera describes court cases (or portions thereof) that the public and press are not admitted to.[1] *In camera* is the opposite of trial in open court where all the parties and witnesses testify in a public courtroom, and attorneys make their arguments in public to the trier of fact.

Entire cases may be heard *in camera* when, for example, matters of national security are involved. *In camera* reviews may also be used during otherwise open trials - for example, to protect trade secrets or where one party asserts privilege (such as attorney-client privileged communications). This lets the judge review the document in private before determining its admissibility in open court.

In camera can also describe closed board meetings that cover information not recorded in the minutes or divulged to the public. Such sessions may discuss personnel, financial, or other sensitive decisions that must be kept secret (e.g., a proposed merger or strategic change the organization does not want disclosed to competitors).

See also

- In limine
- *United States v. The Progressive* — a case where two trials were held simultaneously, one *in camera* and one public

References

[1] Eugene Ehrich, "Amo, Amas, Amat and More", p. 151, ISBN 0-06-272017-1.

In dubio pro reo

The principle of ***in dubio pro reo*** (Latin for "When in doubt, for the accused") means that a defendant may not be convicted by the court when doubts about his or her guilt remain.

In German law

The principle is normalized in the German law, but is derived from Article 103 II GG, II, Article 6 ECHR, as well as § 261 Code of Criminal Procedure. The principle has constitutional status.

The main principle in the sentence was part of Aristotle's interpretation of the law and shaped the Roman law. However, it was not spelled out word for word until the Milanese jurist Egidio Bossi (1487-1546) related it in his treatises. The common use of the phrase in the German legal tradition was documented in 1631 by Friedrich Spee von Langenfeld.

See also

- Presumption of innocence
- Precautionary principle
- In dubio mitius
- In dubio pro duriore

In flagrante delicto

In flagrante delicto (Latin: "in the blazing [progressing] offence [misdeed]") or sometimes simply ***in flagrante*** (Latin: "while blazing [during]") is a legal term used to indicate that a criminal has been caught in the act of committing an offence (compare corpus delicti). The colloquial "caught red-handed" or "caught rapid" are English equivalents.

Like many instances of the ablative case in Latin, the expression does not have a simple translation into English. The root phrase is the adjective *flagrāns* (flaming or blazing) and the noun *dēlictum* (offence, misdeed or crime). The closest literal translation would be "with the offence blazing", where "blazing" is a metaphor for vigorous, highly visible action.

French Economist Frederic Bastiat, in his "Parable of the Broken Window" (a satire regarding those who would say that economic benefits accrue to the community because of the new transactions that are "created" upon the breaking of a window), said that "this formula of condolence contains a whole theory that it is a good idea for us to expose, flagrante delicto, in this very simple case...."

The Latin term is sometimes used colloquially as a euphemism for a couple being caught in the act of sexual intercourse, as it is used in the film *Clue* or in the episode of Alan Partridge (all the way back, at least, to the second episode of Knowing Me, Knowing You in which, under hypnosis, Alan banishes Ursula Andress from his car for removing her top and demanding he make love to her); in modern usage the intercourse need not be adulterous or illicit.

In forma pauperis

In forma pauperis **(IFP or i.f.p.)** is a legal term derived from the Latin phrase *in the character or manner of a pauper*.[1] In the United States, the IFP designation is given by both state and federal courts to someone who is without the funds to pursue the normal costs of a lawsuit or a criminal defense.[1] The status is usually granted by a judge without a hearing, and entitles the person to a waiver of normal costs, and sometimes in criminal cases the appointment of counsel. While court imposed costs such as filing fees are waived, the litigant is still responsible for other costs incurred in bringing the action such as deposition and witness fees.

Approximately two-thirds of writ of certiorari petitions to the Supreme Court are filed *in forma pauperis*.[2] [3] Most of those petitioners are prisoners.[2] Petitions that appear on the Supreme Court's *in forma pauperis* docket are substantially less likely to be granted review than those on the paid docket.[4]

IFP status is usually granted in connection to *pro se* petitioners, but the two concepts are separate and distinct.

References

[1] Henry Campbell Black. (1979). *Black's Law Dictionary* (5th ed.). West Publishing. p. 701. ISBN 0-8299-2041-2.

[2] Wrightsman, Lawrence S. (2006). *The Psychology of the Supreme Court* (http://books.google.com/books?id=c7NjaSd5N14C&pg=PA60&lpg=PA60&dq=two+thirds+certiorari+pauperis&source=web&ots=K4F_D13eyn&sig=hgneoJJVzV1b9WCC4DZ4m5fpFwY&hl=en&sa=X&oi=book_result&resnum=7&ct=result). USA: Oxford University Press. p. 60. ISBN 019530604X. .

[3] Stephens, Otis H.; Scheb, John M. (2002). *American Constitutional Law*. Thomson Wadsworth. ISBN 053454570X.

[4] Thompson, David C.; Wachtell, Melanie F. (2009). "An Empirical Analysis of Supreme Court Certiorari Petition Procedures" (http://ssrn.com/abstract=1377522). *George Mason University Law Review* **16** (2): 237, 241. .

In haec verba

In Latin legal usage, **In Haec Verba** (meaning "in these words") refers to incorporating verbatim text into a complaint or pleading as were mentioned in a deed or agreement which is in question or cause of dispute. It is done instead of attaching a copy of the same with the pleading or complaint.

In limine

Motion ***in limine*** (Latin: "at the threshold") is a motion made before the start of a trial requesting that the judge rule that certain evidence may, or may not, be introduced to the jury in a trial. This is done in judge's chambers, or in open court, but always out of hearing of the jury. If a question is to be decided *in limine*, it will be for the judge to decide. Usually it is used to shield the jury from possibly inadmissible and unfairly prejudicial evidence.

Example

For example, the defendant may ask the judge, possibly before trial, to refuse to admit into evidence any personal medical, criminal or financial records if these records are irrelevant, if their probative value is outweighed by their prejudicial value, or if admittance would otherwise violate one of the court's rules of evidence. A party proffering certain evidence can also ask for the admission of certain evidence via a motion *in limine*. This tactic can be especially useful if the admissibility of certain evidence critical to that party's case is in doubt.

If the motion *in limine* to exclude evidence is granted, then the excluded records would be prohibited from being presented without specific approval from the judge at the time the party wants to offer the evidence. Normally, when a party wants to offer the evidence that was addressed by the motion *in limine*, the attorney will ask for a discussion with the judge at the bench, outside of the hearing of the jury. Then, in the context of the evidence already heard, the judge will decide whether or not to upset his earlier ruling based on whether the evidence should be admitted in trial. Therefore, a motion *in limine* is not a strict prohibition on certain evidence, but merely a requirement that a party approach the judge for permission before introducing the evidence. This prevents a party from committing what some attorneys call "letting a skunk loose in the courtroom" before the other party has the opportunity to object to the evidence.

The party seeking to exclude evidence with a motion in limine should be mindful of the scope of the relief sought. Judges are reluctant to exclude broad categories of evidence but will be more likely to consider a narrow request to exclude evidence.

If the motion is granted and the opposing party fails to obey, the judge may order a mistrial or impose sanctions on the offending party.

Governing laws

In the U.S., most motions *in limine* in federal courts are governed by the Federal Rules of Evidence (in particular, FRE 103). Some others arise under the Federal Rules of Civil Procedure for failure to comply with discovery.

References

- "motion in limine" [1]. *Law.com Legal Definitions Dictionary*. Retrieved 2006-05-06.

References

[1] http://dictionary.law.com/default2.asp?selected=1291

In loco parentis

The term ***in loco parentis***, Latin for "in the place of a parent" or "instead of a parent,"[1] refers to the legal responsibility of a person or organization to take on some of the functions and responsibilities of a parent. Originally derived from English common law, it is applied in two separate areas of the law.

First, it allows institutions such as colleges and schools to act in the best interests of the students as they see fit, although not allowing what would be considered violations of the students' civil liberties.[1]

Second, this doctrine can provide a non-biological parent to be given the legal rights and responsibilities of a biological parent if they have held themselves out as the parent.[2]

The *in loco parentis* doctrine is distinct from the doctrine of *parens patriae*, the psychological parent doctrine, and adoption.[3] In the United States, the parental liberty doctrine imposes constraints upon the operation of the *in loco parentis* doctrine.[3]

In United States law

Courts in the United States primarily apply the doctrine of *in loco parentis* to educational institutions.

Primary and secondary education

The first major limitation to this came in the U.S. Supreme Court case *West Virginia State Board of Education v. Barnette* (1942), in which the court ruled that students cannot be forced to salute the American flag. More prominent change came in the 1960s and 1970s in such cases as *Tinker v. Des Moines Independent Community School District* (1969), when the Supreme Court decided that "conduct by the student, in class or out of it, which for any reason - whether it stems from time, place, or type of behavior - materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech." It should be noted that adult speech is also limited by "time, place and manner" restrictions and therefor such limits do not rely on schools acting en loco parentis.

Many provisions of *in loco parentis* have been upheld over time. *New Jersey v. T.L.O.* (1985) upheld the search of lockers and other personal space while on school property as long as the search was deemed reasonable given the circumstances, indicating there is a balancing between the individual's—even a child's—legitimate expectation of privacy and the school's interest in maintaining order and discipline and stating that while acting *in loco parentis*, school officials are still representatives of the state. In *Hazelwood School District v. Kuhlmeier* (1987) the Supreme Court similarly ruled that "First Amendment rights of students in the public schools are not automatically coextensive with the rights of adults in other settings, and must be applied in light of the special characteristics of the school environment" and schools may censor school-sponsored publications (such as a school newspaper) if content

is "...inconsistent with its basic educational mission." Other student issues, such as school dress codes, have not yet been tested in the Supreme Court.

Private institutions are given significantly more authority over their students than public ones, and are generally allowed to arbitrarily dictate rules. In the Kentucky State Supreme Court case *Gott v. Berea College*, it was upheld that a "college or university may prescribe requirements for admission and rules for the conduct of its students, and one who enters as a student implicitly agrees to conform to such rules of government", while publicly funded institutions could not claim the same ability.

Criticism of the Tinker doctrine by Justice Clarence Thomas

Justice Clarence Thomas has argued that Tinker's ruling contradicted "the traditional understanding of the judiciary's role in relation to public schooling," and ignored the history of public education (127 S.Ct. 2634). He believed the judiciary's role to determine whether students have freedom of expression was limited by *in loco parentis*. He cited Lander v. Seaver (1859) which held that *in loco parentis* allowed schools to punish student expression that the school or teacher believed contradicted the school's interests and educational goals. This ruling declared that the only restriction the doctrine imposed were acts of legal malice or acts that caused permanent injury. Neither of these were the case with Tinker.

Higher education

Though *in loco parentis* continues to apply to primary and secondary education in the U.S., application of the concept has largely disappeared in higher education. However, this was not always the case.

Prior to the 1960s, undergraduates were subject to many restrictions on their private lives. Women were generally subject to curfews as early as 10:00, and dormitories were usually entirely one-sex. Some universities expelled students—especially female students—who were somehow "morally" undesirable. Some universities even insisted that a male and female student sitting on the same chair have at least two feet on the ground at all times. More importantly, universities saw fit to restrict freedom of speech on campus, often forbidding organizations dealing with "off-campus" issues from organizing, demonstrating, or otherwise acting on campus. These restrictions were severely criticized by the student movements of the 1960s, and the Free Speech Movement at the University of California at Berkeley formed partly on account of them, inspiring students elsewhere to step up their opposition.[4]

The landmark 1961 case Dixon v. Alabama was the beginning of the end for *in loco parentis* in U.S. higher education. The United States Court of Appeals for the Fifth Circuit found that Alabama State College could not summarily expel students without due process.[5]

References

[1] "Law.com Law Dictionary - *in loco parentis*" (http://dictionary.law.com/default2.asp?typed=in+loco+parentis&type=1&submit1.x=86&submit1.y=20&submit1=Look+up). Law.com. . Retrieved 2008-09-03.

[2] An example of family law *in loco parentis* (http://jurist.law.pitt.edu/paperchase/2007/02/utah-high-court-denies-parental-rights.php)

[3] In Loco Parentis -- Quaqua Society (http://www.quaqua.org/inlocoparentis.htm)

[4] Anderson, Terry H. (1996). *The Movement and the Sixties*. New York: Oxford University Press. ISBN 9780195104578.

[5] Hoover, Eric (5 September 2008). "'Animal House' at 30: O Bluto, Where Art Thou?". *The Chronicle of Higher Education* **55** (2): 34–35.

In mitius

Retroactivity ***in mitius*** is an exception to the non-retroactivity of laws, permitting the more lenient criminal law to be made retroactive. The phrase *in mitius* is Latin for "to make mild".

In pari delicto

In pari delicto (potior/melior est conditio possidentis), Latin for "in equal fault (better is the condition of the possessor)"[1] is a legal term used to indicate that two persons or entities are equally at fault, whether the malfeasance in question is a crime or tort.

The phrase is most commonly used by courts when relief is being denied to both parties in a civil action because of wrongdoing by both parties. The phrase means, in essence, that since both parties are equally at fault, the court will not involve itself in resolving one side's claim over the other, and whoever possesses whatever is in dispute may continue to do so in the absence of a superior claim. The doctrine is similar to the defense of unclean hands, both of which are equitable defenses. Comparative fault and contributory negligence are not the same as *in pari delicto*, though all of these doctrines have similar policy rationales.

The same principle can be applied when neither party is at *fault* if they have equal *right* to the disputed property, in which case the maxim of law becomes **in aequali jure (melior est conditio possidentis)**[2] . Again the court will not involve itself in the dispute without a superior claim being brought before it.

In pari delicto and bankruptcy caused by fraudulent transfers

Second Circuit: The Wagoner Doctrine

The Wagoner doctrine was first established in *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114, (C.A.2, 1991). There the court decided that as a matter of standing a trustee for a bankrupt corporation cannot pursue claims against those who defrauded the corporation with the cooperation of management. Under 11 U.S.C. 541-49, causes of action that do not belong to the corporation cannot be pursued by the trustee. Legally the trustee stands in the shoes of the corporation and may not reach beyond those rights which have accrued to the bankrupt entity (even if these third parties assign their claims to the trustee). See Barnes v. Schatzkin, 212 N.Y.S. 536 (N.Y.App.Div., 1925).

Thus, a key threshold question in any suit by a bankruptcy trustee is standing; in short "to whom does the claim accrue?" Most claims made by a trustee are of harm to the corporation since claims alleging harm to the corporation typically accrue to the corporation, harm to the creditors to the creditors, etc. The impact of the Wagoner decision was its determination that even where there is damage to the corporation "[a] claim against a third party for defrauding a corporation with the cooperation of management accrues to creditors, not to the guilty corporation." See Wagoner, 944 F.2d at 120 (emphasis added). This determination seems to be grounded in the idea that parties to a fraud, mutual wrongdoers, cannot recover from one another for harm done as a result of the fraud--the *in pari delicto* defense. As between the fraudulent parties the transfer is valid, though it can be assailed externally by the assertion of the rights of the creditors. See In re Maxwell Newspapers, Inc., 151 B.R. 63, 69 (Bkrtcy.S.D.N.Y., 1993).

Though not noted in the Wagoner decision itself, later courts--in utilizing the Wagoner decision--have emphasized the relationship between the Wagoner doctrine and the common law in pari delicto defense (roughly translated, "in equal fault"). Although conceptually distinct (one being an equitable defense, the other being an issue of standing), Second Circuit courts generally recognize that the in pari delicto defense and the Wagoner defense are essentially the same. Global Crossing Estate Rep. v. Winnick, Slip Copy, 2006 WL 2212776, FN. 16. (S.D.N.Y., 2006); cf. In re Promedicus Health Group, LLP, 359 B.R. 45, 50 (Bkrtcy.W.D.N.Y., 2006).

The corporation must, however, be guilty of the fraud. As a result, Wagoner is only applicable where agency principles allow for the imputation of the manager's actions (or whoever was cooperating with the fraud) to the corporation at large, thus making the corporation itself a participant in the fraud. As a rule, " the actions of corporate directors and officers are attributable to the corporate entity." In re Maxwell Newspapers, Inc., 151 B.R. 63, 69 (Bkrtcy.S.D.N.Y., 1993). This general rule appears to be subject to three exceptions (two of which are major exceptions, considered in every case).

(1) *Innocent Insider* Exception

Courts have refused to impute the actions of agents perpetrating a fraud where there is "at least one [relevant] decision-maker in management or among its shareholders who was innocent of the fraud and could have stopped it." In re CBI Holding Co., Inc., 247 B.R. 341, 365 (Bkrtcy.S.D.N.Y., 2000) (emphasis added). This limitation stems from the courts decision in Wechsler v. Squadron, Ellenoff, Plesent & Sheinfeld, LLP where the court, seeking to clarify the scope of Wagoner to cases where the fraudulent insider is not the sole shareholder and manager stated that Wagoner is "applicable in a situation where the owners and all relevant members of the management so participated." 212 B.R. 34. This decision, seen as somewhat of an expansion of the original approach, has since become a fully accepted approach to the Wagoner doctrine, although its meaning is disputed. There are two prevailing approaches to the applicability of the "innocent insider" exception. Some courts treat it as an independent requirement--no actions will be imputed where all relevant shareholders are not joined. Other courts treat the "innocent insider" exception as a way to combat the "sole actor" exception to the "adverse interest" defense (as explained below). Compare In re Monahan Ford Corp. of Flushing 340 B.R. 1, 24 (Bkrtcy.E.D.N.Y.,2006) ("Defendants' argument that the sole actor rule applies, defeating the application of the adverse interest exception, must be rejected, at least on a motion to dismiss. . . . the complaint adequately alleges that an innocent shareholder existed who could have stopped the fraudulent scheme had she known it was being committed." with In re CBI Holding Co., Inc., 247 B.R. 341 (considering the "innocent insider" exception before and independent of consideration of the "adverse interest" exception). A fair reading of the underlying case, *Wechsler v. Squadron*, seems to support the first reading--that all relevant shareholders and decision-makers must be involved for the fraud to be imputed to the corporation. The Wagoner doctrine is thus limited to a rare subset of fraud cases where the company is wholly complicit. Nevertheless, in a recent case *In re CBI Holding Co.*, Inc. (CBI II), the court attempted to settle on the latter interpretation, seemingly more consistent with traditional agency law, stating that:

"the Court nonetheless takes this opportunity to address what appears to be substantial confusion evidenced by several courts . . . regarding the nature of the so-called “innocent insider” exception. As the Court explained above, the bankruptcy court's decision in this case to not impute management's misconduct to the company due to the presence of innocent insiders was made entirely separately from the bankruptcy court's consideration of the “adverse interest” exception to the Wagoner rule. . . . Even when an agent is defrauding his principal, unless the agent has totally abandoned the interests of the principal and is acting entirely in his own, or another person's, interest, that agent is acting within the scope of his agency. Thus, unless the adverse interest exception to the presumption of imputation applies, it is immaterial whether innocent insiders exists; the agent is still acting on behalf of the company, and his actions will be imputed to the company notwithstanding the existence of those innocent insiders. . . . Where [the agents are acting totally adverse to the corporation but] only some of a corporation's owners were involved in a fraud in their role as managers, courts consider whether those insiders who were innocent and unaware of the misconduct had sufficient authority to stop the fraud. . . . When the innocent insiders lack authority to stop the fraud, the “sole actor” exception to the “adverse interest” exception applies, and imputation is thus proper, because all relevant shareholders and decisionmakers were involved in the fraud." 311 B.R. 350, 372 (S.D.N.Y.,2004)

However this doctrine is placed, this "innocent insider" exception cannot be met by a "could-a, should-a, would-a test," the insider must have been an actual person who had the power to stop the fraud, would have done so, but simply did not know about it. In re Bennett Funding Group, Inc., 336 F.3d at 101; see In re Promedicus Health Group, LLP, at 51. The "independent director" cannot be "impotent to actually do anything." In re Bennett, at 101. (It

is unclear how the court would treat a significant ignorant minority shareholder or significant ignorant minority seat on the board of directors. Compare In re CBI Holding, at 365 with FDIC v. Ernst & Young, 967 F.2d 166, 171 (5th Cir., 1992); see also In re Sharp Intern. Corp., 319 B.R. 782 (Bkrtcy.E.D.N.Y., 2005)(finding that a 13% shareholder could has started a derivative action had it known of the fraud and thus qualified as an "innocent insider".)

(2) *Adverse Interest* Exception

Even where the actions would be otherwise imputed, a court will not impute the actions of the agent to the principal where the agent is defrauding the principal exclusively for the agent's own benefit or the benefit of another. This exception turns on the idea that the court will not presume disclosure of the agents actions to the principal--as the law usually does--where those actions would reveal the agent's fraud; essentially that at some point the actor goes outside the scope of his employment. However, "New York courts construe this exception narrowly" and the "agent must have totally abandoned his principle's interests" in favor of his own interests or the interests of another. *In re Maxwell Newspapers, Inc.*, 151 B.R. 63. A conflict of interest is not enough, nor is it enough that the agent is not acting primarily for himself or another. *Id.* Furthermore, this exception is itself subject to two exceptions.

- **(a) Sole-Actor Exception:** Where the agent is "self-dealing," the knowledge of the fraud will be imputed notwithstanding the adverse interests if "the party that should have been informed was the agent itself albeit in its capacity as principle." In re Bennett Funding Group, Inc., 336 F.3d 94, 100 (2nd Cir., 2003) (citing Mediators, 105 F.3d at 827).
- **(b) Ratification:** Even where the agent is not also the principle, where the principle has in some way acquiesced to the actions of the agent, those actions will be deemed ratified by the principle and imputed to it even if the agent is self-dealing. Id. at 100-01 ("New York law recognizes the well-established principle of ratification, which imputes an agent's conduct to a principle who "condones those acts and accepts the benefits of them.").

(3) *In delicto* but not *pari* Exception

At least one court has recently suggested that if parties are both in fault (corporation and third-parties), but not equally in fault, that relief should be granted (and Wagoner denied) to the party bearing less fault. Global Crossings, Slip Copy 2006 WL 2212776 (S.D.N.Y., 2006).

See also

- Equitable remedy
- Equity (law)
- Pot calling the kettle black
- Tu quoque
- Unclean hands

References

[1] A Selection of Legal Maxims, page 546 (http://books.google.com/books?id=ug4yAAAAIAAJ&pg=PA546&lpg=PA546)
[2] A Selection of Legal Maxims, page 543 (http://books.google.com/books?id=ug4yAAAAIAAJ&pg=PA543&lpg=PA543)

In personam

In personam from Latin for "directed toward a particular person." In a lawsuit in which the case is against a specific individual, that person must be served with a summons and complaint to give the court jurisdiction to try the case, and the judgment applies to that person and is called an "in personam judgment." In personam is distinguished from *in rem*, which applies to property or "all the world" instead of a specific person. This technical distinction is important to determine where to file a lawsuit and how to serve a defendant. *In personam* means that a judgment can be enforceable against the person wherever he/she is. On the other hand, if the lawsuit is to determine title to property (*in rem*) then the action must be filed where the property exists and is only enforceable there.[1]

See also

- personal jurisdiction
- quasi in rem
- in rem

References

[1] *A Law Dictionary Containing Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern: And Including the Principal Terms of International, Constitutional, Ecclesiastical, and Commercial Law, and Medical Jurisprudence, with a Collection of Legal Maxims* ... By Henry Campbell Black Edition: 2 Published by West Publishing Co., 1910, pg. 606 (http://books.google.com/books?id=R2c8AAAAIAAJ)

In terrorem

In terrorem, Latin for "in [order to] frighten," is a legal term used to describe a warning, usually one given in hope of compelling someone to act without resorting to a lawsuit or criminal prosecution. For example, many intellectual property attorneys send *in terrorem* letters, which threaten litigation absent compliance with the written request, to persons that are violating their clients' trademark rights before resorting to court proceedings.

In terrorem Clauses (referred to in English as No-contest clauses) are also used in wills to keep beneficiaries from contesting the will by either completely disinheriting them from any share, or reducing their share to a nominal amount. These clauses are not uniformly recognized, or in some states such as New York, are unnecessary.

The term was used in the recent U.S. Supreme Court decision *Bell Atlantic Corp. v. Twombly*, which stated: "The requirement of allegations suggesting an agreement serves the practical purpose of preventing a plaintiff with “ ‘a largely groundless claim’ ” from “ ‘tak[ing] up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value’ ” (quoting *Blue Chip Stamps v. Manor Drug Stores*). In other words, the Court worried that the threat of an expensive lawsuit (that was ultimately groundless) would nevertheless encourage settlements, and thus payments by innocent defendants, particularly in the case of antitrust lawsuits, which have a long and very expensive discovery process.

Inter se

Inter se is a Legal Latin phrase meaning "between or amongst themselves". For example;

> "The constitutional documents of a company constitute a contract between the company and its shareholders, and between the shareholders *inter se*."

In Australian constitutional law, it refers to matters concerning a dispute between the Commonwealth and one or more of the States concerning the extents of their respective powers.

Inter partes

The term ***inter partes*** is the Latin for "between the parties."[1] It can be distinguished from in rem, referring to a legal action whose jurisdiction is based the control of property, or ex parte referring to a legal action that is by a single party.

Lawsuits where all interested parties have been served with adequate notices and are given a reasonable opportunity to attend and to be heard are referred to as *inter partes* proceedings or hearings. When a judgment is given, subject to any right of appeal, it would be inconvenient if the same issues could be endlessly relitigated by the same parties, so they are all bound by the result. However, anyone who was not a party to those proceedings and who can demonstrate a legitimate interest in reopening the issue, is entitled to petition the court for the right to be heard. However, in some circumstances, the judgment is given *in rem*, i.e. it binds everyone whether they were a party to the case or not.

Contracts can also be said to be *inter partes* and various laws can be relied upon to create and vest rights which exist on an *inter partes* basis only, i.e. they do not attach as an attribute to a person's status and so become *in rem* rights.

Examples

- Opposition procedure before the European Patent Office
- Interference proceeding (US patent law)
- *Inter partes* reexamination in US patent law
- Trademark Trial and Appeal Board Petitions

See also

- *ex parte*

References

[1] Duhaime Legal Dictionary (http://www.duhaime.org/LegalDictionary/I/Interpartes.aspx). Accessed July 3, 2008.

Inter regalia (Scots law)

Definition

Inter regalia *(Scots Law)*: something that inherently belongs to the sovereign. This may include property, privileges, or prerogatives. The term derives from Latin *inter* (among) and *regalia* (things of the king).

This term is divided into:

- *regalia majora* (major regalia), which are inseparable from the person of the sovereign.
- *regalia minora* (minor regalia), which may be conveyed to a subject.

The definition was constructed from the sources. [1] [2] [3] [4] [5]

See also

British monarchy

References

[1] "Scottish Language Dictionaries" (http://www.dsl.ac.uk/dsl/). . Retrieved March 1, 2008.
[2] "The Records of the Parliaments of Scotland to 1707" (http://www.rps.ac.uk/). K.M. Brown et al. eds (St Andrews, 2007), 1605/6/39. . Retrieved February 15, 2008.
[3] "Dictionary, Lawyers-and-Laws.com" (http://dictionary.lawyers-and-laws.com). . Retrieved March 1, 2008.
[4] "The Free Dictionary by Farlex" (http://legal-dictionary.thefreedictionary.com/). . Retrieved March 1, 2008.
[5] Shumaker, Walter A.; George Foster Longsdorf (1922). *The Cyclopedic Law Dictionary* (Second Edition by James C. Cahill ed.). Chicago: Callaghan and Company.

Inter rusticos

Latin for "Among rustics or illiterate persons".

Deeds or obligations granted *inter rusticos* are not judged by the same strict rules as those prepared by professionals, rather, they are dealt with more according to equitable principles than rules of strict law.

Inter vivos

Inter vivos (Latin, *between the living*) is a legal term referring to a transfer or gift made during one's lifetime, as opposed to a testamentary transfer (a gift that takes effect on death).

The term is often used to describe a trust established during one's lifetime, i.e., an **Inter vivos trust** as opposed to a **Testamentary trust** which is established on one's death, usually as part of a will. An Inter vivos trust is often used synonymously with the more common term Living trust, but an Inter vivos trust, by definition, includes both revocable and irrevocable trust.

The term inter vivos is also used to describe living organ donation, in which one patient donates an organ to another while both are alive. Generally, the organs transplanted are non-vital. A common example of this practice is the inter vivos transplantation of kidneys.

Intra fauces terra

Intra fauces terrae is a Legal Latin phrase which translates as "In the jaws of the land". It is used to define the territorial waters.

External Reference

- [1] Legal Term Glossary

References

[1] http://www.angelfire.com/empire/martiana/gens/LatinPhrases.html

Ipse dixit

Ipse dixit is a Latin phrase meaning *he himself said it*. The term labels a statement asserted but not proved, to be accepted on faith. Usually from a person of standing; a dictum.

The phrase is from Latin *ipse dixit*, *he himself said (it)* : *ipse* meaning *he himself* and *dixit* third person, singular, perfect, active, indicative form of the verb *dicere*, meaning *to say*.

In the Middle Ages scholars often applied the term to justify arguments if they had been used by Aristotle.

Example

> *"When I use a word" Humpty Dumpty said, "...it means just what I choose it to mean—neither more nor less."*
>
> — Lewis Carroll, *Through the Looking-Glass*

See also

- Bare assertion fallacy
- Ipse-dixitism

External links

- Nolo's Free Dictionary of Law Terms and Legal Definitions [1]
- Dictionary.com reference [2]
- Another definition [3]
- *Through the Looking Glass* reference [4]

References

[1] http://www.nolo.com/dictionary/ipse-dixit-term.html;jsessionid=32EBCE42E2C3FA6F5E79C51101FDB434.jvm1
[2] http://dictionary.reference.com/browse/ipse%20dixit
[3] http://www.bartleby.com/61/61/I0226100.html
[4] http://www.sundials.org/about/humpty.htm

Ipsissima verba

Ipsissima verba, Latin for "the very words," is a legal term referring to material, usually established authority, that a writer or speaker is quoting or referring to. For example, "the lawyer's position on segregation is supported by the ipsissima verba of the Supreme Court's holding in Brown v. Board of Education."

Ipsissima verba also refers to the appearances of Aramaic words throughout the gospels that might be the actual words Jesus physically spoke. While the manuscripts translated into the canonical New Testament were originally penned in koine Greek, a select few Aramaic words have survived in some texts. It is widely speculated that Jesus' native tongue was Aramaic and that these particular sayings could preserve the very words Jesus physically spoke.

Ipsissima verba is also the name of an album of the German band Samsas Traum.

Ipso facto

Ipso Facto is a Latin phrase, directly translated as "by the fact itself," which means that a certain effect is a *direct* consequence of the action in question, instead of being brought about by a subsequent action such as the verdict of a tribunal. It is a term of art used in philosophy, law, and science.

Legal uses

In law, this phrase is frequently employed to convey the idea that something that has been done contrary to law is automatically void. For example, if a married man, during the life of his wife—of which he had knowledge—should marry another woman, the latter marriage would be void *ipso facto*; second marriage would be declared automatically void from the beginning. This is one of the latin word used in the Law cases extensively.

Another example in law would be with the case of money laundering: the act is *ipso facto* illegal because it is done as a cover for something else, so the act puts the actions of an individual in question.

Legal use of the phrase by a religion in historical perspective

Ipso facto denotes the automatic character of the loss of membership of a religious body by someone guilty of a specified action.

Within the Roman Catholic Church, the phrase *latae sententiae* is more commonly used than *ipso facto* with regard to ecclesiastical penalties such as excommunication. It indicates that the effect follows even if no verdict (in Latin, *sententia*) is pronounced by an ecclesiastical superior or tribunal.

Other uses

Aside from its technical uses, it occurs frequently in literature, particularly in scholarly addenda: e.g., "Faustus had signed his life away, and was, *ipso facto*, incapable of repentance." (re: Marlowe, *The Tragical History of Dr. Faustus*.) or "These prejudices are rooted in the idea that every tramp *ipso facto* is a blackguard" (re: George Orwell, *Down and Out in Paris and London*). Also is it usde in a song by John Cleese in Monty Python which reads like this: Half a bee, philosophically, must ipso facto half not be.

See also

- List of Latin phrases
- Eo ipso

Ipso jure

Ipso jure is a Latin phrase, directly translated as *by operation of law*. It is used as an adverb.

The phrase is used to describe legal consequences that occur by the act of the law itself. For example, if property is held in a tenancy by the entirety by a husband and wife, who then get divorced, the property is converted *ipso jure* (i.e. by the law itself) into another form of tenancy, usually a tenancy in common, at the very instant the marriage is dissolved. Likewise, contracts that establish partnerships sometimes provide that the partnership is *ipso jure* dissolved if one partner attempts to sell his or her interest in the partnership. In all of these situations, when one legally significant fact occurs, other relationships are automatically changed by the law.

See also

- List of Latin phrases

Iura novit curia

Iura novit curia is a Latin legal maxim expressing the principle that "the court knows the law", i.e., that the parties to a legal dispute do not need to plead or prove the law that applies to their case.[1] The maxim is applied principally in civil law systems and is part of the investigative ("inquisitorial") aspect of that legal tradition, as distinguished from the more pronouncedly adversarial approach of common law legal systems. The maxim is first found in the writings of the medieval glossators about ancient Roman law.[2]

Principle

Iura novit curia means that the court alone is responsible for determining which law applies to a particular case, and how. The court applies the law *ex officio*, that is, without being limited to the legal arguments advanced by the parties (although the court is normally limited to granting the relief sought by the parties). The same principle is also expressed in the related maxim ***da mihi factum, dabo tibi ius*** ("give me the facts and I shall give you the law"), sometimes also given as *narra mihi factum, narro tibi ius*: it is incumbent on the parties to furnish the facts of a case and the responsibility of the judge to establish the applicable law.[1] The maxim also means the parties cannot limit the court's legal cognition (that is, the authority to determine the applicable law).[3]

In its most wide-reaching form, the principle of *iura novit curia* allows the court to base its decision on a legal theory that has not been the subject of argument by the parties.[4] However, in view of the parties' right to be heard (*audiatur et altera pars*) and the adversarial principle, both also recognized in civil law systems, this freedom is not unlimited. Many jurisdictions require the court to allow the parties to address any points of law first raised by the court itself.[] Because a wide application of *iura novit curia* may conflict with the parties' authority (in private law) to decide what is to be the subject of litigation, courts in most jurisdictions normally stay within the bounds established by the pleadings and arguments of the parties.[5] In criminal law, the court's freedom to apply the law is generally constrained at least to some extent by the legal characterization of the alleged facts in the indictment.

Exceptions

The principle of *iura novit curia* may be subject to exceptions. For instance, courts may be required by law to submit certain questions of law (such as the constitutionality of a statute, or the application of European law) to the review of a specialized other court (such as a constitutional court or the European Court of Justice).

The codes of procedure may also provide that the court may call upon the parties or experts to prove or determine any applicable *foreign* law.[3] In common law countries in particular, the rule is *iura aliena non novit curia*, i.e., judges may not rely on their own knowledge of foreign law, but the party who relies on it must prove it. In civil law systems, the same rule generally applies in attenuated forms: judges may (or should to the extent possible) make their own investigations of foreign law.[6]

Applicability

In civil and common law legal systems

According to Mattias Derlén, "it has traditionally been claimed that *jura novit curia* applies in civil law systems but not in common law systems".[7] Francis Jacobs described this view as follows:

> It might be tempting to suggest that there is a basic distinction between two fundamentally different types of procedure within the Member States: a distinction between, broadly speaking, the continental systems on the one hand and the English, Irish and Scottish systems on the other. On that view, the court in the continental systems is deemed to know the law ('jura novit curia' or 'curia novit legem'); it must apply the appropriate legal rules to the facts as they are presented to the court by the parties ('da mihi factum, dabo tibi jus'); and if necessary it will engage for that purpose in its own legal research. In the English, Irish and Scottish systems, on the other hand, the court has a less active, or even a passive, role: the procedure is generally based on the assumption that the court has no independent knowledge of the law, that it is dependent upon the submissions advanced by counsel for the parties, and that its function essentially is to adjudicate on the exclusive basis of their submissions. According to one commentator, 'perhaps the most spectacular feature of English procedure is that the rule *curia novit legem* has never been and is not part of English law'.[8]

Jacobs explains, however, that this distinction is exaggerated on closer examination: Civil law courts, *iura novit curia* notwithstanding, may not exceed the limits of the case as defined by the claims of the parties and may not generally raise a new point involving new issues of fact. A common law court, too, will *sua sponte* take a point which is a matter of public policy; it will, for instance, refuse to enforce an illegal contract even if no party raises this point.[9] The common law's lack of the rule of *iura novit curia* therefore has some relevance in civil proceedings, but matters little in criminal proceedings or in administrative courts.[10]

In international law

Iura novit curia is widely applied by international courts as a general principle of law. While the ICTY declined to do so in one case, the regulations of the International Criminal Court now provide for it.[11] The principle has also been recognized by the International Court of Justice as generally applicable in international proceedings,[12] as well as by the Inter-American Court of Human Rights[13] and the World Trade Organization's adjudicating bodies.[14]

Variants

The maxim is sometimes quoted as *jura novit curia*, *iura noscit curia*, *curia iura novit*, *curia novit legem* or variants thereof.[1] It is sometimes misspelled as *iuris novit curia* or *iura novat curia*.

References

[1] Derlén, Mattias (2009). Kluwer Law International. ed. *Multilingual interpretation of European Union law* (http://books.google.com/books?id=YKuCJ4fBwX4C&pg=PA314). European monographs. **67**. p. 314. ISBN 9789041128539. .

[2] Geeroms, Sofie (2004). *Foreign law in civil litigation: a comparative and functional analysis* (http://books.google.com/books?id=xl1PKc0lf8oC&pg=PA30). Oxford University Press. p. 30. ISBN 9780199264766. .

[3] van Rhee, C. H. (2005). *European traditions in civil procedure* (http://books.google.com/books?id=cbB_ykTvMA0C&pg=PA303). Ius commune europaeum. **54**. Intersentia nv. p. 303. ISBN 9789050954914. .

[4] Brooker, Douglas (30 October 2005). "Va Savoir! – The Adage "Jura Novit Curia" in Contemporary France" (http://law.bepress.com/expresso/eps/845). *bepress Legal Series* (Working Paper 845): 8. .

[5] See Brooker, Douglas (30 October 2005). "Va Savoir! – The Adage "Jura Novit Curia" in Contemporary France" (http://law.bepress.com/expresso/eps/845). *bepress Legal Series* (Working Paper 845): 11. . concerning the situation in France.

[6] Kahn-Freund, Otto (1975). *General problems of private international law* (http://books.google.ch/books?id=a-B4Um9nKpUC&pg=PA306). Recueil des Cours. **143**. Martinus Nijhoff Publishers. p. 306. ISBN 9789028606050. .

[7] Derlén, Mattias (2009). Kluwer Law International. ed. *Multilingual interpretation of European Union law* (http://books.google.com/books?id=YKuCJ4fBwX4C&pg=PA315). European monographs. **67**. p. 315. ISBN 9789041128539. .

[8] Opinion (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61993C0430:EN:NOT) of Advocate General Jacobs in the European Court of Justice cases C-430/93 and C-431/93, Jeroen van Schijndel and Johannes Nicolaas Cornelis van Veen v Stichting Pensioenfonds voor Fysiotherapeuten, European Court reports 1995 Page I-04705, par. 33. The commentator to which Jacobs refers is F. A. Mann, *Fusion of the Legal Professions?* Law Quarterly Review 1977, 367 at p. 369.

[9] Ibid, par. 34–35.

[10] Ibid, par. 34.

[11] Cryer, Robert Cryer (2007). *An introduction to international criminal law and procedure* (http://books.google.com/books?id=p0-jFTnSy7kC&pg=PA377). Cambridge University Press. pp. 377. ISBN 9780521876094. .

[12] Oesch, Matthias (2003). *Standards of review in WTO dispute resolution* (http://books.google.com/books?id=OWioIqABjy4C&pg=PA50). Oxford University Press. p. 50. ISBN 9780199268924. ., where reference is made to the Court's invocation of the principle in the *Fisheries Jurisdiction* and *Nicaragua v. United States* cases.

[13] Pasqualucci, Jo M. (2003). *The practice and procedure of the Inter-American Court of Human Rights* (http://books.google.com/books?id=4VKb1FpSodMC&pg=PA154). Cambridge University Press. p. 154. ISBN 9780521533355. .

[14] Ortino, Federico; Petersmann, Ernst-Ulrich (2004). *The WTO dispute settlement system, 1995-2003* (http://books.google.com/books?id=e2TVn9sdOsUC&pg=PA167). Kluwer Law International. p. 167. ISBN 9789041122322. .

Ius

Two principal meanings of "Ius"

Ius/Jus (Latin "law", "justice", "right") in ancient Roman law, has two principal meanings (cf Fench "droit," German "Recht," English "right", Spanish "Derecho"):

1. "Law" in the abstract.

   A) ... as distinguished from any specific enactment, the domain of learning, or any personified factor in human history/conduct/social development. Often contrasted with lex or leges, which are the laws. Ius is the law in its broadest sense or its ideal state, above and unaffected by the contingent decrees that the state happens to enact, the leges -- hence the distinction between the English terms “justice” and “legislation.” This division persisted into various regimes not only of civil law regime, and even in the law of the United States, as in the Fourteenth Amendment of the United States Constitution, which distinguishes “due process of law” (singular, as in ius) from “equal protection of the laws” (plural, as in leges).

   B) ... the law taken as a system, an aggregate, a whole -- "the sum total of a number of individual laws taken together."

   C) ... some one particular system or body of particular laws ; as in the phrases "jus civile," "jus gentium," "jus prœtorium."

2. "A right."

   A) a power, privilege, faculty, or demand inherent in one person and incident upon another

   B) a capacity residing in one person of controlling, with the assent and assistance of the state, the actions of another -- as in the expressions "jus in rem," "jus accrescendi," "jus possessionis."

"Objective" v. "Subjective"

Contemporary continental jurists of the civil law have sought to avoid this ambiguity by calling its first signification "objective" and the second "subjective." Thus Mackeldey (Rom. Law, § 2) says: "The laws of the first kind [compulsory or positive laws] form law [jus] in its objective sense, [jus est norma agendi - law is a rule of conduct.] [By contrast,] The possibility resulting from law in this sense to do or require another to do is law in its subjective sense, [jus est facultas agendi, law is a license to act.] The voluntary action of man in conformity with the precepts of law is called 'justice,' [justitia.]"

Minor meanings

3. An action. Bract, fol. 3. Or, rather, those proceedings in the Roman action which were conducted before the prœtor.

4. Power or authority. *Sui juris* In one's own power; independent. Inst. 1, 8, pr.; Bract, fol. 3. Alieni juris, under another's power. Inst. 1, 8, pr.

5. The profession (ars) or practice of the law. Jus ponitur pro ipsa arte. Bract fol. 2b.

6. A court or judicial tribunal, (locus in quo redditur jus.) Id. fol. 3.

Compounds

- ius abutendi: The right to abuse. By this phrase is understood the right to do exactly as one likes with property, or having full dominion over property. 3 Touiller, no. 8C. One of the attributes of dominium, or ownership, usually conceived of as the right or power to consume a thing owned, if capable of being consumed. It may illustrate the sense of dominium corresponding to liberty in the sense of immunity from interference by others under the law, as opposed to a power or right. (112)
- Jus abstinendi - The right of renunciation ; the right of an heir, under the Roman law, to renounce or decline the inheritance, as, for example, where his acceptance, in consequence of the necessity of paying the debts, would make it a burden to him. See Mackeld. Rom. Law, § 733.
- jus accrescendi - The right of survivorship.
- Jus ad rem - a term of the civil law, meaning "a right to a thing" -- distinguished from *jus in re* which is a complete and absolute dominion over a thing available against all persons.
- jus aedilium/ius aedilium
- Jus Aelianum: A body of laws drawn up by Sextus Aelius, and consisting of three parts, wherein were explained, respectively: (1) The laws of the Twelve Tables; (2) the interpretation of and decisions upon such laws; and (3) the forms of procedure. In date, it was subsequent to the Ius Flavianum.
- Jus aesneciae: The right of primogeniture.
- jus albanagii: The right of confiscation of property of an alien, cf droit d'aubaine (ius Albinatus).
- Jus Albinatus: In old French law. The droit d'aubaine in France, whereby the king, at an alien's death, was entitled to all his property, unless he had peculiar exemption. Repealed by the French laws In June, 1791. cf:
    - Albanagium -- in old French law. The state of alienage; of being a foreigner or alien.
    - Albanus -- in old French law. A stranger, alien, or foreigner.
    - Albinatus -- in old French law. The state or condition of an alien or foreigner.
- ius angariae - The right of angary, i.e. in international law, the right of a belligerent to seize neutral ships in its territory and use them for transportation, should the need arise. Also, the right of a belligerent to seize, use, or destroy property of neutral states located temporarily in its territory or that of the enemy.
- Jus anglorum. The laws and customs of the West Saxons, in the time of the Heptarchy, by which the people were for a long time governed, and which were preferred before all others. Wharton.
- Jus aquaeductus: In the civil law, the name of a servitude which gives to the owner of land the right to bring down water through or from the land of another.
- Jus Banci. In old English law, the right of bench - the right or privilege of having an elevated and separate *seat of judgement*, anciently allowed only to the king's judges, who hence were said to administer *high* justice, (*summmam administrant justitiam*.) Blount.
- Jus belli. The law of war - the law of nations as applied to a state of war, defining in particular the rights and duties of the belligerent powers themselves, and of neutral nations.
  The right of war; that which may be done without injustice with regard to an enemy. Grotius de Jure Belli, lib. 1. c. 1. section 3.
    - jus bellum dicendi: the right of proclaiming war.
- Jus canonicum: the Canon law.
- ius civile: In Roman law, the laws resulting from statutes and decrees governing the citizenry, as elaborated by the commentators of Roman law. According to the distinction employed by Gaius, the ius civile is the law applied only to Roman citizens; foreigners or between Romans and foreigners were governed by the ius gentium.
- Jus civile: Civil law. The system of law peculiar to one state or people. Inst 1, 2, 1. Particularly, in Roman law, the civil law of the Roman people, as distinguished from the jus gentium. The term is also applied to the body of law called, emphatically, the "civil law."

The *jus civile* and the *jus gentium* are distinguished in this way. All people ruled by statutes and customs use a law partly peculiar to themselves, partly сошшоп to all men. The law each people has settled for itself is peculiar to the state itself, and is called *jus civile*, as being peculiar to that very state. The law, again, that natural reason has settled among all men—the law that is guarded among all peoples quite alike—is called the *jus gentium,* and all nations use it as if law. The Roman people, therefore, use a law that is partly peculiar to itself, partly common to all men. Hunter, Rom. Law, 38.\

But this is not the only, or even the general, use of the words. What the Roman jurists had chiefly in view, when they spoke of *jus civile,* was not local as opposed to cosmopolitan law, but the old law of the city as contrasted with the newer law introduced by the praetor, (*jus prætorium, jus honorarium*.) Largely, no doubt, the jus gentium corresponds with the jus honorarium: but the correspondence is not perfect. Id. 39.

- Jus civile est quod sibi populus oonstituit. The civil law is what a people establishes for itself. Inst. 1, 2, 1; Jackson v. Jackson, 1 Johns. (N.Y.) 424, 426.

- Ius civitatus: The right of citizenship; the freedom of the city of Rome. It differs from jus quiritium, which comprehended all the privileges of a free native of Rome. The difference is much the same as between "denization" and "naturalization". Wharton.
- Jus cloacae. In the civil law, the right of swerage or drainage. An easement consisting in the right of having a swer, or conducint surface water, through the house or over the ground of one's neighbor. Macheld. Rom. Law, Section 317.
- Ius commune. In the civil law, Common right; the common and natural rule of right, as opposed to jus singulare. Mackeld. Rom. Law, Section 196.

  In English law: the common law, answering to the Saxon *folcright,* 1. Bl. Comm. 67.
- Jus constitui oportet in his quae ut plurimum accidunt non quae ex inopinato. Laws ought to be made with a view to those cases which happen most frequently, and not to those which heppen most frequently, and not to those which are of rare or accidental occurrence. Dig. 1, 3, 3; Broom, Max. 43.
- Jus coronae. In English law. The right of the crown, or to the crown; the right of succession to the throne. 1 Bl. Comm. 191; 2 Steph. Comm. 434.
- Jus cudendae monetae. In old English law, the right of coining money. 2 How. State Tr. 118.
- Jus curialitatis. In English law, the right of curtesy. Spelman.
- Jus dare. To give or to make the law; the frunction and prerogative of the legilsative department.
- Jus deliberandi. In the civil law. The right of deliberating. A term granted by the proper officer at the request of him who is called to the inheritance, (the heir,) within which he has the right to investigate its condition and to consider whether he will accept or reject it. Mackeld. Rom. Law, § 742; Civ. Code La. art. 1028.
- Jus descendit, et non terra. A right descends, not the land. Co. Litt, 345.
- Jus devolutum. The right of the church of presenting a minister to a vacant parish, in case the patron shall neglect to exercise his right within the time limited by law.
- Jus dicere. To declare the law; to say what the law is. The province of a court or judge. 2 Eden, 29; 3 P. Wins. 485.
- Jus disponendi. The right of disposing (of a thing owned) -- an attribute of dominium, or ownership.
- Jus dividendi. The right of disposing of realty by will. Du Cange.
- Jus duplicatum. A double right; the right of possession united with the right of property; otherwise called "droit-droit." 2 Bl. Comm. 199.
- ius edicendi - The right enjoyd by curule magistrates (i.e., aediles, praetors, quastors and governors of provinces) to make edicts respecting their sphere of jurisdiction ("ius edicere").
- Jus est ars boni et aequi. Law is the science of what is good and Just. Dig. 1, 1, 1, 1; Bract, fol. 2b.
- Jus est norma recti; et quicquid est contra normam recti est injuria. Law is a rule of right; and whatever is contrary to the rule of right is an injury. 3 Bulst. 313.

- Jus et fraus numquam cohabitant. Right and fraud never dwell together. 10 Coke, 45a. Applied to the title of a statute. Id. ; Best, Ev. p. 250, Section 205.
- Jus et injuria non oritur. A right does (or can) not rise out of a wrong. Broom, Max. 738. note; 4 Bing. 639.
- Jus Falcani. In old English law. The right of mowing or cutting. Fleta, lib. 4, c. 27, § 1.
- Jus feciale. In Roman law. The law of arms, or of heralds. A rudimentary species of international law founded on the rights and religious ceremonies of different peoples.
- Jus fiduciarium. In the civil law, a right in trust; as distinguished from jus legitimum, a legal right. 2 Bl. Comm. 328.
- Jus Flavianum. In old Roman law, a body of laws drawn up by Cneius Flavius, a clerk of Appius Claudius, from the materials to which he had access. It was a popularization of the laws. Mackeld. Rom. Law §39.
- Jus fluminum. In the civil law, the right to the use of rivers. Loce. de Jure Mar. lib. 1, c, 6.
- Jus fodiendi. In the civil and old English law, a right of digging on another's land. Inst. 2, 3, 2; Bract. fol. 222.
- Ius fruendi. Another attribute of dominium, or ownership: the right or power to reap fruits or profits, as by harvesting crops or taking rents from the property.
- Jus futurum: In the civil law. A future right; an inchoate, incipient, or expectant right, not yet fully vested. It may be either *jus delatum,* when the subsequent acquisition or vesting of it depends merely on the will of the person in whom it is to vest, or *jus nondum delatum,* when it depends on the future occurrence of other circumstances or conditions. Mackeld. Rom. Law, § 191.
- Jus gentium: The law of nations. That law which natural reason has established among all men Is equally observed among all nations, and is called the *law of nations," as being the law which all nations use. Inst 1, 2, 1; Dig. 1, 1, 9; 1 Bl. Comm. 43; 1 Kent, Comm. 7; Mackeld. Rom. Law, § 125.*

  Although this phrase had a meaning in the Roman law which may be rendered by our expression "law of nations," it must not be understood as equivalent to what we now call "international law," its scope being much wider. It was originally a system of law, or more properly equity, gathered by the early Roman lawyers and magistrates from the common ingredients in the customs of the old Italian tribes.—those being the nations, gentes, whom they had opportunities of observing,—to be used in cases where the *jus civile* did not apply; that is, in cases between foreigners or between a Roman citizen, and a foreigner. The principle upon which they proceeded was that any rule of law which was common to all the nations they knew of must be intrinsically consonant to right reason, and therefore fundamentally valid and just. From this it was an easy transition to the converse principle, viz., that any rule which instinctively commended itself to their sense of justice and reason must be a part of the *jus gentium*. And so the latter term came eventually to be about synonymous with "equity" (as the Romans understood it.) or the system of praetorian law.

  Modern jurists frequently employ the term *ius gentium privatum* to denote private international law, or that subject which is otherwise styled the "conflict of laws"; and *ius gentium publicum* for public international law, or the system of rules governing the intercourse of nations with each other as persons.

  Ius gentium. In early Roman law, the law followed by all peoples, closely akin to the ius naturale. From this universal sense, used more specifically to describe the international law that governed Rome's relationship with other states. Following the works of Gaius, the term was employed more narrowly to represent the law that applied among, foreigners, and among Romans and foreigners. Foreigners, and the legal relations of Romans with them, were governed by the ius gentium.
- ius gladii: The right of the sword; the executory power of the law; the right, power, or prerogative of punishing for crime. 4 Bl. Comm. 177.
- ius habendi: The right to have a thing. The right to be put in actual possession of property. Lewin, Trusts, 585.

  ius habendi et retinendi. A right to have and to retain the profits, tithes, and offerings, etc., of a rectory or parsonage.
- ius haereditatis - The right of inheritance.

- ius hauriendi - In the civil and old English law. The right of drawing water. Fleta, lib. 4, c. 27, 5 1.
- ius honorarium - The body of Roman law, which was made up of edicts of the supreme magistrates, particularly the praetors.
- ius imaginis - In Roman law. The right to use or display pictures or statutes of ancestors; somewhat analogous to-the right, in English law, to bear a coat of arms.
- ius immunitatis - In the civil law. The law of immunity or exemption from the burden of public office. Dig. 50, 6.
- ius in personam - A right against a person; a right which gives its possessor a power to oblige another person to give or procure, to do or not to do, something.
- ius in re - "a right in a thing" -- contrast jus ad rem.

  Jus in re propria, denoting full ownership; distinguished from *jus in re aliena*, a mere easement

  ius in re inhaerit ossibus usufructarii. A right in the thing cleaves to the person of the usufructuary.
- ius incognitum. An unknown law. This term is applied by the civilians to obsolete laws. Bowyer, Mod. Civil Law. 33.
- ius individuum. An individual or Indivisible right; a right incapable of division. 36 Eng. Law & Eq. 25.
- ius italicum. A term of the Roman law descriptive of the aggregate of rights, privileges, and franchises possessed by the cities and inhabitants of Italy, outside of the city of Rome, and afterwards extended to some of the colonies and provinces of the empire, consisting principally in the right to have a free constitution, to be exempt from the land tax, and to have the title to the land regarded as Quiritian property. See Gibbon, Rom. Emp. c. xvii ; Mackeld. Rom. Law, § 43.

  [[Jus jurandi forma verbii differt, re convenit; hunc enim sensum habere debet: ut Deus invecetur. Grot, de Jur. B., 1. 2, e. 13, § 10. The form of taking an oath differs in language, agrees in meaning; for it ought to have this sense: that the Deity is invoked.
- ius Latii: In Roman law. The right of Latium or of the Latins. The principal privilege of the Latins seems to have been the use of their own laws, and their not being subject to the edicts of the praetor, and that they had occasional access to the freedom of Rome, and a participation in her sacred rites. Butl. Hor. Jur. 41.
- ius Latium - a rule of law applicable to magistrates in Latium.
- ius legitimum - A legal right In the civil law. A right which was enforceable In the ordinary course of law. 2 Bl. Comm. 328.
- ius mariti - The right of a husband; especially the right which a husband acquires to his wife's movable estate by virtue of the marriage. 1 Forb. Inst. pt. 1, p. 63.
- ius merum - In old English law. Mere or bare right; the mere right of property in lands, without either possession or even the right of possession. 2 Bl. Comm. 197; Bract fol. 23.
- Ius naturae. Literally, “the law of nature.” In Roman law, a near synonym for ius naturale -- a law that is supported by natural reason, and so a law that is, or ought to be, respected by the laws of all nations. Thus, the ius naturae was said to support the ius gentium in its universal sense. However, even this relationship is not always congruent: famously, in the introduction to Justinian’s Institutes, slavery is forbidden by nature but allowed by the ius gentium. Even so, there was the general sense, seized on increasingly from Roman writings throughout the Renaissance and early modern age, that civil law was to reflect the obligations of natural law, especially when natural law required freedom.
- ius naturale - The natural law, or law of nature; law or legal principles, supposed to be discoverable by the light of nature or abstract reasoning, or to be taught by nature to all nations and men alike; or law supposed to govern men and peoples in a state of nature i.e. in advance of organized governments or enacted laws. This conceit originated with the philosophical Jurists of Rome, and was gradually extended until the phrase came to denote a supposed basis or substratum common to all systems of positive law, and hence to be found, in greater or less purity, in the laws of all nations. And, conversely, they held that if any rule or principle of law was observed in common by all peoples with whose systems they were acquainted, it must be a part of the *ius naturale*, or derived from it. Thus

the phrases "jus naturale" and "jus gentium" came to be used Interchangeably.

As the Roman jurist Ulpian said, “that which nature taught all animals.” For most writings of classical Roman law, synonymous with ius naturae. From the writings of Paul, however, the term ius naturale acquired the sense of an ideal of law, quod semper est bonum et aequum -- that which is always fair and just. This sense is followed in the Thomist conceptions of natural law, or lex naturalis.

> ius naturale est quod apud homines eandem habet potentiam. Natural right is that which has the same force among all mankind. 7 Coke, 12.

- ius navigandi - The right of navigating or navigation; the right of commerce by ships or by sea. Locc. de Jure Mar. lib. 1, c. 3.
- ius necis - In Roman law. The right of death, or of putting to death. A right which a father anciently had over his children.
- Jus non habenti tute non paretur. One who has no right cannot be safely obeyed. Hob. 146.
- Jus non patitur ut Idem bis solvatur. Law does not suffer that the same thing be twice paid.
- ius non scriptum - The unwritten law. 1 Bl. Comm. 64. .
- ius offerendi - In Roman law, the right of subrogation, that is, the right of succeeding to the lieu and priority of an elder creditor on tendering or paying into court the amount due to him. See Mackeld. Rom. Law, § 355.
- ius papirianum - The civil law of Papirius. The title of the earliest collection of Roman leges curiatae, said to have been made in the time of Tarquin, the last of the kings, by a pontifix maximus of the name of Sextus or Publius Papirius. Very few fragments of this collection now remain, and the authenticity of these has been doubted. Mackeld. Rom. Law, § 21.
- ius pascendi In the civil and old English law. The right of pasturing cattle. Inst. 2, 3, 2; Bract, fols. 53&, 222.
- ius patronatus - In English ecclesiastical law. The right of patronage; the right of presenting a clerk to a benefice. Blount.

  > A commission from the bishop, where two presentations are offered upon the same avoidance, directed usually to his chancellor and others of competent learning, who are to summon a jury of six clergymen and six laymen to inquire into and examine who is the rightful patron. 3 Bl. Comm. 246; 3 Steph. Comm. 517.

- ius personarum - rights of persons. Those rights which, in the civil law, belong to persons as such, or in their different characters and relation; as parents and children, masters and servants, etc.
- ius poenitendi - In Roman law, the right of rescission or revocation of an executory contract on failure of the other party to fulfill his part of the agreement. See Mackeld. Rom. Law, § 444.
- ius portus - In maritime law. The right of port or harbor.
- ius possessionis - The right of possession.
- Ius possidendi. One of the attributes of dominium, or ownership: the right or power to possess the property.
- ius postliminii - In the civil law. The right of postliminy, i.e. the right or claim of a person who had been restored to the possession of a thing, or to a former condition, to be considered as though he had never been deprived of it Dig. 49, 15, 5 ; 3 Bl. Conim. 107, 210.

  > -In International law. The right by which property taken by an enemy, and recaptured or rescued from him by the fellow- subjects or allies of the original owner, is restored to the latter upon certain terms. 1 Kent, Cornm. 108.

- ius praesens - In the civil law. A present or vested right ; a right already completely acquired. Mackeld. Rom. Law, §191.
- ius praetorium - In the civil law. The discretion of the prietor, as distinct from the leges, or standing laws. 3 Bl. Comm. 49. That kind of law which the praetors introduced for the purpose of aiding, supplying, or correcting the civil law for the public benefit. Dig. 1, 1, 7. Called, also, jus honorarium.
- ius precarium - In the Civil law. A right to a thing held for another, for which there was no remedy by legal action, but only by entreaty or request. 2 Bl. Comm. 328.

- ius presentationis - The right Of presentation.
- ius privatum - Private law; the law regulating the rights, conduct, and affairs of individuals, as distinguished from "public" law, which relates to the constitution and functions of government and the administration of criminal justice. See Mackeld. Rom. Law. 124. Also private ownership, or the right, title, or dominion of a private owner, as distinguished from *ius publicum*, which denotes public ownership, or the ownership of property by the government, either as a matter of territorial sovereignty or in trust for the benefit and advantage of the general public. In this sense, a state may have a double right in given property, e.g., lands covered by navigable waters within its boundaries, including both *ius publicum*, a sovereign or political title, and *ius privatum*, a proprietary ownership. See Oakland v. Oakland Water Front Co., 118 Cal. 160, 50 Pac. 277.
- Ius prohibendi. An attributes of dominium, or ownership: the right or power to prohibit others from using the property, whether by possession alone or by growing or harvesting crops or using or taking rents from the property.
- ius projiciendi - In the civil law. The name of a servitude which consists in the right to build a projection, such as a balcony or gallery, from one's house in the open space belonging to one's neighbor, but without resting on his house. Dig. 50, 10, 242; Id. 8, 2, 2; Mackeld. Rom. Law, § 317.
- ius proprietatis - The right of property, as distinguished from the ius possessionis, or right of possession. Bract, fol. 3. Called by Bracton "jus merum," the mere right Id.; 2 Bl. Comm. 197; 3 Bl. Comm. 19, 176.
- ius protegendi - In the Civil law. The name of a servitude. It is a right by which a part of the roof or tiling of one house is made to extend over the adjoining house. Dig. 50, 16, 242, 1; Id. 8, 2, 2П; Id. 8, 5, 8, 5.
- ius publicum - Public law, or the law relating to the constitution and functions of government and its officers and the administration of criminal justice. Also public ownership, or the paramount or sovereign territorial right or title of the state or government. See Jus Privatum.

  > Jus publicum et privatum quod ex naturalibus praeceptis aut gentium aut civilibus est collectum; et quod in jure scripto jus appellatur, id in lege Angliae rectum esse dicitur. Co. Litt. 185. Public and private law is that which is collected from natural principles, either of nations or in states; and that which in the civil law is called "ius," In the law of England is said to be "right."
  >
  > Jus publicum privatorum pactis mutari non potest. A public law or right cannot he altered by the agreements of private persons.
- ius quaesitum - A right to ask or recover; for example, in in obligation there is a binding of the obligor, and a jus quaesitum in the obligee. 1 Bell, Comm. 32:!.
- ius Quiritium - The old law of Rome, that was applicable originally to patricians only, and, under the Twelve Tables, to the entire Roman people, was so called. In contradistinction to the ius praetorium, or equity. Brown.

  > ius quo universitatis utuntur est idem quod habent privati. The law which governs corporations is the same which governs Individuals. Foster v. Essex Bank, 16 Mass. 265, 8 Am. Dec. 135.
- ius recuperandi -- The right of recovering [lands.]
- ius relictae - In Scotch law. The right of a relict; the right or claim of a relict or widow to her share of her husband's estate, particularly the movables. 2 Kames, Eq. 340; 1 Forb. Inst. pt. 1, p. 67.
- ius representationis - The right of representing or standing in the place of another, or of being represented by another.
- ius rerum - The law of things. The law regulating the rights and powers of persons over things; how property is acquired, enjoyed, and transferred.
- Jus respicit aequitatem - Law regards equity. Co. Litt 24b; Broom, Max. 151.
- ius scriptum In Roman law. Written law. Inst. 1, 2, 3. All law that was actually committed to writing, whether it had originated by enactment or by custom, in contradistinction to such parts of the law of custom as were not committed to writing. Mackeld. Rom. Law, § 126.

-In English law. Written law, or statute law, otherwise called "lex scripta," as distinguished from the common law, "lex non scripta." 1 Bl. Comm. 62.

- ius singulare In the civil law. A peculiar or individual rule, differing from the *ius commune*, or common rule of right, and established for some special reason. Mackeld. Rom. Law, §196.
- ius stapulae - In old European law. The law of staple: the right of staple. A right or privilege of certain towns of stopping imported merchandise, and compelling it to be offered for sale in their own markets. Locc. de Jure Mar. lib. 1, c. 10.
- ius strictum - "Strict law;" law interpreted without any modification, and in its utmost rigor.
- Jus superveniens auctori accrescit sueccessori. A right growing to a possessor accrues to the successor. Halk. Lat. Max. 76.
- ius tertii - The right of a third party. A tenant, bailee, etc., who pleads that the title is in some person other than his landlord, bailor, etc., Is said to set up a ius tertii.

  ius testamentorum pertinet ordinario. Y. B. 4 Hen. VII., 13b. The right of testaments belongs to the ordinary.
- ius tripertitum - In Roman law. A name applied to the Roman law of wills, in the time of Justinian, on account of its threefold derivation, viz., from the praetorian edict, from the civil law, and from the imperial constitutions. Maine, Anc. Law, 207.

  Jus triplex est,—proprietatis, possessionis, et possibilitatis. Right is threefold.—of property, of possession, and of possibility.
- ius trium liberorum - In Roman law. A right or privilege allowed to the parent of three or more children. 2 Kent Comm. 85; 2 Bl. Comm. 247. These privileges were an exemption from the trouble of guardianship, priority in bearing offices, and a treble proportion of corn. Adams, Rom. Ant. (Am. Ed.) 227,
- ius utendi - The right to use property without destroying its substance. Employed in contradistinction to ius abutendi.
- ius venandi et piscandi - The right of hunting and fishing.
- [[ius vendit quod usus approbavit. Ellesm. Postn. 35. The law dispenses what use has approved.
- jusjurandum - Lat. An oath. .

  jusjurandum inter alios factum nec nocere nec prodesse debet. An oath made between others ought neither to hurt nor profit. 4 Inst. 279.

References

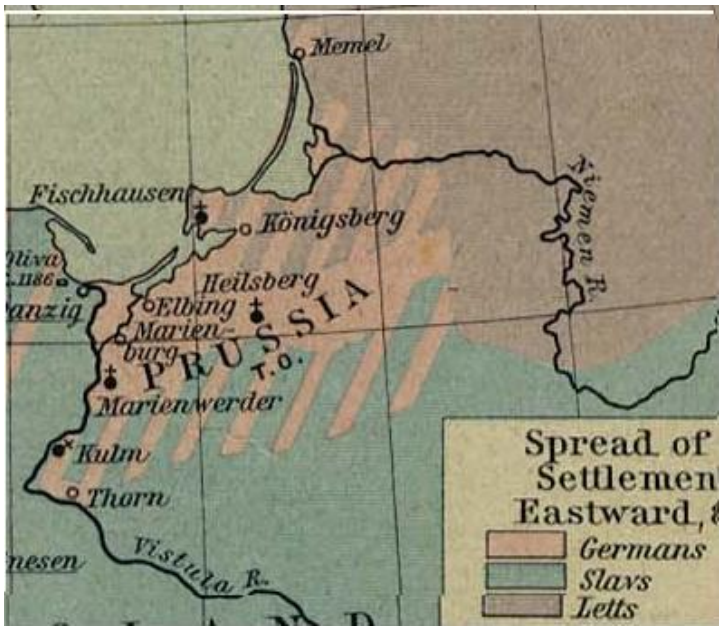
- Black's Law Dictionary (Second Edition 1910) (public domain) [1]

References

[1] http://books.google.com/books?id=R2c8AAAAIAAJ&dq=second+edition+of+Black's+Law+Dictionary+(1910)&as_brr=1&source=gbs_navlinks_s

Ius indigenatus

Ius indigenatus (Latin for "right of local birth") is a right which was from 15th to 18th century a requirement for people to hold office in Prussia. It limited offices and land ownership to local Prussian natives. i. e. persons from the Monastic state of the Teutonic Knights as of 1453.



A cropped image of Prussia from "Spread of German settlements to the Eastward, 800-1400". (Full map. [1])

When the Prussian cities (some of them Hanseatic league members) and gentry (many of German origin) seceded from the Order in 1454, it was, along with Danzig's privileges, a prerequisite for a personal union with the King of Poland. It was confirmed in 1466 by the Second Peace of Thorn which secured a large decree of autonomy for Royal Prussia. The Prussian Ius indigenatus was valid for both parts of Prussia separated in 1466, the western part, later called Royal Prussia, and the eastern part, from 1525 the Duchy of Prussia, later East Prussia.

At times this Prussian birth right (nationality), has been frequently ignored by the Polish side in later centuries.

In Silesia, the Silesian Ius indigenatus was customary as well.

See also

- Jus soli
- Jus sanguinis
- Indygenat

References

- Karin Friedrich, *The Other Prussia. Royal Prussia, Poland and Liberty, 1569–1772*, Cambridge, 2000, ISBN 0-521-58335-7 [2]
- Michael G. Müller, *Zweite Reformation und Städtische Autonomie im Königlichen Preußen. Danzig, Elbing und Thorn in der Epoche der Konfessionalisierung (1557–1660)*, Berlin 1998, ISBN 3-050-03215-4
- Hans-Jürgen Bömelburg, *Zwischen polnischer Ständegesellschaft und preußischem Obrigkeitsstaat. Vom Königlichen Preußen zu Westpreußen (1756–1806)*, München 1995, ISBN 3-486-56127-8

References

[1] http://www.lib.utexas.edu/maps/historical/shepherd/german_settlements_800_1400.jpg
[2] http://books.google.com/books?id=qsBco40rMPcC&printsec=frontcover&dq=Karin+Friedrich&sig=La5qpteGE0_d6TaRrfbm4GfBZFM#PPA26,M1

Ius Latium

ius Latium, in Roman law, was a rule of law applicable to magistrates in Latium. It was either majus Latium or minus Latium,—the majus Latium raising to the dignity of Roman citizen not only the magistrate himself, but also his wife and children; the minus Latium raising to that dignity only the magistrate himself.

See also

- Ius
- Ius Latii
- Ius Quiritium

References

- Black's Law Dictionary (Second Edition 1910) (public domain) [1]

Ius civile

Ius civile is Latin for "citizen law" (originally *ius civile Quiritium*). It was the body of common laws that applied to Roman citizens and the *Praetores Urbani*, the individuals who had jurisdiction over cases involving citizens.

See also

- *ius gentium*
- *ius naturale*
- Roman law

Ius in re

ius in re, in the civil law, means a "right in a thing" -- i.e. a right existing in a person with respect to an article or subject of property, inherent in his relation to it, implying complete ownership with possession, and available against all the world. Compare jus ad rem.

> Jus in re propria. The right of enjoyment which is incident to full ownership or property, and is often used to denote the full ownership or property itself. It is distinguished from *jus in re aliena*, which is a mere easement or right in or over the property of another.
>
> ius in re inhaerit ossibus usufructarii. A right in the thing cleaves to the person of the usufructuary.

See also

- Ius

References

- Black's Law Dictionary (Second Edition 1910) (public domain) [1]

Ius naturale

Ius naturale is Latin for "natural law", the laws common to all beings. Roman jurists wondered why the *ius gentium* (the laws which applied to foreigners and citizens alike) was in general accepted by all people living in the Empire. Their conclusion was that these laws made sense to a reasonable person and thus were followed. All laws which would make sense to a normal person were called *ius naturale*.

Slavery for example was part of the empire-wide *ius gentium* because slavery was known and accepted as a fact in all parts of the known world, nevertheless slavery does not make sense to a reasonable person. Forcing people to work for others was not natural. So, slavery was part of the *ius gentium* but not of the *ius naturale*. The *ius naturale* of the Roman jurists is not the same as implied by the modern sense of natural law as something derived from pure reason. As Sir Henry Sumner Maine puts it, "it was never thought of as founded on quite untested principles. The notion was that it underlay existing law and must be looked for through it".[1]

See also

- Roman law
- *ius civile*
- *ius gentium*

References

[1] Sir Henry Sumner Maine, *Ancient Law*, 10th ed., p. 67

Ius non scriptum

Ius non scriptum is Latin for "unwritten law". It contrasts with the *ius scriptum* ("written law") by way of their sources (e.g. a legislature, court judgments, or custom). The *ius non scriptum* was the body of common laws that arose from customary practice. It had become binding over time.

See also

- Roman law
- *ius scriptum*

Ius privatum

Ius privatum is Latin for private law. Contasted with *ius publicum* (the laws relating to the state), *ius privatum* regulated the relations between individuals. In Roman law this included personal, property and civil law. Judicial proceeding was a private process (*iudicium privatum*). Criminal law was also considered private matters, except where the crimes were particularly severe.

Lex Aquilia

The *lex Aquilia* was a plebiscite which codified the law on damage to person and property through a particular fault. It is a forerunner of the modern law of tort.

Stipulatio

Stipulatio was the basic form of contract in Roman law. It was made in the format of question and answer. The precise nature of the contract was disputed, as can be seen below.

Vindicatio

Rei vindicatio is a legal action by which the plaintiff demands that the defendant return a thing that belongs to the plaintiff. It may only be used when plaintiff owns the thing, and the defendant is somehow impeding the plaintiff's possession of the thing. The plaintiff could also institute an *actio furti* (a personal action) in order to punish the defendant. If the thing could not be recovered, the plaintiff could claim damages from the defendant with the aid of the *condictio furtiva* (a personal action). With the aid of the *actio legis Aquiliae* (a personal action), the plaintiff could claim damages from the defendant. *Rei vindicatio* was derived from the ius civile, therefore was only available to Roman citizens.

See also

- Roman law
- *ius publicum*
- *Privatus*

Ius publicum

Ius publicum is Latin for public law. It is to protect the interests of the Roman state (while *ius privatum* (private law) concerned relations between individuals).Public law will only include some areas of private law close to the end of the Roman state.

Ius publicum was used also to describe obligatory legal regulations, such as *ius cogens*, which is now a term used in public international law meaning basic rules which cannot (or should not) be broken, or contracted out of. Regulations that can be changed are called today *ius dispositivum*, and they are used when party shares something and are not in opposition.

See also

- Roman law

Ius scriptum

Ius scriptum is Latin for "written law". *Ius scriptum* was the body of statute laws made by the legislature. The laws were known as *leges* ("laws") and *plebiscita* ("plebiscites" which came from the Plebeian Council). Roman lawyers would also include in the *ius scriptum*:

- The edicts of magistrates (*magistratuum edicta*),
- The advice of the Senate (*Senatus consulta*),
- The responses and thoughts of jurists (*responsa prudentium*), and
- The proclamations and beliefs of the emperor (*principum placita*).

Ius scriptum was contrasted with *ius non scriptum*, the body of common laws that arose from customary practice and had become binding over time.

See also

- Roman law
- *ius non scriptum*

Ius singulare

Ius singulare is Latin for "singular law". It was special law for certain groups of people, things, or legal relations (because of which it is an exception from the general principles of the legal system). An example of this is the law about wills written by people in the military during a campaign, which are exempt of the solemnities generally required for citizens when writing wills in normal circumstances.

It contrasts with the *ius commune*, the general, ordinary law. As Roman law evolved into modern legal systems, the concept of *ius singulare* was abandoned and *ius commune* was applied to all cases.

See also

- Roman law
- Palm Sunday Compromise

Ius strictum

ius strictum means "strict law"; law interpreted without any modification, and in its utmost rigor. It is a very rare term in the materials of classical Roman law;it is really a Byzantine term, occurring in Justinian's Institutes in reference to the strict actions of the law, primarily describing the rigid limitations of the forms of action available under the law, particularly the older laws. Often used by later commentators to distinguish it from the moderating influence of the praetors, or judges who expanded the law through actions ex fide bona, or what we would now call equity.

See also

- Ius

References

- Black's Law Dictionary (Second Edition 1910) (public domain) [1]

Ius utendi

ius utendi, a term in civil law and Roman law, is an attribute of dominium (ownership): the right or power to use the property -- particularly by residing there -- without destroying its substance. It is employed in contradistinction to the jus abutendi.

See also

- Ius

References

- Black's Law Dictionary (Second Edition 1910) (public domain) [1]

Jactitation

Jactitation is a word stemming from the Latin *iactare*, to throw.

Legal jactitation

In English law, jactitation is the maliciously boasting or giving out by one party that he or she is married to the other.

In such a case, in order to prevent the common repudiation of their marriage that might ensue, the procedure is by suit of jactitation of marriage, in which the petitioner alleges that the respondent boasts that he or she is married to the petitioner, and prays a declaration of nullity and a decree putting the respondent to perpetual silence thereafter. To the suit there are three defences:

1. denial of the boasting;
2. the truth of the representations;
3. allegation (by way of estoppel) that the petitioner acquiesced in the boasting of the respondent.

In Thompson v. Rourke, 1893, Prob. 70, the Court of Appeal laid down that the court will not make a decree in a jactitation suit in favour of a petitioner who has at any time acquiesced in the assertion of the respondent that they were actually married.

Prior to 1857 such a proceeding took place only in the Ecclesiastical Court, but by express terms of the Matrimonial Causes Act 1857 it could be brought in the probate, divorce and admiralty division of the High Court. The right to petition for jactitation of marriage was abolished by Section 61 of the Family Law Act 1986.

In addition, this term may refer to acts such as slander of title or other similar misrepresentations of the ownership of physical or intellectual property.

Physical jactitation

Jactitation is an archaic medical term (derived, perhaps as a corruption, from "jactation", meaning a restless tossing and turning of the body, and derived itself from Latin *jactare* or *jacere*, both meaning "to throw or hurl") referring to the involuntary spasm of a limb, muscle, or muscle group. This is sometimes seen in fever patients or other situations of physical distress, but may occur in healthy individuals in a hypnogogic state. This hypnagogic jactitation often occurs in the legs, and may occasion a short explanatory dream about stumbling or missing the bottom stair.

Judgment non obstante veredicto

Civil procedure in the United States

- *Federal Rules of Civil Procedure*
- *Doctrines of civil procedure*
- Jurisdiction
  - Subject-matter jurisdiction
  - Diversity jurisdiction
  - Personal jurisdiction
  - Removal jurisdiction
- Venue
  - Change of venue
  - *Forum non conveniens*
- Pleadings and motions
  - Service of process
  - Complaint
    - Cause of action
    - Case Information Statement
    - Class action
      - Class Action Fairness Act of 2005
  - Demurrer
  - Answer
    - Affirmative defense
  - Reply
  - Counterclaim
  - Cross-claim
  - Joinder
    - Indispensable party
  - Impleader
  - Interpleader
  - Intervention
- Pre-trial procedure
  - Discovery
  - Interrogatories
  - Depositions
  - Request for Admissions
- Resolution without trial
  - Default judgment
  - Summary judgment
  - Voluntary dismissal
  - Involuntary dismissal
  - Settlement

- Trial
  - Parties
    - Plaintiff
    - Defendant
  - Jury
    - Voir dire
  - Burden of proof
  - Judgment
    - Judgment as a matter of law (JMOL)
    - Renewed JMOL (JNOV)
    - Motion to set aside judgment
    - New trial
    - Remedy
      - Injunction
      - Damages
      - Attorney's fees
        - American rule
        - English rule
      - Declaratory judgment
- Appeal
  - Mandamus
  - Certiorari

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Judgment notwithstanding the verdict, also called judgment ***non obstante veredicto***, or **JNOV**, is a type of judgment as a matter of law (JMOL) that is ordered at the conclusion of a jury trial.

JNOV is the practice in American courts whereby the presiding judge in a civil jury trial may overrule the decision of a jury and reverse or amend their verdict. In literal terms, the judge enters a verdict notwithstanding the jury findings. This intervention, often requested but rarely granted, permits the judge to exercise discretion to avoid extreme and unreasonable jury decisions.[1]

Because of the guaranteed right against double jeopardy in United States criminal cases, a judge is not allowed to enter a JNOV of "guilty" following a jury acquittal. However, if the judge grants a motion to set aside judgment after the jury convicts, this may be reversed on appeal by the prosecution, as the verdict was different previously.

A JNOV is appropriate only if the judge determines that no reasonable jury could have reached the given verdict. For example, if a party enters no evidence on an essential element of their case, and the jury still finds in their favor, the court may rule that no reasonable jury would have disregarded the lack of evidence on that key point and reform the judgment.

Reversal of a jury's verdict by a judge occurs when the judge believes that there were insufficient facts on which to base the jury's verdict, or that the verdict did not correctly apply the law. This procedure is similar to a situation in which a judge orders a jury to arrive at a particular verdict, called a directed verdict. In fact, a judgment notwithstanding the verdict is occasionally made when a jury refuses to follow a judge's instruction to arrive at a certain verdict.[2]

References

[1] Rule 50(b). Federal Rules of Civil Procedure.
[2] Rule 50(a). Federal Rules of Civil Procedure.

Juris privati

In legal Latin, **juris privati** means "of private right; not clothed with a public interest." Contrast juris publici.

References

- Munn v Illinois, 94 US 113
- The History of the Common Law of England By Matthew Hale, Charles Runnington [1]

References

[1] http://books.google.com/books?id=96oDAAAAQAAJ&pg=RA1-PA41&dq=juris+privati&lr=&ei=EetXSueIDofkygS_i6GrBw

Jus gladii

In Latin **jus (ius) gladii** literally means "the right of the sword", referring to the legal authority of an individual or group to execute someone for a capital offense.

Example

According to the New Testament account of the death of Jesus, the Jewish leaders had the right to imprison someone within their territory, but only the Roman rulers were permitted to claim *jus gladii*. Therefore, Jesus had to be brought up for judgment before the Romans in order for an execution to be legal.

Jus accrescendi

ius accrescendi: In Roman law, the right of survivorship -- i.e. the right of the survivor or survivors of two or more joint tenants to the tenancy or estate, upon the death of one or more of the Joint tenants.

- Jus accrescendi inter mercatores, pro benefio commercii, locum non habet. The right of survivorship has no place between merchants, for the benefit of commerce. Co. Litt. 182(1 ; 2 Story, Eq. Jur. | 1207; Broom, Max. 455. There is no survivorship in cases of partnership, in contrast to joint-tenancy. Story, Partn. § 00.
- Jus accrescendi praefertur oneribus - The right of survivorship is preferred to incumbrances. Co. Litt. 185o. Hence no dower or courtesy can be claimed out of a joint estate. 1 Steph. Comm. 316.
- Jus accrescendi praefertur ultima voluntati. The right of survivorship is preferred to the last will. Co. Litt 1856. A devise of one's share of a joint estate, by will, is no severance of the jointure; for no testament takes effect till after the death of the testator, and by such death the right of the survivor (which accrued at the original creation of the estate, and has therefore a priority to the other) is already vested. 2 Bl. Comm. 18(i; 3 Steph. Comm. 316.

See also

Ius

References

- Black's Law Dictionary (Second Edition 1910) (public domain) [1]

Jus ad rem

Jus ad rem is a Latin term of the civil law, meaning "a right to a thing:" that is, a right exercisable by one person over a particular article of property in virtue of a contract or obligation incurred by another person in respect to it and which is enforceable only against or through such other person. It is thus distinguished from *jus in re* which is a complete and absolute dominion over a thing available against all persons.

> The disposition of contemporary civil law jurists is to use the term *jus ad rem* as descriptive of a right without possession, and *jus in re* as descriptive of a right accompanied by possession. Or, in a somewhat wider sense, the former denotes an inchoate or incomplete right to a thing; the latter, a complete and perfect right to a thing. See The Carlos F. Roses, 177 U.S. 655; The Young Mechanic, 30 Fed. Cas. 873.
>
> In canon law. A right to a thing. An inchoate and imperfect right, such as is gained by nomination and institution; as distinguished from *jus in re*, or complete and full right, such as is acquired by corporal possession. 2 Bl. Comm. 312.

See also

- Ius

References

- Black's Law Dictionary (Second Edition 1910) (public domain) [1]

Jus cogens

A **peremptory norm** (also called ***jus cogens*** or ***ius cogens***, Latin for "compelling law") is a fundamental principle of international law which is accepted by the international community of states as a norm from which no derogation is ever permitted.

There is no clear agreement regarding precisely which norms are *jus cogens* nor how a norm reaches that status, but it is generally accepted that *jus cogens* includes the prohibition of genocide, maritime piracy, slaving in general (to include slavery as well as the slave trade), torture, and wars of aggression and territorial aggrandizement.

Status of peremptory norms under international law

Unlike ordinary customary law, which has traditionally required consent and allows the alteration of its obligations between states through treaties, peremptory norms cannot be violated by any state "through international treaties or local or special customs or even general customary rules not endowed with the same normative force".[1]

Under the Vienna Convention on the Law of Treaties, any treaty that conflicts with a peremptory norm is void.[2] The treaty allows for the emergence of new peremptory norms,[3] but does not specify any peremptory norms. It does mention the prohibition on the threat of use of force and on the use of coercion to conclude an agreement:

> "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."[4]

The number of peremptory norms is considered limited but not exclusively catalogued. They are not listed or defined by any authoritative body, but arise out of case law and changing social and political attitudes. Generally included are prohibitions on waging aggressive war, crimes against humanity, war crimes, maritime piracy, genocide, apartheid, slavery, and torture.[5] [6]

Despite the seemingly clear weight of condemnation of such practices, some critics disagree with the division of international legal norms into a hierarchy. There is also disagreement over how such norms are recognized or established. The relatively new concept of peremptory norms seems to be at odds with the traditionally consensual nature of international law considered necessary to state sovereignty.

Some peremptory norms define criminal offences which are considered to be enforceable against not only states, but individuals as well. This has been increasingly accepted since the Nuremberg Trials (the first enforcement in world history of international norms upon individuals) and now might be considered uncontroversial. However, the language of peremptory norms was not used in connection with these trials - rather the basis of criminalisation and punishment of Nazi atrocities was that civilisation could not tolerate their being ignored, because it could not survive their being repeated.

There are often disagreements over whether a particular case violates a peremptory norm. As in other areas of law, states generally reserve the right to interpret the concept for themselves.

Many big States have accepted this concept. Some of them have ratified the Vienna Convention, while others have stated in their official statements that they accept the Vienna Convention as "codificatory". Some have applied the concept in their dealings with internaional organizations and other States.

Examples

Execution of juvenile offenders

The case of Michael Domingues v. United States provides an example of an international body's opinion that a particular norm is of a *jus cogens* nature. Michael Domingues had been convicted and sentenced to death in Nevada, United States for two murders committed when he was 16 years old. Domingues brought the case in front of the Inter-American Commission of Human Rights which delivered a non-legally binding report.[7] The United States argued that there was no *jus cogens* norm that "establishes eighteen years as the minimum age at which an offender can receive a sentence of death".[7] The Commission concluded that there was a "*jus cogens* norm not to impose capital punishment on individuals who committed their crimes when they had not yet reached 18 years of age."[8] The United States has subsequently banned the execution of juvenile offenders. Although not necessarily in response to the above non-binding report, the Supreme Court cited evolving international norms as one of the reasons for the ban. (Roper v. Simmons).

Torture

The International Criminal Tribunal for the Former Yugoslavia stated in *Prosecutor v. Furundžija* that there is a *jus cogens* for the prohibition against torture.[6] It also stated that every State is entitled "to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction."[6] Therefore, there is universal jurisdiction over torture. The rationale for this is that "the torturer has become, like the pirate and the slave trader before him, *hostis humani generis*, an enemy of all mankind."[9] Further to this, there is no allowance for states to make reservations to the Convention for the Prevention and Punishment of Torture, and the Convention is considered to bind all states, not just those party to it.

See also

- Actio popularis
- Erga omnes
- Universal jurisdiction

References

[1] Prosecutor v. Furundzija, International Criminal Tribunal for the Former Yugoslavia, 2002, 121 *International Law Reports* 213 (2002)
[2] Vienna Convention on the Law of Treaties, Article 53, May 23, 1969, 1155 U.N.T.S 331, 8 *International Legal Materials* 679 (1969)
[3] Vienna Convention on the Law of Treaties, Article 64, May 23, 1969, 1155 U.N.T.S 331, 8 *International Legal Materials* 679 (1969)
[4] U.N. Doc. A/CONF.39/27 (1969), repinted in 63 Am. J. Int'l L. 875 (1969).
[5] Marc Bossuyt en Jan Wouters (2005): *Grondlijnen van internationaal recht*, Intersentia, Antwerpen enz., p. 92.
[6] Prosecutor v. Furundžija, International Criminal Tribunal for the Former Yugoslavia, 2002, 121 *International Law Reports* 213 (2002)
[7] The Michael Domingues Case: Argument of the United States, Office of the Legal Adviser, United States Department of State, *Digest of United States Practice in International Law 2001, at 303, 310-13*
[8] The Michael Domingues Case: Report on the Inter-American Commission on Human Rights, Report No. 62/02, Merits, Case 12.285 (2002)
[9] Janis, M. and Noyes, J. International Law": Cases and Commentary (3rd ed.), Prosecutor v. Furundžija, Page 148 (2006)

Jus commune

Jus commune or ***ius commune*** is Latin for "common law" in certain jurisdictions. It is often used by civil law jurists to refer to those aspects of the civil law system's invariate legal principles, sometimes called "the law of the land" in English law. (*Ius commune* is distinct from the term "common law" meaning the Anglo-American family of law in contradistinction to the civil law family.)

The phrase "the common law of the civil law systems" means those underlying laws that create a distinct legal system and are common to all its elements.

The *ius commune*, in its historical meaning, is commonly thought of as a combination of canon law and Roman law which formed the basis of a common system of legal thought in Western Europe from the rediscovery and reception of Justinian's Digest in the 12th and 13th centuries. In addition to this definition, the term also possibly had a narrower meaning depending upon the context in which it was used. Some scholars believe that the term, when used in the context of the ecclesiastical courts of England in the fourteenth and fifteenth century, also "meant the law that is common to the universal church, as opposed to the constitutions or special customs or privileges of any provincial church."[1]

The *ius commune* was an actual part of the law in most areas, although in any one jurisdiction local laws (statutes and customs) could take precedence over the *ius commune*. This was the case up until the codification movement in the late 18th and 19th centuries, which explicitly removed the direct applicability of Roman and canon law in most countries, although there continued to be argument about whether the *ius commune* was banished completely or survived where the national codes were silent.

The latter view prevailed, so it can still be said that there is, in theory at least, a common basis in substantive law throughout Western Europe (except England, which never had a reception as such) although it has of course fragmented greatly from its heyday in the 15th and 16th centuries. More important, however, is the civilian tradition of ways of thinking that the *ius commune* encouraged and the procedures it used, which have been more persistent than the actual substance.

In England, the law developed its own tradition separate from the rest of Europe based on its own common law. Scotland has a mixed civil and common law system. Scotland had a reception of Roman law and partial codification through the works of the Institutional Writers, such as Viscount Stair and Baron Hume, among others. Influence from England has meant that Scotland's current system is more common law than civilian, but there are areas which are still heavily based on Roman law, such as Scots property law.

Bibliography

- Ken Pennington's lectures and articles on medieval law, including Ius Commune [2]
- Bellomo, Manlio (1995-04). *The Common Legal Past of Europe: 1000-1800*. Catholic University of America Press. pp. 276. ISBN 0813208149.

References

[1] F.W. Maitland, *Canon Law in England*, The English Historical Review, Vol. 11, No. 43 (Jul. 1896) pp. 446-478.

[2] http://faculty.cua.edu/Pennington/

Jus de non evocando

The ***Jus de non evocando*** is an ancient feudal right, stating that no one can be kept from the competent court. It derives from a medieval principle that subjects of the Crown were entitled to *ius de non evocando*, the right to enjoy the jurisdiction and protection of the Crown to which they were loyal. As such it is still present in several constitutions, such as the German constitution, the Italian constitution and the Dutch constitution.

It has today become an important concept in public international law by which states refuse to extradite their own citizens. Some countries may refuse to extradite non-nationals, who, because of their crimes, may be subject to the death penalty. This may be seen in the case of Canada and Mexico vis-à-vis the United States.

This principle is frequently argued in cases of the International Criminal Tribunal for Rwanda (ICTR) and former Yugoslavia (ICTY). The foundation lies in that the international tribunal, by seizing jurisdiction over an international criminal trial from national courts, is violating the principle of *jus de non evocando*. The Trial Chamber in the case of Dusko Tadic (IT-94-1 of the ICTY) stated that states give up some measure of sovereignty to be a part of the UN and the ICTY is a product of the UN, therefore there is no violation.

Jus disponendi

Jus disponendi, in the civil law, refers to the right of disposing (of a thing owned, i.e. it is an attribute of dominium, or ownership). An expression used either:

- generally, to signify the right of alienation, as historically a married woman would be deprived of the jus disponendi over her separate estate;
- specially, in the law relating to sales of goods, where it is often a question whether the vendor of goods has the intention of reserving to himself the jus disponendi; i. e., of preventing the ownership from passing to the purchaser, notwithstanding that he (the vendor) has parted with the possession of the goods.

See also

- Ius

References

- Black's Law Dictionary (Second Edition 1910) (public domain) [1]

Jus gentium

Jus gentium, Latin for "law of nations", was originally the part of Roman law that the Roman Empire applied to its dealings with foreigners, especially provincial subjects. In later times the Latin term came to refer to the natural or common law among nations considered as states within a larger human society, especially governing the rules of peace and war, national boundaries, diplomatic exchanges, and extradition, that together with *jus inter gentes* makes up public international law.

Jon Roland, of the Constitution Society, lists[1] several rules of law that make up the *jus gentium*, including:

1. Not attacking other nations, except in declared wars and similar situations;
2. Honoring truce, peace treaties, and boundaries;
3. Protecting wrecked ships and persons thereon;
4. Prosecuting piracy;
5. Caring decently for prisoners of war;
6. Protection of embassies and diplomats;
7. Honoring extradition treaties;
8. Prohibiting slavery and trading in slaves.

See also

- Law of nations
- International law
- Jus inter gentes
- Human rights violations
- United Nations

References

- *Relectiones*, Franciscus de Victoria (lect. 1532, first pub. 1557). Available online here [2].
- *The Law of War and Peace*, Hugo Grotius (1625). Available online here [3].
- *The Law of Nature and of Nations*, Samuel Pufendorf (1674, tr. Basil Kennett 1703). Available online here [4], under construction.
- *Questions of Public Law*, Cornelius van Bynkershoek (1737). Available online here [5].
- *The Law of Nations*, Emmerich de Vattel (1758). Available online here [6].
- Tucker's *Blackstone*, St. George Tucker (1803). Available online here [7].

References

[1] The meaning of "Offenses against the Law of Nations" (http://www.constitution.org/cmt/law_of_nations.htm), Jon Roland, 1998
[2] http://www.constitution.org/victoria/victoria_.htm
[3] http://www.constitution.org/gro/djbp.htm
[4] http://www.constitution.org/puf/puf-law.htm
[5] http://www.constitution.org/bynk/bynk.htm
[6] http://www.constitution.org/vattel/vattel.htm
[7] http://www.constitution.org/tb/tb-0000.htm

Jus inter gentes

Jus inter gentes, or ius inter gentes, is the body of treaties, U.N. conventions, and other international agreements. Originally a Roman law concept, it later became a major part of public international law. The other major part is *jus gentium*, the Law of Nations referred to in the United States Constitution, Article I, Section 8, Clause 10.[1] *Jus inter gentes*, literally, means "law between the peoples".[2]

Jon Roland, of the Constitution Society, notes that John Foster Dulles pronounced the so-called Dulles Doctrine that treaties and United Nations resolutions can be part of the Law of Nations for purposes of the U.S. Constitution.[1]

This is *not* the same as *jus gentium*, argues Francisco Martin and his co-authors in "International Human Rights and Humanitarian Law" (2006),[3] because *jus inter gentes* includes internationally recognized human rights.

See also

- Monograph on jus inter gentes: [4]
- Human rights violations
- International law
- Jus gentium
- Law of nations
- United Nations

References

[1] The meaning of "Offenses against the Law of Nations", Jon Roland, 1998 (http://www.constitution.org/cmt/law_of_nations.htm)

[2] These are cognate, in the English language to justice, international, and gentiles, respectively.

[3] Treaties, Cases, and Analysis (http://www.cambridge.org/us/catalogue/catalogue.asp?isbn=9780521858861&ss=exc), Francisco Martin, et al. 2006 ISBN 9780521858861

[4] http://www.law.nyu.edu/kingsburyb/fall06/globalization/papers/Kingsbury,NewJusGentiumandInter-PublicI1.pdf

Jus legationis

Jus legationis is a Legal Latin term meaning the capacity to send and receive consuls and diplomats.

Jus naufragii

The ***jus naufragii*** (right of shipwreck), sometimes ***lex naufragii*** (law of shipwreck), was a medieval custom (never actually a law) which allowed the inhabitants or lord of a territory to seize all that washed ashore from the wreck of a ship along its coast. This applied, originally, to all the cargo of the ship, the wreckage itself, and even any passengers who came ashore, who were thus converted into slaves. This latter custom disappeared before the *jus naufragii* came to the attention of lawmakers.

Right, God, and abolition

The theoretical basis for the law, in Christian countries, was that God must be punishing the doomed ship for the vice of the crew. The ship and its cargo had thus been taken from their rightful owners by an act of God and were fair game. Despite this, consistent attempts to abolish the practice are recorded over the course of more than a millennium.

Roman and Byzantine law made no room for the custom. The *Codex* and the *Digesta* of Justinian I include sections respectively titled *De naufragiis* and *De incendio, ruina, naufragio rate, nave expugnata*. They refer to a law of the emperor Antoninus Pius outlawing exercise of the *jus naufragii*. Around 500 the *Breviarium Alaricianum* of the Visigoths, probably following Roman law, forbade the custom. Theodoric the Great also legislated against it, but apparently to no longterm avail.

Despite the appeal to Providence for its justification, canon law anathematised those who exercised the *jus*. The Lateran Council of 1079 and the Council of Nantes (1127) both outlawed it. In 1124 Pope Clement II issued a bull condemning it and on 24 February 1509 Julius II issued a bull prohibiting the collection of *bona nafraugantia*.

The *jus* did not completely lack support, however. Charles I of Sicily used it, Philip III of France legislated regulations to cover it, and in the same kingdom Henry II seems to have tolerated it. In his reign, according to *De republica* by Jean Bodin, the *jus* was cited by Anne de Montmorency to justify the seizure of a wrecked ship with the support of the king.

Italy

In 827, Sicard of Benevento and Andrew II of Naples signed a treaty, the *Pactum Sicardi*, whereby the *lex naufragii* was abolished in the domain of Benevento. The Papacy and the north Italian *comuni* soon followed the southern example and fought to have the property rights (and right to liberty) of sailors and merchants recognised universally.

When in 1184 a Genoese ship carrying Ibn Jubayr wrecked off the coast of Messina, it was only by the intervention of William II of Sicily that the passengers were spared robbery and enslavement.

In June 1181 the Genoese ambassador Rodoano de Mauro signed a treaty with Abu Ibrahim Ishaq Ibn Muhammad Ibn Ali of the Balearics that included a protection of the rights of Genoese merchants from the exercise of the *jus*. This treaty was renewed for twenty years in August 1188 by Niccolò Leccanozze and Ishaq's successor. Meanwhile, on 1 June 1184, Pisa and Lucca had signed a similar treaty with the Balearic Muslims.

In the early thirteenth century, Frederick I outlawed the *jus* in the Kingdom of Sicily, and by 1270 the custom had gone completely out of fashion in the Mediterranean when Charles I, a Frenchman by upbringing, invoked the *jus naufragii* in Sicily, against the Eighth Crusaders.

Northern Europe

In northern Europe the custom survived much longer, despite legislation designed to forbid it. In the territory of the Bishop of Utrecht the right was exercised on the river until its abrogation in 1163. The *de facto* independent Viscounty of Léon sustained itself on the proceeds of "the most valuable of precious stones", a rock which generated 100,000 *solidi* per annum in revenue due to shipwrecks.[1]

In the thirteenth century Edward I in England and Louis IX in France sought to ban the *jus*. In the fourteenth century the law became the target of several Holy Roman Emperors: Henry VII in 1310, Louis IV in 1336, and Charles IV in 1366. In the fifteenth century the Hanseatic League began funding salvage missions and offering rewards to salvors.

Attempts were also made in France to abolish the practice by means of treaties where legislation could not take effect. France and the Duchy of Brittany signed one in 1231 and France and Venice in 1268. Most French maritime laws also included articles restricting the practice of *lex naufragii*, such as the Rolls of Oléron of Eleanor of Aquitaine (c. 1160), the *Constitutio criminalis* of Charles V (the later *Carolina* of 1532), an ordinance of Francis I of 1543 and Charles IX of 1568.

Early modern Europe

Several early modern treaties established a time frame during which the owner of the goods wrecked could claim them, typically a year and a day. England and the Netherlands signed a treaty of alliance 17 September 1625 at Southampton that included a clause allowing the owners of wreckage to reclaim it within a year, and France and the Netherlands signed 27 April 1662 demanding the restitution of shipwrecked goods on the payment of a *droit de sauvement*, a salvor's fee. A commercial treaty signed at Nijmegen on 10 August 1678 had an article to the same effect.

On 12 December 1663 the Netherlands abolished what remained of the old *jus*—the *recht van de tiend penning*, or right of the tenth penny. The French Ordonnance de la Marine (1681) abolished the *jus* entirely and put castaways under royal protection. The Turkish capitulations of 1535 and 1740 contain clauses banning the *jus naufragii*.

References

- Everard, J. A. (2000). *Brittany and the Angevins: Province and Empire, 1158–1203*. Cambridge: Cambridge University Press. ISBN 0 52166 071 8.
- Lopez, Robert S. and Raymond, Irving W. (1951). *Medieval Trade in the Mediterranean World*. New York: Columbia University Press. LCC 54-11542.
- Samarrai, Alauddin (1980). "Medieval Commerce and Diplomacy: Islam and Europe, A.D. 850–1300." *Canadian Journal of History/Annales canadiennes d'histoire*, **15**:1 (April), pp. 1–21.
- Verzijl, J. H. W. (1972). *International Law in Historical Perspective. Vol. IV: Stateless Domain*. Martinus Nijhoff Publishers. ISBN 9 02 86005 15.

References

[1] The quotation was a favourite of Guihomar of Léon in the 1160s.

Jus primae noctis

Droit de seigneur (French pronunciation: [dʁwa də sɛɲœʁ], "the lord's right", often conflated with the Latin phrase "*Jus primae noctis*"), is a term now popularly used to describe an alleged legal right allowing the lord of an estate to take the virginity of the estate's virgins. Little or no historical evidence has been unearthed from the Middle Ages to support the idea that it ever actually existed.[1]

Vasily Polenov: *Le droit du Seigneur* (1874).
An old man bringing his young daughters to the feudal lord.

It is also sometimes spelled ***droit du seigneur*** ([dʁwa dy sɛɲœʁ]), but native French prefer the term **droit de cuissage** or **droit de jambage**. A related term is ***ius primæ (primae) noctis*** (English: /ˈjuːs ˈprɪmiː ˈnɒktɪs/), Latin for *law* (or *right*) *of the first night*.[1] [2]

Droit de seigneur is often interpreted today as a synonym for *ius primae noctis*, although it originally referred to a number of other rights as well, including hunting, taxation, and farming.

History

The existence of a "right of the first night" in the Middle Ages was first disputed in the 19th century. Although most historians today would agree that there was no authentic custom in the Middle Ages, disagreement continues about the origin, the meaning, and the development of the widespread popular belief in this alleged right and the actual prevalence of symbolic gestures referring to this right.[2]

The origin of this popular belief is difficult to trace, though readers of Herodotus were made to understand that such a custom had obtained among the tribe of the "Adyrmachidae" in distant ancient Libya, where Herodotus thought it unique: "They are also the only tribe with whom the custom obtains of bringing all women about to become brides before the king, that he may choose such as are agreeable to him."[3] In the 16th century, Hector Boece referred to the decree of the Scottish king Evenus III that "the lord of the ground shall have the maidenhead of all virgins dwelling on the same." Legend has it that Saint Margaret of Scotland procured the replacement of *jus primae noctis* with a bridal tax called merchet. But King Evenus III did not exist, and Boece's account included much clearly fictional material.[4]

In literature from the 13th and 14th centuries and in customary law texts of the 15th and 16th centuries, *jus primae noctis* is also closely related to specific marriage payments of (formerly) unfree people. There is good reason to assume that this relation goes back to the early medieval period and has its roots in the legal condition of unfree people.[4] [5]

Similarities to other traditions

Some have speculated that the *jus primae noctis* tradition did exist in the ancient (not Medieval) world. There are examples of defloration practices in Ancient Mesopotamia. In Mesopotamian literature, the privilege of a powerful man to deflower another man's woman is a very old topos, present as early as in the *Epic of Gilgamesh* (circa 2000 B.C.)—though in *Gilgamesh* there appears to be no justification for the king's "leav[ing] no girl to her mother;" the gods, hearing the people of Uruk protest Gilgamesh's violent nature, create Enkidu to change the king's behavior.[6] Although the literary descriptions from ancient Mesopotamia and the legends of *ius primae noctis* in medieval Europe stem from very different cultural traditions, they meet in the suggestion that, in both cases, persons of high social rank were involved, an admittedly tenuous (and probably spurious) link.

As late as the early 20th century, Kurdish chieftains (*khafirs*) in Western Armenia reserved the right to bed Armenian brides on their wedding night.[7]

Literary and other references

Despite the lack of historical evidence for the existence of such a right, cultural references to the custom abound. Examples:

- Part of the peculiar traditional carnival in the city of Ivrea, Italy, involves a character known as "Mugnaia" ("miller's daughter"). This supposedly commemorates a spirited miller's daughter who refused to accept the exercise of this "right" by the local duke, chopped the duke's head off and sparked a revolution.
- *Voyages historiques de l'Europe* (Volume IV: pages 140–141), by Claude Jordan, first published in 1694; the description is similar to Boece's, but attributes the change to Malcolm I of Scotland, in the 10th century.
- Voltaire wrote the five-act comedy *Le droit du seigneur* or *L'écueil du sage* (ISBN 2-911825-04-7) in 1762, although it was not performed until 1779, after his death.
- *Oroonoko* (1688), a short novel by Aphra Behn; the young prince, Oroonoko, sees his bride kidnapped by his grandfather, who attempts to rape her claiming he has the right to do so.
- *Lorenzaccio* (1834), by Alfred de Musset
- *The Marriage of Figaro* (1778) by Beaumarchais and the 1786 opera of the same name by Mozart, whose plot centers on Count Almaviva's foiled attempt to exercise his right with Figaro's bride, Suzanne in the play, Susanna in the opera.
- *Woman, Church and State* (1893) by Matilda Joslyn Gage—Chapter IV: Marquette [8]
- *The War Lord* (1965), a film by Franklin J. Schaffner, starring Charlton Heston as a knight who falls in love with a peasant woman, using droit de seigneur to claim her on her wedding night. Based on Leslie Stevens' play *The Lovers*.
- *Braveheart*; *jus primae noctis* is invoked by Edward Longshanks (Edward I of England) in an attempt to breed the Scots out.
- Chapter 7 of the first part [9] of George Orwell's *Nineteen Eighty-Four*, in which "the law by which every capitalist had the right to sleep with any woman working in one of his factories" is an element of the Party's propaganda
- Tochmarc Emire ("The Wooing of Emer"), a tale of the ancient Irish hero Cúchulainn[10]
- Mark Twain's *A Connecticut Yankee in King Arthur's Court* makes frequent reference to the 'right.' For example, in Chapter 25, King Arthur, acting as Chief Judge of the King's Bench judges a case where a bishop attempts to claim the estate of a recently married young orphan girl whose property the Church held in seignory on the grounds that because she had married privately, she had cheated the Church out of the right.
- Kanashimi no Belladonna (1973), a film directed by Eiichi Yamamoto
- The Discworld novel, *Wyrd Sisters*, satirizes the idea in several places, with several characters appearing to be under the impression that 'Droit de Seigneur' is a type of dog, leading to a recurring double entendre about it having to be 'exercised' often. The late King Verence's 'exercise' of his 'big hairy thing' later proves to be a key

plot point.
- In an episode of The Office, Michael Scott declares that he is instituting "prima nocta" in light of Phyllis's upcoming wedding, but he misunderstands the concept, as well as the Latin.

References

Bibliography

- Boureau, Alain. *The Lord's First Night: The Myth of the Droit de Cuissage*, translated by Lydia G. Cochrane, University of Chicago Press, 1998. ISBN 0-226-06742-4.
- Wettlaufer, Jörg. "The *jus primae noctis* as a male power display: A review of historic sources with evolutionary interpretation", in *Evolution and Human Behavior* Vol. 21: No. 2: pages 111–123. Elsevier, 2000.
- Evans, Hilary. *Harlots, whores & hookers : a history of prostitution*. Taplinger Pub. Co., 1979

External links

- The Straight Dope: Did medieval lords have "right of the first night" with the local brides? [11]
- Urban Legends website investigates the issue [12]
- Jus primae noctis. Scientific resources (in German) [13]
- The above resource in English translation [14]

References

[1] The Straight Dope: Did medieval lords have "right of the first night" with the local brides? (http://www.straightdope.com/classics/a5_181.html)

[2] The jus primae noctis as a male power display: A review of historic sources with evolutionary interpretation (http://www.fibri.de/jus/arthbes.htm)

[3] Herodotus, iv.168 (on-line text (http://www.fordham.edu/halsall/ancient/herod-libya1.htm)).

[4] Jus primae noctis - Das Herrenrecht der ersten Nacht (http://www.fibri.de/jpn.htm)

[5] snopes.com: First Knight (http://www.snopes.com/weddings/customs/droit.asp)

[6] Citation from Tablet I, line 73, in Foster, Benjamin R. (2001). *The Epic of Gilgamesh*. New York: Norton. pp. 5. ISBN 9780393975161.

[7] Barsoumian, Hagop. "The Eastern Question and the Tanzimat Era" in *The Armenian People From Ancient to Modern Times, Volume II: Foreign Dominion to Statehood: The Fifteenth Century to the Twentieth Century*. Richard G. Hovannisian (ed.) New York: St. Martin's Press, p. 200. ISBN 0-3121-0168-6.

[8] http://www.sacred-texts.com/wmn/wcs/wcs06.htm

[9] http://www.george-orwell.org/1984/6.html

[10] Thomas Kinsella, *The Táin*, Oxford University Press, 1969, ISBN 0192810901, pp. 25-39

[11] http://www.straightdope.com/classics/a5_181.html

[12] http://www.snopes.com/weddings/customs/droit.htm

[13] http://www.fibri.de/jpn.htm

[14] http://www.fibri.de/jus/arthbes.htm

Jus relictae

Definition

Jus relictae (*Scots law*): The right of the surviving spouse in the movable goods of the deceased spouse.

Jus relictae is the term used for a surviving wife, and ***jus relicti*** is the term used for a surviving husband. The similar right for any surviving children is referred to as ***legitim***.

The deceased must have been domiciled in Scotland, but the right accrues from movable property, wherever situated. The surviving spouse's right vests by survivance, and is independent of the deceased spouse's testamentary provisions; it may however be renounced by contract, or be discharged by satisfaction. It is subject to alienation of the deceased spouse's movable estate during his lifetime or by its conversion into heritage.

The definition was constructed from the sources. [1] [2] [3] [4]

Additional explanations

The surviving spouse also has a right of terce (not the same as the religious term terce) on the deceased spouse's lands. Thus, under Scots law, both movable and immovable property are subject to the rights of a surviving spouse and children.

References

[1] Bell, William (1861). *Dictionary and Digest, Law of Scotland, with Short Explanations of the most Ordinary English Law Terms* (Revised and Corrected with Numerous Additions by George Ross ed.). Edinburgh: Bell & Bradfute.

[2] Shumaker, Walter A.; George Foster Longsdorf (1922). *The Cyclopedic Law Dictionary* (Second Edition by James C. Cahill ed.). Chicago: Callaghan and Company.

[3] "Scottish Language Dictionaries" (http://www.dsl.ac.uk/dsl/). . Retrieved March 1, 2008.

[4] "Legal rights: introduction" (http://www.hmrc.gov.uk/manuals/ihtmanual/IHTM12221.htm). HM Revenue and Customs. . Retrieved November 28, 2007.

Jus sanguinis

Jus sanguinis (Latin: *right of blood*) is a social policy by which nationality or citizenship is not determined by place of birth, but by having an ancestor who is a national or citizen of the state. It contrasts with *jus soli* (Latin for "right of soil").

At the end of the 19th century, the French-German debate on nationality saw Ernest Renan oppose the German conception of an "objective nationality", based on blood, race or even, as in Fichte's case, language. Renan's republican conception explains France's early adoption of *jus soli*. Many nations have a mixture of *jus sanguinis* and *jus soli*, including the United States, Canada, Italy, Israel, Germany (as of recently), Greece, Ireland and others.

Apart from France, *jus sanguinis* still is the preferred means of passing on citizenship in many continental European countries, with benefits of maintaining culture and national identity but with the inconvenient of higher consanguinity rates increasing the risk of genetic disorders.[1] This has been criticised by some on the grounds that, if it is the only means, and were a group of immigrants to intra-marry, it could lead to generations of people living their whole lives in the state without being citizens of it - according to Agamben, thus likening their status to an *homo sacer*, deprived of any civil rights.. Some countries provide almost the same rights as a citizen to people born in the country, without actually giving them citizenship. An example is 'Indfødsret' of Denmark. When you're 18 you can then decide to take a test to gain citizenship.

Unlike France, some European states (in their modern forms) are post-empire creations within the past century. States arising out of the Austro-Hungarian and Ottoman Empires had huge numbers of ethnic populations outside of their new boundaries, as do most of the former Soviet states. Several had long-standing diasporas that did not conform to 20th century European nationalism and state creation. In many cases, *jus sanguinis* rights were mandated by international treaty, with citizenship definitions imposed by the international community. In other cases, minorities were subject to legal and extra-legal persecution and their only option was immigration to their ancestral home country. States offering *jus sanguinis* rights to ethnic "citizens" and their descendants include Greece, Turkey, Bulgaria and, from 2009, Romania. Each are obligated by international treaty to extend those rights.

Lex sanguinis

Many countries provide immigration privileges to individuals with ethnic ties to these countries (so-called *leges sanguinis*). As examples:

- Bulgaria: Article 25 of the 1991 constitution specifies that "person[s] of Bulgarian origin shall acquire Bulgarian citizenship through a facilitated procedure." Article 15 of the Law on Bulgarian Citizenship provides that an individual "of Bulgarian origin" may be naturalized without any waiting period and without having to show a source of income, knowledge of the Bulgarian language or renunciation of his former citizenship. Bulgaria and Greece were subject to a population exchange following the second Balkan war. Conditions of treaty settlement mandated that they accept individuals' claiming respective ethnic origin.
- Belgium: A former Belgian citizen (other than a person deprived of citizenship) may resume Belgian citizenship by declaration after a 12-month period of residence. Residence abroad can be equated with residence in Belgium if the person can prove genuine ties with Belgium. The conditions under which the person lost his or her Belgian nationality and the reasons for wishing to regain it will be taken into account. Children aged under 18 automatically acquire Belgian citizenship if a responsible parent resumes Belgian citizenship.[2] See also Belgian nationality law.
- China: See Chinese nationality law. The only significant immigration to China has been by the overseas Chinese. Since 1949 the national government has offered them various enticements to emigrate to China. Several million may have done so since 1949.[3]

- Croatia: Article 11 of the Law on Croatian Citizenship allows emigrants and their descendants to acquire Croatian nationality upon return, without passing a language examination or renouncing former citizenship. In addition, Article 16 permits "a member of the Croatian people who does not have a place of residence in the Republic of Croatia [to] acquire Croatian citizenship" by making a written declaration and submitting proof of attachment to Croatian culture.
- Estonia: Article 36 of Estonian constitution states the right of every Estonian to come and live in Estonia.
- Finland: Finnish law provides a right of return to ethnic Finns from the former Soviet Union, including Ingrians. Applicants must now pass an examination in the Finnish language. Certain persons of Finnish descent who live outside the former Soviet Union also have the right to establish permanent residency, which would eventually entitle them to qualify for citizenship.
- Germany: Article 116(1) of the German Basic Law (constitution) confers - within the range of the laws regulating the peculiarities - a right to citizenship upon any person who is admitted to Germany (in its borders of 1937) as "refugee or expellee of German ethnic origin or as the spouse or descendant of such a person." At one time, ethnic Germans living abroad in a country in the former Eastern Bloc (Aussiedler) could obtain citizenship through a virtually automatic procedure.[4] Since 1990 the law has been steadily tightened to limit the number of immigrants each year. It now requires immigrants to prove language skills and cultural affiliation. Article 116(2) entitles persons (and their descendants), who were denaturalised by the Nazi government, to be renaturalised if they wish so. Those among them, who took their residence in Germany after May 8, 1945 are automatically to be considered as Germans. Both regulations, (1) and (2), provided for a considerable group of Poles and Israelis, residing in Poland and Israel, who are simultaneously Germans.
- Greece: Ethnic Greeks can obtain Greek citizenship by two methods under the Code of Greek Nationality. Pursuant to Article 5, ethnic Greeks who are stateless (which, in practice, includes those who voluntarily renounce their nationality) may obtain citizenship upon application to a Greek consular official. In addition, ethnic Greeks who join the armed forces acquire automatic citizenship by operation of Article 10, with the military oath taking the place of the citizenship oath. This position arises from the fact that approximately 85% of known ethnic Greeks were outside the nation state boundaries when the country was formed. Forty percent remained outside the final boundaries at the beginning of World War I. Most were *de jure* stripped of their host country citizenship with the outbreak of war if the host country was at war with Greece. In the late 19th century, Greece had a wider diaspora because of poverty and limited opportunities.
- Hungary: Section 4(3) of the Act on Nationality permits ethnic Hungarians (defined as persons "at least one of whose relatives in ascendant line was a Hungarian citizen") to obtain citizenship on preferential terms after one year of residence. In addition, the "Status Law" of 2001 grants certain privileges to ethnic Hungarians living in territories that were once part of the Austro-Hungarian empire. It permits them to obtain an identification card but does not confer the right to full Hungarian citizenship.
- Iceland: See Icelandic nationality law. A person can acquire Icelandic citizenship at birth if the mother is an Icelandic citizen or the father is an Icelandic citizen and married to the mother (unless they are separated at the time of birth). Persons not meeting these terms can apply for citizenship if they do so before 18 or the father is deemed the father under the Icelandic Children Act.
- India: Persons with at least one Indian great-grandparent may apply for a Person of Indian Origin card, provided that neither the applicant nor any ancestor has ever been a citizen of Pakistan, Bangladesh, Nepal, Sri Lanka, Afghanistan or China. This card is a travel document and permits the holder to enter and stay in India without a visa, own land and attend educational institutions, but not to vote or hold office. In addition, persons of Indian origin who are nationals of certain specified countries (again subject to an exclusion for Pakistanis and Bangladeshis) may apply for Overseas Indian Citizenship, which confers similar rights and also permits the holder to apply for full Indian nationality after one year of residence.

- Ireland: The Nationality and Citizenship Act allows any person with an Irish grandparent to become an Irish citizen "by registering in the Foreign Births Register at an Irish embassy or consular office, or at the Department of Foreign Affairs in Dublin." Such an individual may also pass his entitlement to Irish nationality on to his children by registering in the Foreign Births Register even if he chooses not to take up citizenship himself, provided he has registered with the Foreign Births Register before the birth of those children. Section 16 of the Irish citizenship law of 1986 grants the interior minister authority to confer automatic citizenship on any applicant of "Irish origin or affiliation" although this is sparingly used.
- Israel: In addition to Israeli citizenship being granted to all ethnic groups and religions (a) by virtue of birth in Israel or (b) by naturalisation after 5 years' residency and the acquisition of a basic knowledge of Hebrew, (c) the Law of Return confers an automatic right to citizenship on any immigrant to Israel who is Jewish by birth or conversion, or who has a Jewish parent, grandparent or spouse or who is the spouse of a child of a Jew or the spouse of a grandchild of a Jew.
- Italy: Possibly alone in this respect, bestows citizenship *jure sanguinis*. There is no limit of generations for the citizenship via blood, but the Italian ancestor born in Italian territories before 1861 had to die after 1861 anywhere (in Italian territory or abroad) but without losing the Italian citizenship before death in order to being able to continue the *jure sanguinis* chain. This is required because 1861 is the year that the Unification of the Italian territory took place. Another constraint is that each descendant of the ancestor through whom citizenship is claimed *jure sanguinis* can pass on citizenship only if they were a citizen at the time of the birth of the person to whom they are passing it. So, if one person in the chain renounces or otherwise loses their Italian citizenship, then has a child, that child is not an Italian citizen *jure sanguinis*. A further constraint is that citizenship could be passed on by women only after January 1, 1948. Those born before that date are not Italian citizens *jure sanguinis* if their line of descent from an Italian citizen depends on a female at some point. See Italian nationality law
- Japan: A special visa category exists for foreign-citizen descendants of Japanese nationals up to the third generation, allowing long-term residence, unrestricted by occupation. Japanese citizenship still requires the naturalization process.
- Kiribati: Articles 19 and 23 of the constitution provide that "[e]very person of I-Kiribati descent... shall... become or have and continue to have thereafter the right to become a citizen of Kiribati" and that "[e]very person of I-Kiribati decent who does not become a citizen of Kiribati on Independence Day... shall, at any time thereafter, be entitled upon making application in such manner as may be prescribed to be registered as a citizen of Kiribati."
- Lebanon: Lebanese law currently makes no provision for reacquisition of nationality by members of the diaspora. A pending government proposal would permit descendants of Lebanese emigrants to acquire an overseas identity card that confers rights similar to the Person of Indian Origin scheme.
- Philippines; Prior to 23 October, 1985, a female citizen lost Philippine citizenship upon her marriage to a foreigner if, by virtue of the laws in force in her husband's country, she acquired his nationality. Prior to 29 August 2003, a citizen naturalized in a foreign country lost Philippine citizenship. A law approved 29 August 2003 provided an administrative mechanism for both classes of such persons to reacquire Philippine citizenship. For more info, see Philippines nationality law#Loss and reacquisition of Philippine citizenship.
- Poland: The Statute on Polish Citizenship, as amended in 2000, permits the descendants of Poles who lost their nationality involuntarily between 1920 and 1989 to take up Polish citizenship without regard to ordinary naturalization criteria.
- Romania: Romanian expatriates who lost their citizenship prior to December 22, 1989, as well as their children and grandchildren, may reclaim their nationality upon presentation of a declaration and supporting documents.[5]
- Russia: Until recently, persons holding Soviet passports could exchange them for Russian Federation nationality on a virtually automatic basis. The 2002 amendment to the Law on Russian Federation Citizenship, however, puts substantial qualifications on this right, including language and financial requirements and preferences for

immigrants who have a secondary/higher education obtained in Russia or who join the armed forces. Former Soviet citizens may, however, still apply for Russian citizenship without a waiting period.

- Rwanda: Article 7 of the Rwandan constitution provides that "Rwandans or their descendants who were deprived of their nationality between 1st November 1959 and 31 December 1994 by reason of acquisition of foreign nationalities automatically reacquire Rwandan nationality if they return to settle in Rwanda." In addition, "[a]ll persons originating from Rwanda and their descendants shall, upon their request, be entitled to Rwandan nationality."
- Serbia: Article 23 of the 2004 citizenship law provides that the descendants of emigrants from Serbia, or ethnic Serbs residing abroad, may take up citizenship upon written declaration.
- Slovakia: A person with at least one Slovak grandparent and "Slovak cultural and language awareness" may apply for an expatriate identity card entitling him to live, work, study and own land in Slovakia. Expatriate status is not full citizenship and does not entitle the holder to vote, but a holder who moves his domicile to Slovakia may obtain citizenship under preferential terms.
- South Korea: The law of South Korea grants special status to descendants of ethnic Koreans who emigrated after 1922. As with India and Slovakia, this status falls short of full citizenship and does not confer political rights, but permits them to live, work, own property and conduct business in South Korea.
- Spain: Regardless of place of birth, or how far removed one is from an ancestor born in Spain, those born to an *original* Spaniard (whether or not your parent still retains Spanish citizenship, or is still living) are entitled to *original* Spanish nationality. (Original Spaniards are those who were born Spanish, no matter *where* they were born.) The grandchildren of those who emigrated due to political or economical reasons are also entitled to *original* Spanish nationality. Citizenship on preferential terms may be obtained after one year's residence for grandchildren of original Spanish citizens, as well as any person who can claim Sephardic Jewish ancestry. For citizens of Andorra, Portugal, Latin America, the Philippines, or Equatorial Guinea, the required residency period is two years, versus ten for all other foreigners.
- Turkey: Turkish law allows persons of Turkish origin, and their spouses and children, to apply for naturalization without the five-year waiting period applicable to other immigrants. Turkey and Greece reciprocally expelled their minorities in the early 1920s after World War I. They were mandated by international treaty to accept incoming populations as citizens based on ethnic background.
- Ukraine: Article 8 of the Law on Citizenship of Ukraine permits any person with at least one Ukrainian grandparent to become a citizen upon renunciation of his former nationality.

They also cite many other countries with similar laws, including Poland, Hungary, Slovakia, the Czech Republic, Slovenia, and Croatia[6] . Similarly, the Liberian constitution allows only people "of sub-saharan African descent" (regardless of cultural or national affiliation) to become citizens.

See also

- Blood quantum laws
- Nationality Law
- Right of Return
- Jus soli
- Consanguinity

References

[1] Anne Kerr, *Genetics and citizenship*, Volume 40, Number 6 , septembre 2003

[2] Belgian nationality : 10. How can I lose my Belgian nationality? (http://www.diplomatie.be/en/services/nationalitydetail.asp?TEXTID=42527), Belgium Federal Public Service, Foreign Affairs, Foreign Trade and Development Cooperation .

[3] China - Migration (http://countrystudies.us/china/35.htm)

[4] The Federal Expellee Law (German: *Bundesvertriebenengesetz*), § 6, specifies that also foreign citizens of states of the Eastern Bloc (and their desdendants), who were persecuted between 1945 and 1990 for their German ethnicity by their respective governments, are entitled to become Germans, if they wish so. The argument goes that the Federal Republic of Germany had/has to administer to their needs, because their respective governments in charge of guaranteeing their equal treatment as citizens, severely neglected or contravened that obligation.

[5] http://www.romanianpassport.co.il/english/romanian-citizenship-law/

[6] Alexander Yakobson and Amnon Rubinstein , Democratic Norms, Diasporas, and Israel's Law of Return (http://web.archive.org/web/20060319002851/http://69.20.5.215/upload/pdf/YakobsonRubinstein2005.pdf) (archived from the original (http://69.20.5.215/upload/pdf/YakobsonRubinstein2005.pdf) on 2006-05-19).

Jus soli

In naturalization, ***jus soli*** (Latin: *law of ground*), also known as **birthright citizenship**, is a right by which nationality or citizenship can be recognized to any individual born in the territory of the related state.[1] At the turn of the nineteenth century, nation-states commonly divided themselves between those granting nationality on the grounds of *jus soli* (France, for example) and those granting it on the grounds of *jus sanguinis* (right of blood) (Germany, for example, before 2000). However, most European countries chose the German conception of an "objective nationality", based on blood, race or language (as in Fichte's classical definition of a nation), opposing themselves to republican Ernest Renan's "subjective nationality", based on an every-day plebiscite of one's appurtenance to his Fatherland. This non-essentialist conception of nationality allowed the implementation of *jus soli*, against the essentialist *jus sanguinis*. However, today's increase of migrants has somewhat blurred the lines between these two antagonistic sources of right.

Countries that have acceded to the 1961 Convention on the Reduction of Statelessness will grant nationality to otherwise stateless persons who were born on their territory, or on a ship or plane flagged by the country.

Lex soli

Usually a practical regulation of the acquisition of nationality or citizenship of a state by birth on the territory of the state is provided by a derivative law called *lex soli*. Most states provide a specific *lex soli*, in application of the respective *jus soli*, and it is the most common means of acquiring nationality. A frequent exception to *lex soli* is imposed when a child was born to a parent in the diplomatic or consular service of another state, on a mission to the state in question.

Blurred lines between *jus soli* and *jus sanguinis*

There is a trend in some countries toward restricting *lex soli* by requiring that at least one of the child's parents be a national of the state in question at the child's birth, or a legal permanent resident of the territory of the state in question at the child's birth,[2] or that the child be a foundling found on the territory of the state in question (e.g.,see subparagraph (f) of 8 U.S.C. § 1401 [3]). The primary reason for imposing this requirement is to limit or prevent people from travelling to a country with the specific intent of gaining citizenship for a child.

Specific national legislation

Jus soli is common in developed countries that wish to increase their own citizenry, as well as in countries of the Western Hemisphere who sought to increase their populations through settlement. It is also recognized in some developing countries.

States that observe *jus soli* include:

- Antigua and Barbuda[4]
- Argentina[4]
- Barbados[4]
- Belize[4]
- Bolivia[4]
- Brazil[4]
- Canada[4]
- Chile[5] (children of transient foreigners or of foreign diplomats on assignment in Chile only upon request)
- Colombia[4]
- Dominica[4]
- Dominican Republic[4]
- Ecuador[4]
- El Salvador[4]
- Fiji[6]
- Grenada[4]
- Guatemala[4]
- Guyana[4]
- Honduras[4]
- Jamaica[4]
- Lesotho[7]
- Malaysia[4]
- Mexico[4]
- Nicaragua[4]
- Pakistan[4]
- Panama[4]
- Paraguay[4]
- Peru[4]
- Saint Christopher and Nevis[4]
- Saint Lucia[4]
- Saint Vincent and the Grenadines[4]
- Trinidad and Tobago[4]
- United States[4]
- Uruguay[4]
- Venezuela[4]

Modification of jus soli

In a number of countries, the automatic application of *jus soli* has been modified to impose some additional requirements for children of foreign parents, such as the parent being a permanent resident or having lived in the country for a period of time. *Jus soli* has been modified in the following countries:

- United Kingdom on 1 January 1983
- Australia on 20 August 1986[2]
- Republic of Ireland on 1 January 2005[2]
- New Zealand on 1 January 2006[2]
- South Africa on 6 October 1995[2]
- France also operates a modified form of *jus soli*

German nationality law was changed on 1 January 2000 to introduce a modified concept of *jus soli*. Prior to that date, German nationality law was based entirely on *jus sanguinis*.[2]

Modification of *jus soli* has been criticized as contributing to economic inequality, the perpetuation of unfree labour from a helot underclass,[2] and statelessness.

On the other hand, in places like the United States, *jus soli* is credited with the nation's ability to integrate various nationalities and with much less social strife and difficulties than other countries . Although *jus soli* was formally stated in the Fourteenth Amendment, judicial authorities recognize that the philosophy was integral at the conception of the country's constitution.

Children born to foreign diplomats are usually not granted nationality of the country they were born in, even in countries that practice *jus soli*.

Abolition of jus soli

Some countries which formerly operated *jus soli* have moved to abolish it entirely, only conferring citizenship on children born in the country if one of the parents is a citizen of that country. India did this on 3 December 2004, in reaction to illegal immigration from its Muslim neighbor Bangladesh, though jus soli was progressively weakened since 1987.[8] Malta also changed the principle of citizen to *jus sanguinis* on 1 August 1989, in a move that also relaxed restrictions against multiple citizenship.[9]

United States

The 14th Amendment to the United States Constitution reads, in pertinent part, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." This makes citizens of all persons born in the United States, provided they are subject to U.S. jurisdiction at the time of their birth - that is, they are not the children of foreign diplomats and like persons who, having diplomatic immunity, are not subject to U.S. jurisdiction while they are in the country for diplomatic purposes.

At the time the Fourteenth Amendment was ratified (1868), it excluded Aboriginal Americans because they were not considered subject to the jurisdiction of the United States and, thus, were not American citizens. Congress declared it policy to extend citizenship to all Aboriginal peoples in 1924, which was realized in 1968 with the Indian Civil Rights Act.[10]

This interpretation of "subject to the jurisdiction" of the United States was formally established in 1898 by a 6-2 decision the Supreme Court in *United States v. Wong Kim Ark* 169 U.S. 649 [11] (1898). In that case, the Court found the petitioner had been born in the United States and therefore became a U.S. citizen. This could not be revoked because his parents were not American citizens at the time of his birth, or because they made several trips to China after it.[12]

However, the Supreme Court has never explicitly ruled on whether children born in the United States to illegal immigrant parents are entitled to birthright citizenship via the 14th Amendment,[13] although it is generally assumed that they are.[14] Heightened concern over illegal immigration to the United States has prompted some moves to abolish *jus soli*,[2] [15] but these have so far failed.

See also

- Birth tourism
- Jus sanguinis
- Nationality law
- Native-born citizen
- Natural-born citizen – a specific requirement for the office of President of the United States
- Stateless person

References

[1] Vincent, Andrew (2002). *Nationalism and particularity*. Cambridge; New York: Cambridge University Press.

[2] Mancini, JoAnne; Finlay, Graham (September 2008). "'Citizenship Matters': Lessons from the Irish citizenship referendum". *American Quarterly* (American Quarterly) **60** (3): 575–599. doi:10.1353/aq.0.0034.

[3] http://www.law.cornell.edu/uscode/8/1401.html

[4] "Nations Granting Birthright Citizenship" (http://www.numbersusa.com/content/learn/issues/birthright-citizenship/nations-observing-birthright-citizenship.html). NumbersUSA. . Retrieved 2009-09-06.

[5] Constitution of the Republic of Chile, chap. II, art. 10, par. 1 (Spanish text (http://pdba.georgetown.edu/Constitutions/Chile/chile05.html); English version (http://confinder.richmond.edu/admin/docs/Chile.pdf) without recent changes)

[6] Fiji Constitution (http://www.servat.unibe.ch/icl/fj00000_.html), chap. 3, sec. 10

[7] The Constitution of Lesotho (http://library2.parliament.go.th/giventake/content_cons/lesotho.pdf), chap. IV, sec. 38

[8] Sadiq, Kamal (2008). *Paper Citizens: How Illegal Immigrants Acquire Citizenship in Developing Countries*. Oxford University Press. p. 10. ISBN 9780195371222.

[9] Bauböck, Rainer; Bernhard Perchinig, Wiebke Sievers (2007). *Citizenship policies in the new Europe*. Amsterdam University Press. p. 247. ISBN 9789053569221.

[10] Schultz, Jeffrey D. (2000). *Encyclopedia of Minorities in American Politics: Hispanic Americans and Native Americans*. Greenwood Publishing Group. p. 621. ISBN 9781573561495.

[11] http://supreme.justia.com/us/169/649/case.html

[12] Ryan, John M. (2009-08-27). "Letters: U.S. citizenship" (http://www.scsun-news.com/ci_13217786). Silver City Sun-News. . Retrieved 2009-09-06.

[13] The Heritage Foundation (2005). *The Heritage Guide to the Constitution* (http://books.google.com/books?id=-_8N3UeXeesC&pg=PA385&vq=wong+kim+ark&dq="the+heritage+guide+to+the+constitution"&sig=YrXqQZRCOTmvYgfEwxv7ZH7Uwlc). Washington, DC: Heritage Foundation. pp. 385–386. ISBN 159698001X. .

[14] Erler, Edward J; Thomas G West, John A Marini (2007). *The Founders on Citizenship and Immigration: Principles and Challenges in America* (http://books.google.com/books?id=yTA0NyesVbcC&pg=PA67&vq=wong+kim+ark&dq="The+Founders+on+Citizenship+and+Immigration"&sig=u1mgbto2nyHjAog9wxFCVlHwcSA). Lanham, MD: Rowman & Littlefield. pp. 67. ISBN 074255855X. .

[15] "GOP mulls ending birthright citizenship" (http://www.washingtontimes.com/news/2005/nov/03/20051103-115741-1048r/). The Washington Times. 2005-11-03. .

Jus tractatuum

Jus tractatuum is a Legal Latin term commonly used in public international law and constitutional law that refers to the right to conclude treaties.

Justitium

Not to be confused with iustitia, the Latin word for "justice," or Justitia, the allegorical figure representing justice.

Justitium is a concept of Roman law, equivalent to the declaration of the state of emergency. It was usually declared following a sovereign's death, during the troubled period of *interregnum*, but also in case of invasions. However, in this last case, it was not as much the physical danger of invasion that justified the instauration of a state of exception, as the consequences that the news of the invasion had in Rome - for example, *justitium* was proclaimed at the news of Hannibal's attacks.

According to Giorgio Agamben, *justitium* progressively came to mean, after the Roman Republic, the public mourning of the sovereign: a sort of privatization or diversion of the danger threatening the *polis*, as the sovereign claimed for himself the *auctoritas* necessary to the rule of law.

See also

- *Auctoritas*
- Giorgio Agamben
- *Interregnum*
- State of emergency

References

- Giorgio Agamben, *State of Exception*, 2005.

External links

- *The Roman Law Library* by Professor Yves Lassard and Alexandr Koptev [1]

References

[1] http://web.upmf-grenoble.fr/Haiti/Cours/Ak

Legem terrae

The ***law of the land*** is a legal term, from the Latin *legem terrae* or *lex terrae*. It refers to all of the laws in force within a country.

Most famous uses

In 1297, this term was used in the Magna Carta. Perhaps the most famous clause of Magna Carta states: "No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the *Law of the Land*."[1]

Centuries later, this term was used in 1787 to write the Supremacy Clause of the United States Constitution. The Supremacy Clause states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme *Law of the land*...."[2]

Meaning and interpretation

English jurists have consistently attached the same basic meaning to this term, writing that it includes all laws that are in force in the jurisdiction. Edward Coke, commenting upon Magna Carta, wrote in 1606: "no man be taken or imprisoned but per *legem terrae*, that is, by the common law, statute law, or custom of England."[3] Likewise, Justice Powys of the King's Bench wrote in 1704: "lex terrae is not confined to the common law, but takes in all the other laws, which are in force in this realm; as the civil and canon law...."[4]

How it changes

William Blackstone wrote that the law of the land "depends not upon the arbitrary will of any judge; but is permanent, fixed, and unchangeable, unless by authority of parliament.... Not only the substantial part, or judicial decisions, of the law, but also the formal part, or method of proceeding, cannot be altered but by parliament."[5]

See also

- Lex loci
- Due process

References

[1] Magna Carta (http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1517519) (1297).

[2] WikiSource: Constitution of the United States of America (1787).

[3] Coke, Edward. *Institutes of the Laws of England* (http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php?title=912&chapter=61105&layout=html&Itemid=27) (1606).

[4] Regina v. Paty, 92 Eng. Rep. 232, 234 (http://books.google.com/books?id=SA4wAAAAIAAJ&pg=PA1108&dq="but+takes+in+all+the+other+laws,+which+are+in+force+in+this+realm"&as_brr=1&ei=QB30SOLWB5W0yQSvq_zHCg#PPA1105,M1) (K. B. 1704).

[5] Blackstone, William. *Commentaries on the Laws of England* (http://press-pubs.uchicago.edu/founders/documents/amendV_due_processs8.html), Volume 1, pages 137-138 (Univ. of Chicago Press 1979).

Lex ferenda

Lex ferenda (also called ***de lege ferenda***) is a Latin expression that means "what the law should be" (as opposed to lex lata). Used in the anglo-american legal system.

See also

- List of Latin phrases

Lex inuista non est lex

Lex Inuista Non Est Lex (Latin: An unjust law is no law at all), is a standard legal maxim. It originates with Augustine,[1] [2] and was used by Aquinas [3]

References

[1] (http://books.google.com/books?id=8eoBAAAAMAAJ&q="Lex+Inuista+Non+Est+Lex"&dq="Lex+Inuista+Non+Est+Lex"&ei=4MFDS9-THYGGzgTq-4HdBw&client=safari&cd=2)

[2] (http://books.google.com/books?id=qn95AAAAIAAJ&q="Lex+Inuista+Non+Est+Lex"&dq="Lex+Inuista+Non+Est+Lex"&ei=4MFDS9-THYGGzgTq-4HdBw&client=safari&cd=3)

[3] Norman Kretzmann, Lex Inuista Non Est Lex: Laws on Trial in Aquinas' Court of Conscience, 33 Am. J. Juris. 99 (1988);

- Law and Morality, Edited by Kenneth Einar Himma, Seattle Pacific University, USA and Brian Bix, University of Minnesota, USA (http://www.ashgatepublishing.com/default.aspx?page=637&calctitle=1&pageSubject=625&sort=pubdate&forthcoming=1&pagecount=8&title_id=6665&edition_id=9014)
- Philosophical theory and the Universal Declaration of Human Rights By William Sweet (http://books.google.com.au/books?id=_V_KuJGcJSAC&source=gbs_navlinks_s)

Lex loci arbitri

The **lex loci arbitri** is the Latin term for "law of the place where arbitration is to take place" in the conflict of Laws. Conflict is the branch of public law regulating all lawsuits involving a "foreign" law element where a difference in result will occur depending on which laws are applied.

Explanation

When a case comes before a court and all the main features of the case are local, the court will apply the *lex fori*, the prevailing municipal law, to decide the case. But if there are "foreign" elements to the case, the forum court may be obliged under the Conflict of Laws system to consider:

- whether the forum court has jurisdiction to hear the case (see the problem of forum shopping);
- it must then characterise the issues, i.e. allocate the factual basis of the case to its relevant legal classes; and
- then apply the choice of law rules to decide which law is to be applied to each class.

The *lex loci arbitri* is an element in the choice of law rules applied to cases testing the validity of a contract. As an aspect of the public policy of freedom of contract, the parties to an agreement are free to include a forum selection clause and/or a choice of law clause and, unless there is a lack of bona fides, these clauses will be considered valid. If there is no express selection of a proper law, the courts will usually take the nomination of a forum as a "connecting factor", i.e. a fact that links a case to a specific georgraphical location. For these purposes, one of the "forums" that may be selected is arbitration. Hence, the fact that the parties have chosen a state as the place of arbitration is an indication that parties may have intended the local law to apply. This indication will be weighed alongside other connecting factors. The state that has the largest number of connecting factors will be the *lex causae* applied to resolve the dispute between the parties. If there is a tie, the connecting factors which relate to performance will be given a greater weighting.

See also

- Lex domicilii
- Lex loci celebrationis
- Lex loci contractus
- Lex loci delicti commissi
- Lex loci solutionis
- Lex patriae
- Lex situs

Lex specialis

Lex specialis, in legal theory and practice, is a doctrine relating to the interpretation of laws, and can apply in both domestic and international law contexts. The doctrine states that a law governing a specific subject matter (*lex specialis*) overrides a law which only governs general matters (*lex generalis*). The situation ordinarily arises with regard to the construction of earlier-enacted specific legislation when more general legislation is later passed. This principle also applies to construction of a body of law or single piece of legislation that contains both specific and general provisions.

The name comes from the full statement of the doctrine (a legal maxim) in Latin: ***Lex specialis derogat legi generali***.

See also

- Statutory interpretation
- International law

Lex causae

In the conflict of laws, **lex causae** (Latin: lex+causa, "cause [for the] law") is the law or laws chosen by the forum court from among the relevant legal systems to arrive at its judgement of an international or interjurisdictional case. The term refers to the usage of particular local laws as the basis or "cause" for the ruling, which would itself become part of referenced legal canon.

Conflict of laws regulates all lawsuits involving "foreign" law, where the outcome of a legal action will differ based on which laws are applied. Once the forum court has ruled that it has jurisdiction to hear the case, it must then decide which of the possible laws are to be applied.

Explanation

When the parties and the causes of action are local, the court will apply the *lex fori*, the prevailing municipal law. If there are "foreign" elements to the case, the forum court should under the conflict of laws consider whether it should apply one or more foreign laws.

For example, suppose that a person domiciled in Scotland and a person habitually resident in France, both being of the Islamic faith, go through an Islamic form of marriage in Egypt while on holiday. This ceremony is not registered with the Egyptian authorities. They establish a matrimonial home in Algeria where they buy a house in the husband's name. The relationship breaks down and the wife returns to Scotland. When she hears that the husband is proposing to sell the house, she goes to the courts in Scotland. Is this:

- a case involving title to land where the *lex situs*, the law of the place where the land is situated, will be applied;
- a case to decide whether the Egyptian ceremony created a valid marriage under the *lex loci celebrationis, the law of the place where the marriage was celebrated;*
- a case to decide whether she has the status of a wife and so may seek matrimonial relief under the *lex domicilii*, the law of her domicile; or
- a case to seek divorce in which case the *lex fori* substantive family law will apply?

Assuming that the three relevant laws (the domicile and the forum is in Scotland) would give different results, the choice of the *lex causae* assumes major significance (see also incidental question).

See also

- Lex fori
- Lex loci celebrationis
- Lex loci contractus
- Lex loci delicti commissi
- Lex situs
- Privilegium fori

Lex domicilii

The **lex domicilii** is the Latin term for "law of the domicile" in the Conflict of Laws. Conflict is the branch of public law regulating all lawsuits involving a "foreign" law element where a difference in result will occur depending on which laws are applied.

Explanation

When a case comes before a court and all the main features of the case are local, the court will apply the *lex fori*, the prevailing municipal law, to decide the case. But if there are "foreign" elements to the case, the forum court may be obliged under the Conflict of Laws system to consider:

- whether the forum court has jurisdiction to hear the case (see the problem of forum shopping);
- it must then characterise the issues, i.e. allocate the factual basis of the case to its relevant legal classes; and
- then apply the choice of law rules to decide the lex causae, i.e. which law is to be applied to each class.

The *lex domicilii* is a common law choice of law rule applied to cases testing the status and capacity of the parties to the case. For example, suppose that a person domiciled in Malaysia decides to take a "round-the-world" trip. It would be inconvenient if this person's legal status and capacities changed every time they changed jurisdiction, e.g. that they might be considered an infant or an adult, married or free to marry, bankrupt or creditworthy, etc., depending on the nature of the laws of the place where they happened to be. Assuming that there are no public policy issues raised under the relevant *lex fori*, the domiciliary law should apply to define all major issues and so produce an *in rem* outcome no matter where the case might be litigated. The civil law states use a test of either *lex patriae (the law of nationality) or the law of habitual residence to determine status and capacity.*

See also

- Lex loci celebrationis
- Lex loci contractus
- Lex loci delicti commissi
- Lex loci solutionis

Lex fori

Lex fori (Latin for the laws of a forum) is a legal term used in the conflict of laws used to refer to the laws of the jurisdiction in which a legal action is brought.[1] When a court decides that it should, by reason of the the principles of conflict of law, resolve a given legal dispute by reference to the laws of another jurisdiction, the *lex causae*, the *lex fori* still govern procedural matters.[2]

See also

- Lex causae
- Lex loci celebrationis
- Lex loci contractus
- Lex loci delicti commissi
- Lex loci rei sitae
- Lex situs
- Privilegium fori

References

[1] "Lex fori" (http://dictionary.getlegal.com/lex-fori). getlegal.com. . Retrieved 8 February.

[2] Collins, Lawrence (2000). *Dicey and Morris on the Conflicts of Laws* (13th ed.). London: Sweet & Maxwell. p. 157.

Lex Fori refers to the law of the forum, which means the law that the Court naturally applies (e.g. Greek court would apply Greek law)

Lex incorporationis

The **internal affairs doctrine** is a choice of law rule in corporations law. Simply stated, it provides that the "internal affairs" of a corporation (e.g. conflicts between shareholders and management figures such as the board of directors and corporate officers) will be governed by the corporate statutes and case law of the state in which the corporation is incorporated, sometimes referred to as the ***lex incorporationis***.

Practical effects of the doctrine

The internal affairs doctrine ensures that such issues as voting rights of shareholders, distributions of dividends and corporate property, and the fiduciary obligations of management are all determined in accordance with the law of the state in which the company is incorporated. On the other hand, the "external affairs" of a corporation, such as labor and employment issues and tax liability, are typically governed by the law of the state in which the corporation is doing business. Some issues and activities, such as contracts, mergers and acquisitions, and sales of securities to third parties, may be governed both by the laws of the state of incorporation and by the laws of the state in which the transaction takes place, and in some cases, by federal law as well (for example, United States securities law and antitrust law).

The doctrine and its relation to Federalism

In the United States, each state has the power to set its own corporate law. Because of this, and the fact that the internal affairs doctrine has been used by courts to allow application of the *lex incorporationis*, this has created a competitive market for incorporations among the states. Several states have taken advantage of this situation by becoming corporate havens, particularly Delaware and Nevada. Likewise, many jurisdictions apply the internal affairs doctrine internationally, which has permitted offshore financial centres to flourish.

See also

- Delaware corporation
- Nevada corporation

References

- Bauman, Jeffrey D.; Weiss, Elliott J.; and Palmiter, Alan R. *Corporations, Law and Policy, Fifth Edition.* Thomson-West, 2005. ISBN 0-314-25966-X

Further reading

- "A Comparative Bibliography: Regulatory Competition on Corporate Law" [1]. *(Georgetown University Law Center Working Paper).*

References

[1] http://ssrn.com/abstract=1103644

Lex lata

Lex lata (also called ***de lege lata***) is a Latin expression that means "the law as it exists" (as opposed to lex ferenda).

See also

- List of Latin phrases

Lex loci

In Conflict of Laws, the term **lex loci** (Latin for "the law of the place")[1] is a shorthand version of the choice of law rules that determine the *lex causae*.

The relevant rules are:

- Lex fori
- Lex loci arbitri
- Lex loci celebrationis
- Lex loci contractus
- Lex loci damni infecti
- Lex loci delicti commissi
- Lex loci rei sitae
- Lex situs
- Lex loci solutionis
- Lex loci actus

References

[1] Eugene Ehrich, "Amo, Amas, Amat and More", p. 170, ISBN 0-06-272017-1.

Lex loci celebrationis

The **'''lex loci celebrationis** is the Latin term for "law of the place where the marriage is celebrated" in the conflict of laws. Conflict is the branch of public law regulating all lawsuits involving a "foreign" law element where a difference in result will occur depending on which laws are applied.

Explanation

When a case comes before a court and all the main features of the case are local, the court will apply the *lex fori*, the prevailing municipal law, to decide the case. But if there are "foreign" elements to the case, the forum court may be obliged under the conflict of laws system to:

1. consider whether the forum court has jurisdiction to hear the case (see the problem of forum shopping);
2. characterise the issues, i.e. allocate the factual basis of the case to its relevant legal classes; and
3. apply the choice of law rules to decide which law is to be applied to each class.

The *lex loci celebrationis* is a choice of law rule applied to cases testing the validity of a marriage. For example, suppose that a person domiciled in Scotland and a person habitually resident in France, both being of the Islamic faith, go through an Islamic marriage ceremony in Pakistan where their respective families originated. This ceremony is not registered with the Pakistani authorities but they initially establish a matrimonial home in Karachi. After a year, they return to Europe. For immigration and other purposes, whether they are now husband and wife would be referred to the law of Pakistan because that is the most immediately relevant law by which to decide precisely the nature of the ceremony they went through and the effect of failing to register it. If the ceremony was in fact sufficient to create a valid marriage under Pakistani law and there are no public policy issues raised under their personal laws of *lex domicilii* or habitual residence, and under the *lex fori*, they will be treated a validly married for all purposes, i.e. it will be an *in rem* outcome.

See also

- Lex causae
- Lex fori
- Lex loci contractus
- Lex loci delicti commissi
- Lex situs

Lex loci contractus

In the conflict of laws, the **lex loci contractus** is the Latin term for "law of the place where the contract is made".[1]

Explanation

When a case comes before a court and all the main features of the case are local, the court will apply the *lex fori*, the prevailing municipal law, to decide the case. But if there are "foreign" elements to the case, the forum court may be obliged under the Conflict of Laws system to consider:

- whether the forum court has jurisdiction to hear the case (see the problem of forum shopping);
- it must then characterise the issues, i.e. allocate the factual basis of the case to its relevant legal classes; and
- then apply the choice of law rules to decide which law is to be applied to each class.

The *lex loci contractus* is one of the possible choice of law rules applied to cases testing the validity of a contract. For example, suppose that a person domiciled in Canada and a person habitually resident in France, make a contract by e-mail. They agree to meet in New York State to record a CD of hip hop music. The possibly relevant choice of law rules would be:

- the lex domicilii and law of habitual residence to determine whether the parties had the capacity to enter into the contract;
- the *lex loci contractus* which could be difficult to establish since neither party left his own jurisdiction (reliance on postal rules for offer and acceptance in the several putative leges causae might produce different results);
- the lex loci solutionis might be the most relevant since New York is the most closely connected to the substance of the obligations assumed;
- the proper law; and
- the *lex fori* which might have public policy issues if, say, one of the parties was an infant.

Implications of the law

The provisions of this legal concept can be construed to confirm the following:[2]

- If a contract is valid where it was consummated, it is (generally) valid everywhere (i.e. in all comity states);
- If a contract is void where it was consummated, it is void everywhere (i.e. in all comity states);
- An exception in comity exists: The agreement will not be held valid in the forum country if it violates the law of the forum country, or if it violates the law of nature, or if it violates the Law of God;
- A contract may be deemed valid in lex loci contractus, but if it is a revenue law of that state it will not be enforced in the forum state.

If a contract is consummated in one state but its content specifies that it is to be carried out in another state, two *loci* are thus generated: *locus celebrate contractus* (where it was signed) and *locus solutionis* (where it is to be performed). The laws of the *locus celebrate contractus* state will govern all matters concerning the mode of constructing the contract, the meaning of each factor therein, the nature of the contract, and its validity. The laws of the *locus solutionis* state will apply to the performance or execution of the contract.

Determining lex loci contractus at law

Sometimes the locus celebrate contractus state is difficult to determine, for example if the contract was signed at sea or on a moving train, or if the details of the contract signing were not well-documented. If a court is called upon to determine the applicable state, it may use any or all of the following factors:

- The residence or main domicile of the signatory parties;
- The main place of business of the signatory parties;
- The state in which the business was incorporated;
- The state nominated for arbitration proceedings in case of a conflict *(lex loci arbitri)*;
- The language used to write the contract;
- The format of the contract (only relevant if the contract format is unique to a state or group of states within the comity group);
- The currency in which payment for performance of the contract is specified to be paid;
- The nation of registration of any ship involved in performance of the contract;
- The state where completion of the contract is specified to occur *(lex loci solutionis)*;
- A pattern of similar contracts involving the same parties;
- The state where any third parties to the contract are located;
- The state where any insurance companies connected with the contract are located.

See also

- Lex loci arbitri
- Lex loci celebrationis
- Lex loci delicti commissi
- Lex situs

References

[1] Starr Printing Co. v. Air Jamaica, 45 F.Supp.2d. 625 (1999 U.S. Dist.)
[2] http://www.legal-dictionary.thefreedictionary.com/Lex+loci+contractus

Lex loci delicti commissi

The ***lex loci delicti commissi*** is the Latin term for "law of the place where the delict [tort] was committed"[1] in the conflict of laws. Conflict of laws is the branch of law regulating all lawsuits involving a "foreign" law element where a difference in result will occur depending on which laws are applied.

The term is often shortened to *lex loci delicti*.

Explanation

When a case comes before a court and the parties and the causes of action are local, the court will apply the *lex fori*, the prevailing municipal law, to decide the case. However, if there are "foreign" elements to the case, the forum court may be obliged under the conflict of laws to consider the following issues:

- It adjudicates whether the forum court has jurisdiction to hear the case (see forum shopping);
- It subsequently applies the choice of law rules to decide the lex causae, that is, which law is to be applied to each cause of action.

The *lex loci delicti commissi* is one of the possible choice of law rules applied to cases arising from an alleged tort. For example, suppose that a person domiciled in Australia and a person who resides in Albania exchange correspondence by e-mail that is alleged to defame a group of Kurds resident in Turkey. The relevant choice of law rules would be:

- The *lex loci solutionis* (law of the place where relevant performance occurs) might be the most relevant, but it leaves the laws of Australia, Albania, and Turkey equally applicable. That is, the parties corresponded from two states but the damage was not sustained until the correspondence was published in Turkey;
- The proper law is the law which has the closest connection with the alleged misconduct; and
- The *lex fori* which might have public policy issues if, for example, one of the parties was an infant, or multiple jurisdictions may be involved over global internet use.

Reasoning for applicability

In a case where a US citizen on vacation in Mexico was injured when he fell into a hotel construction excavation (while climbing a mound of dirt to obtain a better view of the construction activity), he attempted to sue the hotel's owners in a US court. The US court rejected the suit, asserting *lex loci delicti*. The man appealed the trial court's finding, but the appeals court sided with the trial court.[2] The appeals court judge (Judge Posner) supported his decision with a vigorous explanation of why the lex loci rule should apply: *"The jurisdiction in which the accident occurs] is the place that has the greatest interest in striking a reasonable balance among safety, cost, and other factors pertinent to the design and administration of a system of tort law. Most people affected whether as victims or as injurers by accidents and other injury-causing events are residents of the jurisdiction in which the event takes place. So if law can be assumed to be generally responsive to the values and preferences of the people who live in the community that formulated the law, the law of the place of the accident can be expected to reflect the values and preferences of the people most likely to be involved in accidents . . ."*

Two Harvard University Law professors examined the Judge's reasoning, and while agreeing with it in principle, articulated several different points of rationale for applying local law to local incidents:[3]

- Under the economic theory of accident law, compensatory damages should be relative to the social harm caused by an accident, and that level of harm can best be determined by application of the local laws governing that area;
- The perceived economic value of life and limb varies from state to state;
- The optimal amount of medical care for an injured person (and thus the required cash compensation) will vary from state to state;

- Specific standards of precautions against particular classes of injuries or accidents will differ between states, because of differences in population density, climatic factors, economic factors, differing perceptions of risk etc.

See also

- Lex loci celebrationis
- Lex domicilii
- Lex loci contractus
- Lex situs

References

[1] http://www.yourdictionary.com/law/lex-loci-delicti
[2] Spinozzi v. Sherator Corp, 174 F.3d 842 (7th Cir. 1999)
[3] http://www.harvardlawreview.org/issues/120/march07/goldsmith_sykes.pdf

Lex loci rei sitae

The ***lex loci rei sitae*** (Latin: *law of the place where the property is situated*) is a doctrine which states that the law governing the transfer of title to property is dependent upon, and varies with, the location of the property for the purposes of the Conflict of Laws. Conflict is the branch of public law regulating all lawsuits involving a "foreign" law element where a difference in result will occur depending on which laws are applied.

Explanation

When a case comes before a court and all the main features of the case are local, the court will apply the *lex fori*, the prevailing municipal law, to decide the case. But if there are "foreign" elements to the case, the forum court may be obliged under the Conflict of Laws system to consider:

- whether the forum court has jurisdiction to hear the case (see the problem of forum shopping);
- it must then characterise the issues, i.e. allocate the factual basis of the case to its relevant legal classes; and
- then apply the choice of law rules to decide which law is to be applied to each class.

The *lex loci rei sitae* is a choice of law rule applied to identify the lex causae for cases involving title to, or the possession and use of personal property. In law, there are two types of property:

- Real property is land or any permanent feature or structure above or below the surface. Ownership of land is an aspect of the system of *real property* or *realty* in common law systems (*immovables* in civil law systems and the Conflict of Laws).
- All other property is considered *personal property* or *personalty* in common law systems (*movables* in civil law systems and the Conflict of Laws), and this property is either *tangible* or *intangible*, i.e. it is either physical property that can be touched like a computer, or it is an enforceable right like a patent or other form of intellectual property.

See also

- Lex loci celebrationis
- Lex loci contractus
- Lex loci delicti commissi
- Lex loci solutionis

Lex loci solutionis

The **lex loci solutionis** is the Latin term for "law of the place where relevant performance occurs" in the Conflict of Laws. Conflict is the branch of public law regulating all lawsuits involving a "foreign" law element where a difference in result will occur depending on which laws are applied.

Explanation

When a case comes before a court and all the main features of the case are local, the court will apply the *lex fori*, the prevailing municipal law, to decide the case. But if there are "foreign" elements to the case, the forum court may be obliged under the Conflict of Laws system to consider:

- whether the forum court has jurisdiction to hear the case (see the problem of forum shopping);
- it must then characterise the issues, i.e. allocate the factual basis of the case to its relevant legal classes; and
- then apply the choice of law rules to decide which law is to be applied to each class.

The *lex loci solutionis* is one of the possible choice of law rules applied to cases testing the validity of a contract and in tort cases. For example, suppose that a person domiciled in Bolivia and a person habitually resident in Germany, make a contract by e-mail. They agree to meet in Arizona to research a book. The possibly relevant choice of law rules would be:

- the *lex domicilii*, *lex patriae* or the law of habitual residence to determine whether the parties had the capacity to enter into the contract;
- the *lex loci contractus* which could be difficult to establish since neither party left their own state (reliance on postal rules for offer and acceptance in the several putative *lex causae* might produce different results);
- the lex loci solutionis might be the most relevant since Arizona is the most closely connected to the substance of the obligations assumed;
- the proper law; and
- the *lex fori* which might have public policy issues if, say, one of the parties was an infant.

See also

- Lex loci celebrationis
- Lex loci delicti commissi
- Lex situs

Lex non scripta

Lex non scripta is a Latin expression that means "'law not written'" or "'unwritten law'". It is a term that embraces all the laws which do not come under the definition of written law or "*lex scripta*" and it is composed, principally, of the *law of nature*, the *law of nations*, the *common law*, and *customs*.

See also

- List of Latin phrases

Lex patriae

The term **lex patriae** is Latin for *the law of nationality* in the Conflict of Laws which is the system of public law applied to any lawsuit where there is a choice to be made between several possibly relevant laws and a different result will be achieved depending on which law is selected.

Explanation

When a case comes before a court and all the main features of the case are local, the court will apply the *lex fori*, the prevailing municipal law, to decide the case. But if there are "foreign" elements to the case, the forum court may be obliged under the Conflict of Laws system to consider:

- whether the forum court has jurisdiction to hear the case (see the problem of forum shopping);
- it must then characterise the issues, i.e. allocate the factual basis of the case to its relevant legal classes; and
- then apply the choice of law rules to decide the lex causae, i.e. which law is to be applied to each class.

The *lex patriae* is a civil law choice of law rule (in some states, the law of habitual residence is used) to test the status and capacity of the parties to the case. For example, suppose a person with a nationality in Denmark decides to take a round-the-world trip. It would be inconvenient if this person's legal status and capacities changed every time they entered a new state, that they might be considered an infant or an adult, married or free to marry, bankrupt or creditworthy, etc., depending on the laws of the place they happened to be. Assuming there are no public policy issues raised under the relevant *lex fori*, the *lex patriae* should apply to define all major issues, and so produce an *in rem* outcome no matter where the case might be litigated. The common law states use a test of *lex domicilii* (the law of domicile) to determine status and capacity. Because the *lex patriae* choice of law rule may select the law of a country that contains more than one legal system, there must be rules to determine which of the several possible laws might apply (e.g. a reference to the law of the United States is actually a reference to one of the U.S. states). A supranational example of this selection process is contained in Article 19 of the Rome Convention:

> States with more than one legal system
>
> 1. Where a State comprises several territorial units each of which has its own rules of law in respect of contractual obligations, each territorial unit shall be considered as a country for the purposes of identifying the law applicable under this Convention.
> 2. A State within which different territorial units have their own rules of law in respect of contractual obligations shall not be bound to apply this Convention to conflicts solely between the laws of such units.

See also

- Lex loci celebrationis
- Lex loci contractus
- Lex loci delicti commissi
- Lex loci solutionis

Lex rei sitae

Lex rei sitae is a legal doctrine of property law and of International private law. It is Latin for "the law where the property is situated". The law governing the transfer of title to property is dependent upon, and varies with, the *lex rei sitae*.

Lex scripta

Lex scripta pl. ***leges scriptae*** is a Latin expression that means "written or statutory law." It is in contrast to lex non scripta, customary or common law. The term originates from the Roman legal tradition. Emperor Justinian divides the *lex scripta* into several categories:

- Statutes
- Plebiscita
- Senatorial Decrees
- The Decisions of the Emperors
- Orders of the Magistrates
- Answers of Jurisconsults

Lex scripta has a lasting effect that can define a legal tradition for a culture such as that found in the Corpus Juris Civilis, Magna Carta, Tang Code, or a country's constitution.

See also

- List of Latin phrases

Lex situs

The term ***lex situs*** (Latin) refers to the law of the place in which property is situated for the purposes of the Conflict of laws. For example, property may subject to tax pursuant to the law of the place of the property or by virtue of the domicile of its owner. Conflict is the branch of public law regulating all lawsuits involving a "foreign" law element where a difference in result will occur depending on which laws are applied.

Explanation

When a case comes before a court and all the main features of the case are local, the court will apply the *lex fori*, the prevailing municipal law, to decide the case. But if there are "foreign" elements to the case, the forum court may be obliged under the Conflict of Laws system to consider:

- whether the forum court has jurisdiction to hear the case (see the problem of forum shopping);
- it must then characterise the issues, i.e. allocate the factual basis of the case to its relevant legal classes; and
- then apply the choice of law rules to decide which law is to be applied to each class.

The *lex situs* is a choice of law rule applied to identify the lex causae for cases involving title to, or the possession and use of property. In law, there are two types of property:

- Real property is land or any permanent feature or structure above or below the surface. Ownership of land is an aspect of the system of *real property* or *realty* in common law systems (*immovables* in civil law systems and the Conflict of Laws).
- All other property is considered *personal property* or *personalty* in common law systems (*movables* in civil law systems and the Conflict of Laws), and this property is either *tangible* or *intangible*, i.e. it is either physical property that can be touched like a computer, or it is an enforceable right like a patent or other form of intellectual property.

Properly speaking, the term *lex situs* is applied only to immovable property and *lex loci rei sitae* ought to be used when referring to the law of the *situs* of movable property but this distinction is less common today and is ignored for the purposes of the Conflict pages on the Wikipedia. Land has traditionally represented one of the most important cultural and economic forms of wealth in society. Because of this historical significance, it is vital that any judgment affecting title to or the use of the land should be enforceable with the minimum of difficulty. Hence, compliance with the *lex situs* should produce a judgment in rem. The choice of law rules are as follows:

- immovables, by definition, do not move and so the identification of the *lex situs* will not present a problem in the majority of cases;
- because movables may be portable, the *lex situs* is the law of the state in which the personalty is resident at the time the case is heard.

See also

- Lex loci celebrationis
- Lex loci contractus
- Lex loci delicti commissi
- Lex loci solutionis

Lex talionis

The phrase, "**an eye for an eye**", (Hebrew: עַיִן תַּחַת עָיִן, *ayin tachat ayin, literally "eye under eye"*), is a quotation from several passages of the Hebrew Bible (Leviticus 24:19–21 [1], Exodus 21:22–25 [2], and Deuteronomy 19:21 [3]) in which a person who has injured the eye of another is instructed to give the value of his or her own eye in compensation. At the root of this principle is that one of the purposes of the law is to provide equitable retribution for an offended party. It defined and restricted the extent of retribution in the laws of the Torah.

The term eye for an eye was not just about retribution, but also about mercy - in ancient times, the punishment often far *exceeded* the crime. [4]

In modern times, the phrase still loosely applies. Should a person commit a tort that results in personal injury of the plaintiff, they must pay for the repairing of the injury (e.g. an eye transplant). This is called compensatory damages.

The English word *talion* means a punishment identical to the offence, from the Latin *talio*. The principle of "an eye for an eye" is often referred to using the Latin phrase *lex talionis*, the law of talion.

Definition and methods

The term *lex talionis* does not always and only refer to literal eye-for-an-eye codes of justice (see rather mirror punishment) but applies to the broader class of legal systems that specify formulaic penalties for specific crimes, which are thought to be fitting in their severity. Some propose that this was at least in part intended to prevent excessive punishment at the hands of either an avenging private party or the state. The most common expression of *lex talionis* is "an eye for an eye", but other interpretations have been given as well. Legal codes following the principle of *lex talionis* have one thing in common: prescribed 'fitting' counter punishment for an offense. In the famous legal code written by Hammurabi, the principle of exact reciprocity is very clearly used. For example, if a person caused the death of another person, the killer would be put to death (Hammurabi's code, ¶230).

Under the right conditions, such as the ability for all actors to participate in an iterative fashion, the "eye for an eye" punishment system has a mathematical basis in the Tit for tat game theory strategy.

The simplest example is the "eye for an eye" principle. In that case, the rule was that punishment must be exactly equal to the crime. Conversely, the twelve tables of Rome merely prescribed particular penalties for particular crimes. The Anglo-Saxon legal code substituted payment of wergild for direct retribution: a particular person's life had a fixed value, derived from his social position; any homicide was compensated by paying the appropriate wergild, regardless of intent. Under the British Common Law, successful plaintiffs were entitled to repayment equal to their loss (in monetary terms). In the modern tort law system, this has been extended to translate non-economic losses into money as well. bareyor hebat giler arr...

Antecedents

Various ideas regarding the origins of *lex talionis* exist, but a common one is that it developed as early civilizations grew and a less well-established system for retribution of wrongs, feuds and vendettas, threatened the social fabric. Despite having been replaced with newer modes of legal theory, *lex talionis* systems served a critical purpose in the development of social systems — the establishment of a body whose purpose was to enact the retaliation and ensure that this was the only punishment. This body was the state in one of its earliest forms.

The principle is found in Babylonian Law (see Code of Hammurabi). It is surmised that in societies not bound by the rule of law, if a person was hurt, then the injured person (or their relative) would take vengeful retribution on the person who caused the injury. The retribution might be much worse than the crime, perhaps even death. Babylonian law put a limit on such actions, restricting the retribution to be no worse than the crime, as long as victim and offender occupied the same status in society, while punishments were less proportional with disputes between social

strata: like blasphemy or laesa maiestatis (against a god, viz., monarch, even today in certain societies), crimes against one's social better were systematically punished as worse.

Roman law moved toward monetary compensation as a substitute for vengeance. In cases of assault, fixed penalties were set for various injuries, although *talio* was still permitted if one person broke another's limb.[5]

Abrahamic traditions

Lex talionis in Judaism

The Hebrew Bible states lex talionis as the punishment for battery (Ex 21:22–27 [6] , 24:18–20) and perjury (Dt 19:16–21 [7]). Sadducees and modern-day Karaite Jews understand these laws literally as corporal punishment [8]. One argument in favor of the literal interpretation is that the Bible explicitly states not to show mercy in Dt 19:16–21 [7].

The Torah's first mention of the phrase "an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot" appears in Ex 21:22–27 [6]. The Talmud (in *Bava Kamma*, 83b-84a), based upon an extended argument about how to interpret the original Hebrew text, eventually decides that this biblical concept entails monetary compensation in tort cases. One element of this interpretation argues that "an eye for an eye" understood literally would be inapplicable to blind or eyeless offenders. Since the Torah requires that penalties be universally applicable, the phrase cannot be interpreted literally. The same interpretation applies to this phrase as it appears in Leviticus 24:18–20. Personal retribution is explicitly forbidden by the Torah (Lv 19:18 [9]), such reciprocal justice being strictly reserved for the social magistrate (usually in the form of regional courts). Nevertheless, Rabbi Eliezer is quoted as saying, "An eye for an eye - literally."

> The Oral Law explains, based upon the biblical verses, that the Bible mandates a sophisticated five-part monetary form of compensation, consisting of payment for "Damages, Pain, Medical Expenses, Incapacitation, and Mental Anguish" — which underlies many modern legal codes. Some rabbinic literature explains, moreover, that the expression, "An eye for an eye, etc." suggests that the perpetrator deserves to lose his own eye, but that biblical law treats him leniently. – Paraphrased from the Union of Orthodox Congregations[10]

However, the Torah also discusses a form of direct reciprocal justice, where the phrase "An eye for an eye, a tooth for a tooth" makes another appearance (Dt 19:16–21 [7]). Here, the Torah discusses false witnesses who conspire to testify against another person. The Torah requires the court to "do to him as he had conspired to do to his brother" (Dt 19:19 [11]). Assuming the fulfillment of certain technical criteria (such as the sentencing of the accused whose punishment was not yet executed), wherever it is possible to punish the conspirators with the exact same punishment through which they had planned to harm their fellow, the court carries out this direct reciprocal justice (including when the punishment constitutes the death penalty). Otherwise, the offenders receive lashes (*Makot* 1:1; ibid., Bab. Talmud 2a based on critical exegesis of Dt 25:1–3 [12]).

Since there is no form of punishment in the Torah that calls for the maiming of an offender, there is no case where a conspiratorial false witness could possibly be punished by the court injuring to his eye, tooth, hand, or foot. (There is one case where the Torah states "…and you shall cut off her hand…" Dt 25:11–12 [13]. The sages of the Talmud understood the literal meaning of this verse as referring to a case where the woman is attacking a man in potentially lethal manner. This verse teaches that, although one must intervene to save the victim, one may not kill a lethal attacker if it is possible to neutralize that attacker through non-lethal injury {Sifrei; Maimonides' *Yad*, *Nezikin*, Hil. *Rotze'ach u'Sh'mirat Nefesh* 1:7}. Regardless, there is no verse that even appears to mandate injury to the eye, tooth, or foot.) Thus, it is impossible to read "an eye for an eye, a tooth for a tooth" literally in the context of a conspiratorial witness.

Numbers 35:9–30 [14] discusses the only form of remotely reciprocal justice not carried out directly by the court, where, under very limited circumstances, someone found guilty of negligent manslaughter may be killed by a

relative of the deceased who takes on the role of "redeemer of blood". In such cases, the court requires the guilty party to flee to a designated city of refuge. While the guilty party is there, the "redeemer of blood" may not kill him. If, however, the guilty party illegally forgoes his exile, the "redeemer of blood", as an accessory of the court, may kill the guilty party. Nevertheless, the provision of the "redeemer of blood" does not serve as true reciprocal justice, because the redeemer only acts to penalize a negligent killer who forgoes his exile. Furthermore, intentional killing does not parallel negligent killing and thus cannot serve directly as a reciprocal punishment for manslaughter, but as a penalty for escaping punishment (*Makot* 7a–13a). (According to traditional Jewish Law, application of these laws requires the presence and maintenance of the biblically designated cities of refuge, as well as a conviction in an eligible court of 23 judges as delineated by the Torah and Talmud. The latter condition is also applicable for any capital punishment. These circumstances have not existed for approximately 2,000 years.)

Based on the literal reading of Exodus 21:23-25 [15], Obadiah Shoher argues that "an eye for an eye" punishment only applies for harming the pregnant women. Taken literally, Exodus 21:18-19 [16]prescribes only reimbursement of medical costs and work income for the harm done to men.[17]

Objective of reciprocal justice in Judaism

The Talmud discusses the concept of justice as measure-for-measure retribution (*middah k'neged middah*) in the context of divinely implemented justice. Regarding reciprocal justice by court, however, the Torah states that punishments serve to remove dangerous elements from society ("…and you shall eliminate the evil from your midst," Deut. 19:19 [18]) and to deter potential criminals from violating the law ("And the rest shall hear and be daunted, and they shall no longer commit anything like this wicked deed in your midst", Dt 19:20 [19]). Additionally, reciprocal justice in tort cases serves to compensate the victim (see above).

The ideal of vengeance for the sake of assuaging the distress of the victim plays no role in the Torah's conception of court justice, as victims are cautioned against even hating or bearing a grudge against those who have harmed them. The Torah makes no distinction between whether the potential object of hatred or a grudge has been brought to justice, and all people are taught to love their fellow human beings(Lv 19:17–18 [20]).

Lex talionis in Christianity

Christian interpretation of the Biblical passage has been heavily influenced by the quotation from Leviticus (19:18 above) in Jesus of Nazareth's Sermon on the Mount. In the Expounding of the Law (part of the Sermon on the Mount), Jesus urges his followers to turn the other cheek when confronted by violence:

> You have heard that it was said, "An eye for an eye and a tooth for a tooth". But I say to you, do not resist an evildoer. If anyone strikes you on the right cheek, turn to him the other also. (Matthew 5:38–39 [21], NRSV)

This saying of Jesus is frequently interpreted as criticism of the Old Testament teaching, and often taken as implying that "an eye for an eye" encourages excessive vengeance rather than an attempting to limit it. It was one of the points of 'fulfilment or destruction' of the Hebrew law which the Church father St. Augustine already discussed in his Contra Faustum, Book XIX.[22]

As noted in previous sections, the natural tendency of people is for revenge and in the extreme. “You hurt me or offended me so I am going to take an ‘arm and a leg’ or sue you for all you have!” Although both the Hammurabi Code and Hebrew Law both had death penalties for many crimes, the “eye for eye” was to restrict compensation to the value of the loss; in the hammurabi code as being literal, and in the Hebrew Law applying monetarily. Thus, it might be better read 'only one eye for one eye'.

Lex talionis in Islam

In Islam the Quran permits exact and equivalent retribution. The Quran, however, softens the law of an eye for an eye by urging mankind to accept less compensation than that inflicted upon him or her by a Muslim, or to forgive altogether. In other words, Islam does not deny Muslims the ability to seek retaliation in the equal measure. But it does, however, promote forgiveness and the acceptance of blood money not as a mandatory requisite, but rather as a good deed that will be eventually rewarded (Quran 5:45).

On occasions, however, the "eye for an eye" rule is applied quite literally.[23]

Alternatives

Some alternative penalty systems exist which primarily concern the impact of the punishment on the sanctioned offender and/or on society, while demanding non-parallel penalties.

For example the "correctional" prison system (first instituted in the USA in the early 20th century) is based on the idea that the purpose of law enforcement is to correct the deviant nature of criminals by compelling them to reflect and regret their crimes during a lengthy incarceration; another alternative, the reformatory, was invented to "reform", i.e. re-educate, young offenders etcetera.—

Notable dissenters

- The phrase "An eye for an eye for an eye for an eye ... ends in making everybody blind" has been attributed to Mahatma Gandhi. [24]
- Martin Luther King Jr. later used this phrase in the context of racial violence: "The old law of an eye for an eye leaves everyone blind"[25]

See also

- Deterrence theory
- Forgiveness
- Mutual assured destruction
- Retributive justice
- Revenge
- Turn the other cheek

Sources and external links

- Union of Orthodox Jewish Congregations explanation of the Torah and Lex Talonis [26]
- Calvin's Commentary on Exodus 21:22–26 [27]
- Calvin's Commentary on Matthew 5:38 [28]
- Aquinas' collation of commentaries on Matthew 5:38–42 [29]
- Tolstoy's Legacy for Mankind: A Manifesto for Nonviolence, Part 1 [30] & Part 2 [31]
- The fine art of revenge [32]: Salon interview with Professor William Ian Miller, author of "Eye for an Eye", about the *Lex talionis*.
- Shubow, Justin. Blind Justice [33]: a review of William Ian Miller's *Eye for an Eye*. *First Things*, December 2006.

References

[1] http://bibref.hebtools.com/?book=%20Leviticus&verse=24:19–21&src=131

[2] http://bibref.hebtools.com/?book=%20Exodus&verse=21:22–25&src=131

[3] http://bibref.hebtools.com/?book=%20Deuteronomy&verse=19:21&src=131

[4] http://www.pursuingthetruth.org/studies/files/eyeforeye.htm

[5] Roman law: Delict and contract (http://www.britannica.com/EBchecked/topic/507759/Roman-law/41328/Delict-and-contract#ref469137) at Encyclopedia Britannica

[6] http://bibref.hebtools.com/?book=%20Ex&verse=21:22–27&src=131

[7] http://bibref.hebtools.com/?book=%20Dt&verse=19:16–21&src=131

[8] http://www.karaite-korner.org/sources/sadducees_handout.pdf

[9] http://bibref.hebtools.com/?book=%20Lv&verse=19:18&src=131

[10] Torah (http://www.ou.org/about/judaism/torah.htm), Union of Orthodox Congregations (http://ou.org./).

[11] http://bibref.hebtools.com/?book=%20Dt&verse=19:19&src=131

[12] http://bibref.hebtools.com/?book=%20Dt&verse=25:1–3&src=131

[13] http://bibref.hebtools.com/?book=%20Dt&verse=25:11–12&src=131

[14] http://bibref.hebtools.com/?book=%20Numbers&verse=35:9–30&src=131

[15] http://bibref.hebtools.com/?book=%20Exodus&verse=21:23-25&src=!

[16] http://bibref.hebtools.com/?book=%20Exodus&verse=21:18-19&src=!

[17] An Eye for an Eye Doctrine (http://samsonblinded.org/blog/an-eye-for-an-eye-doctrine.htm).

[18] http://bibref.hebtools.com/?book=%20Deut.&verse=19:19&src=!

[19] http://bibref.hebtools.com/?book=%20Dt&verse=19:20&src=131

[20] http://bibref.hebtools.com/?book=%20Lv&verse=19:17–18&src=131

[21] http://bibref.hebtools.com/?book=%20Matthew&verse=5:38–39&src=131

[22] Contra Faustum (http://www.newadvent.org/fathers/140619.htm), Augustine of Hippo, NewAdvent.

[23] "Court orders Iranian man blinded" (http://news.bbc.co.uk/2/hi/middle_east/7754756.stm). BBC, 28 November 2008.

[24] Louis Fischer, *The Yale book of quotations*, Fred R. Shapiro, Yale University Press, 2006, ISBN 0-300-10798-6. Google Books (http://books.google.co.uk/books?id=w5-GR-qtgXsC&pg=PA269)

[25] "Violence as a way of achieving racial justice is both impractical and immoral. It is impractical because it is a descending spiral ending in destruction for all. The old law of an eye for an eye leaves everyone blind. It is immoral because it seeks to humiliate the opponent rather than win his understanding..." see e.g. The Words of Martin Luther King, Jr. (http://books.google.com/books?id=irMxJS36904C) by Coretta Scott King.

[26] http://www.ou.org/about/judaism/torah.htm

[27] http://www.ccel.org/ccel/calvin/calcom05.ii.ii.v.ii.html#ii.ii.v.ii-p63

[28] http://ccel.org/ccel/calvin/calcom31.ix.xlix.html#ix.xlix-p8

[29] http://www.ccel.org/ccel/aquinas/catena1.ii.v.html

[30] http://www.fredsakademiet.dk/library/tolstoj/tolstoy.htm

[31] http://www.fredsakademiet.dk/library/tolstoj/tolstoy2.htm#contents

[32] http://www.salon.com/books/int/2006/02/20/miller/print.html

[33] http://web.archive.org/web/20080223122935/http://www.firstthings.com/article.php3?id_article=5421

Lex terrae

The ***law of the land*** is a legal term, from the Latin *legem terrae* or *lex terrae*. It refers to all of the laws in force within a country.

Most famous uses

In 1297, this term was used in the Magna Carta. Perhaps the most famous clause of Magna Carta states: "No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the *Law of the Land*."[1]

Centuries later, this term was used in 1787 to write the Supremacy Clause of the United States Constitution. The Supremacy Clause states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme *Law of the land*...."[2]

Meaning and interpretation

English jurists have consistently attached the same basic meaning to this term, writing that it includes all laws that are in force in the jurisdiction. Edward Coke, commenting upon Magna Carta, wrote in 1606: "no man be taken or imprisoned but per *legem terrae*, that is, by the common law, statute law, or custom of England."[3] Likewise, Justice Powys of the King's Bench wrote in 1704: "lex terrae is not confined to the common law, but takes in all the other laws, which are in force in this realm; as the civil and canon law...."[4]

How it changes

William Blackstone wrote that the law of the land "depends not upon the arbitrary will of any judge; but is permanent, fixed, and unchangeable, unless by authority of parliament.... Not only the substantial part, or judicial decisions, of the law, but also the formal part, or method of proceeding, cannot be altered but by parliament."[5]

See also

- Lex loci
- Due process

References

[1] Magna Carta (http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1517519) (1297).

[2] WikiSource: Constitution of the United States of America (1787).

[3] Coke, Edward. *Institutes of the Laws of England* (http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php?title=912&chapter=61105&layout=html&Itemid=27) (1606).

[4] Regina v. Paty, 92 Eng. Rep. 232, 234 (http://books.google.com/books?id=SA4wAAAAIAAJ&pg=PA1108&dq="but+takes+in+all+the+other+laws,+which+are+in+force+in+this+realm"&as_brr=1&ei=QB30SOLWB5W0yQSvq_zHCg#PPA1105,M1) (K. B. 1704).

[5] Blackstone, William. *Commentaries on the Laws of England* (http://press-pubs.uchicago.edu/founders/documents/amendV_due_processs8.html), Volume 1, pages 137-138 (Univ. of Chicago Press 1979).

Lis alibi pendens

The principle of ***lis alibi pendens*** (Latin for "dispute elsewhere pending") applies both in municipal law, public international law, and private international law to address the problem of potentially contradictory judgments. If two courts were to hear the same dispute, it is possible they would reach inconsistent decisions. To avoid the problem, there are two rules. *Res judicata* provides that once a case has been determined, it produces a judgment either inter partes or in rem depending on the subject matter of the dispute, i.e. although there can be an appeal on the merits, neither party can recommence proceedings on the same set of facts in another court. If this rule were not in place, litigation might never come to an end. The second rule is that proceedings on the same facts cannot be commenced in a second court if the *lis* i.e. action, is already *pendens*, i.e. pending, in another court. *Lis alibi pendens* arises from international comity and it permits a court to refuse to exercise jurisdiction when there is parallel litigation pending in another jurisdiction. Shany (2003) considers the problem within the public international law field where, for example, the *Southern Bluefin Tuna* dispute could have been determined either by the International Court of Justice (ICJ), or by tribunals established under the United Nations Convention on the Law of the Sea (UNCLOS), and the *Swordfish* dispute, which was submitted simultaneously to both the International Tribunal for the Law of the Sea (ITLOS) and a dispute settlement panel of the World Trade Organisation (WTO). Kwak and Marceau (2002) consider the jurisdiction between the dispute settlement mechanisms of regional trade agreements (RTAs) and that of the WTO.

European rules

Articles 27-30 of the *Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters* (September 1968, O.J. 1998) as amended by the "Brussels Regulation", i.e. Council Regulation (EC) No 44/2001 of 22 December 2000 on *Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters*, lay down a framework of regulation to avoid conflicting judgments (see Brussels Regime). For an analysis of the relationship between EU law and the New York Convention, see Balkanyi-Nordmann (2002).

The European Court of Justice ruled in *Overseas Union Insurance Ltd. v New Hampshire Insurance Co.* (1991) ECR I-3317 that Article 27 applies to all proceedings commenced in the courts of the European Union regardless of the habitual residence or domicile of the parties. The Article provides for the court first seised to have priority in the same cause of action between the same parties without giving a second court the right to examine the first court's grounds for accepting jurisdiction with Article 27(2) imposing a mandatory duty on the second court to decline any jurisdiction unless the first court determines not to accept jurisdiction. This places a duty on the first court to make the decision expeditiously. In *Turner v Grovit* Case C-159/02 judgment on April 27, 2004, an English court, being the first court seised, issued an injunction to restrain one of the parties from pursuing the proceedings they had commenced in Spain. Even where the defendant is acting in bad faith with the intention of frustrating the existing proceedings, the issue of an injunction was inconsistent with the Convention. The English court should trust the Spanish court to apply Article 27(2) (Blanke: 2004).

The question is what constitutes the "same cause". In *Gubisch Maschinenfabrik v Palumbo* (1987) ECR 4861 (Hartley: 1988) and *The Tatry v The Maciej Ratja* (1994) ECR I-5439, the test is whether the factual basis of the claim and the laws to be applied are the same with a view to obtaining the same basic outcome. The test cannot be formal. It must look to the substance of each claim so that technical or procedural differences cannot be used to justify invoking separate jurisdictions in different Member States. One difficulty has been *in rem* jurisdiction, e.g. as in shipping law, but the substance test looks behind the *res* and identifies who the parties are and identifies what their purpose or objects are in the litigation. The parties must also be the same although the roles may be reversed between plaintiff/claimant and defendant (Seatzu: 1999). However, in multi-party actions, the subsequent court is only obliged to decline jurisdiction between the same parties, i.e. new parties may intervene and be heard in subsequent proceedings. But the courts are careful to look at the substance of the relationship between each set of parties. Thus,

because an insurer has the right to use subrogation, the insurer and the insured would be considered the same person since they are both interested in achieving the same outcome.[1] Similarly, a wholly owned subsidiary company can be regarded as the same party as its parent.

Article 28 deals with cases that are related, i.e. actions which are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings. But Article 28(3) allows the second court a discretion to consider whether it should stay the second action. Article 29 provides for conflicts of exclusive jurisdiction, but its application is still uncertain. Under Article 16 some courts are granted exclusive jurisdiction over a cause, e.g. under Article 16(4) the courts of the place of registration of a patent have exclusive jurisdiction on issues of validity and infringement, but if a party has already commenced proceedings in another state, Article 27(2) obliges the second court to dismiss the second suit.

The new Article 30 seeks to introduce an autonomous interpretation of the concept of seisin. The original rule identified the time of commencement by reference to the local rules in each Member State. This could lead to difficulties when a second state had different rules as to when an action commenced because it might allow a second action to overtake the first on a technicality (e.g. in some states the rule was that an action had not commenced until it was served, whereas others held that an action commenced on the day the pleadings were lodged or registered in the court office. The new Article 30 now provides that an action commences when the plaintiff/claimant takes the necessary steps to continue the proceedings which will usually be service and the system will, for the most part, avoid unfairness (see Eisengraeber: 2004 at pp19–21 for an explanation of difficulties in the English procedural system).

Torpedo proceedings

Arising out of comity which requires each Member State to respect the courts and judgments of other Members, the theory underpinning Article 27 is a blunt and inflexible instrument because its effect is to stimulate each party to initiate proceedings before the court most likely to produce a favourable outcome. Thus, instead of avoiding forum shopping, it actually turns it into a race (Hartley: 1988). Where one party in a legal relationship foresees that action may be brought against them, they can pre-empt this and bring their own action to the court of their choice. This will result in the delaying of proceedings while jurisdiction is established. It may also mean that the case is decided in the court they wish, if it is established that the court has jurisdiction. This strategy has become known as a "torpedo" proceeding. The abuse of Article 27 was first described by Franzosi (1997 and 2002) in intellectual property disputes where a party infringing a patent commenced proceedings for a declaration before a court with long delays because of the number of cases waiting to be heard. Thus, no other European court could accept jurisdiction in cases alleging infringement by the patent holder. One possible response to this abuse of process might arise from the relationship between exclusive jurisdiction granted under Article 16 and the Article 27(2) mandatory duty. Article 29 reserves the priority for the first court when both courts have exclusive jurisdiction under Article 16. But the ECJ has not ruled on the situation where only the second court has exclusive jurisdiction. Article 35 provides that a judgment that conflicts with the provisions on exclusive jurisdiction cannot be recognised and enforced. Since Article 16(4) allows exclusive jurisdiction to the forum in the place of registration, this might provide an arguable case that the second court could review the ground upon which the first court had accepted the action. A further interesting development lies in the application of Article 6 which provides for multi-party proceedings and allows a person domiciled in a Member State to be sued in the state of any one of the defendants so long as there is a real connection between the cause of action and that state. The justification of this provision is one of efficiency. If an action involving many defendants and states can be consolidated, a single judgment enforced in all the relevant states saves costs and time and some Member States are now issuing cross-border injunctions in intellectual property (IP) disputes (see Eisengraeber (2004) for a detailed evaluation of this option). A final option to consider is that the IP licensor should include exclusive jurisdiction clauses in the grant of all licences. Although such clauses almost certainly do not prevail over *lis alibi pendens*, some courts have been persuaded to prefer the parties' choice over torpedo actions.

However, this approach will potentially create conflicting judgments and Article 35 will deny recognition to the subsequent forum's decisions. This situation may represent a breach of Article 6 European Convention for the Protection of Human Rights which stipulates that everyone is entitled to a fair and public hearing within a reasonable time. As it stands, one party's selection of a forum suffering from inordinate delays, effectively denies all the other parties a hearing. But it is uncertain whether the European Court of Human Rights would find this prejudice to be a breach of Article 6.

United States

In the United States, *Seguros Del Estado SA v. Scientific Games Inc.* U.S. 11th Circuit Court of Appeals (2001)[2] there was alleged parallel litigation in Georgia and Colombia. It was held that the threshold question was whether the two cases were genuinely parallel. Applying *Finova Capital Corp. v. Ryan Helicopters U.S.A., Inc.*, 180 F.3d 896, 898 (7th Cir. 1999), the court concluded that the two cases were not parallel since they involved materially different issues, documents, and parties. Thus, *lis alibi pendens* did not apply to terminate the proceedings.

External links

- International Lis Pendens under the Brussels 1 Regulation Case Law [3]
- Text of the Brussels Convention [4]

Other

- Balkanyi-Nordmann, Nadine. (2002). The Perils of Parallel Proceedings". Nov 2001-Jan 2002. *Dispute Resolution Journal*.
- Blanke, G. (2004) "The Turning Tides of Turner". October BLR pp. 261–270.
- Eisengraeber, Julia. (2004). "*Lis alibi pendens* under the Brussels I Regulation - How to minimise "Torpedo Litigation" and other unwanted effects of the "first-come, first-served" rule." *Centre for European Legal Studies. Exeter Papers in European Law No. 16*. [5]
- Franzosi, Mario. (1997). "Worldwide Patent Litigation and the Italian Torpedo". 19 (7) *European Intellectual Property Review* p. 382 at 384
- Franzosi, Mario. (2002). "Torpedoes Are Here to Stay". 2 *International Review of Industrial Property and Copyright Law* p. 154.
- Hartley, Trevor. (1988). "Article 21: *Lis Alibi Pendens*" 13 *European Law Review* p. 217.
- Kwak, Kyung & Marceau, Gabrielle. (2002). "Overlaps and Conflicts of Jurisdiction Between the WTO and RTAs". *Conference on Regional Trade Agreements World Trade Organisation.* [6]
- Reinisch, August. (2004). "The Use and Limits of *Res Judicata* and *Lis Pendens* as Procedural Tools to Avoid Conflicting Dispute Settlement Outcomes", 3 *The Law and Practice of International Courts and Tribunals* pp. 37–77.
- Schutze, Rolf A. (2002) "*Lis Pendens* and Related Actions". 4(1) *European Journal of Law Reform* p. 57.
- Seatzu. F. (1999). "The Meaning of 'Same Parties' in Article 21 of the Brussels Jurisdiction and Judgments Convention", Vol 24(5) *European Law Review* pp. 540–544.
- Shany, Yuval. (2003) *The Competing Jurisdictions of International Courts and Tribunals*. Oxford: Oxford University Press. ISBN 0-19-925857-0.

References

[1] 1998/3 Drouot Assurances SA v Consolidated Metallurgical Industries (CMI Industrial Sites), Protea Assurance and Groupement d'Intérêt Économique (GIE) Réunion Européenne (http://www.jura.uni-sb.de/convention-bruxelles/gemdoc98/html/c35196/drouarren.htm)
[2] http://laws.lp.findlaw.com/11th/9914166op2.html
[3] http://www.juridicum.su.se/jurweb/utbildning/master/ec_commercial_law/assignments/Hermione%20Heffernan.pdf
[4] http://www.jus.uio.no/lm/brussels.jurisdiction.and.enforcement.of.judgments.in.civil.and.commercial.matters.convention.1968/doc.html
[5] http://www.law.ex.ac.uk/cels/documents/papepr_llm_03_04_dissertation_Eisengraeber_001.pdf
[6] http://www.wto.org/english/tratop_e/region_e/sem_april02_e/marceau.pdf

Lis pendens

Lis pendens is Latin for "suit pending."[1] This may refer to any pending lawsuit or to a specific situation with a public notice of litigation that has been recorded in the same location where the title of real property has been recorded. This notice secures a plaintiff's claim on the property so that the sale, mortgage, or encumbrance of the property will not diminish plaintiff's rights to the property, should the plaintiff prevail in its case. In some jurisdictions, when the notice is properly recorded, *lis pendens* is considered constructive notice to the other litigants or other unrecorded or subordinate lienholders. The term is sometimes abbreviated as "*lis pend*".

In current practice, a *lis pendens* is a written notice that a lawsuit has been filed concerning real estate, involving either the title to the property or a claimed ownership interest in it. The notice is usually filed in the county land records office. Recording a *lis pendens* against a piece of property alerts a potential purchaser or lender that the property's title is in question, which makes the property less attractive to a buyer or lender. After the notice is filed, anyone who nevertheless purchases the land or property described in the notice takes subject to the ultimate decision of the lawsuit.

The recording office will record a lis pendens upon request of anyone who claims to be entitled to do so (e.g. because he has filed a lawsuit). If someone else with an interest in the property (e.g. the owner) believes the lis pendens is not proper, he can then file suit to have it expunged.

Some states' *lis pendens* statutes require the filer of the notice, in the event of a challenge to the notice, to establish that it has probable cause or a good likelihood of success on the merits of its case in the underlying lawsuit; other statutes do not have such a requirement.[2] .

lis pendens applies in matters of parental responsibility as well. [3]

History

Under the common law, the mere existence of a lawsuit potentially affecting the title to real property had the legal effect of putting the entire world on constructive notice of the suit;[4] anyone acquiring an interest in real property which was the subject of a pending suit took that interest subject to the litigants' rights as they might be eventually determined, no matter how much later.[5] In effect, nothing relating to the ownership of the subject matter of the suit could be definitively changed while the suit was pending.[6] Innocent buyers might discover the existence of a lawsuit too late.

The harsh effect of this rule, and especially its effect on innocent purchasers (particularly vis-à-vis not-so-innocent sellers), led many jurisdictions to enact *lis pendens* statutes requiring a written notice, usually recorded in the land records where the real estate is located, for the notice provisions of the rule to be effective. Typically, a separate recorded instrument is required by statute if the lawsuit in question affects title to real property.[7] If the statutory requirements are met, the world is put on "constructive notice" of the existence of the suit, and any person acquiring an interest later does so subject to the outcome of the suit.

Effect

Lis pendens is taken as constructive notice of the pending lawsuit,[8] and it serves to place a cloud on the title of the property in question until the suit is resolved and the notice released or the *lis pendens* is expunged. Reputable, careful lenders will not lend money on the security of land which is subject to a lis pendens, as title insurance companies will not insure the title to such land: title is taken subject to the outcome of the lawsuit. Because so much real property is purchased with borrowed money, this largely keeps the owner from selling the property. It also may keep the owner from borrowing money secured by the property (such as to pay the costs of defending the suit). Similarly, careful buyers will be unwilling to purchase the land, at least not at what the full value would be without the cloud on title.

It is important to note that the presence of a *lis pendens* does **not** prevent or necessarily invalidate a transfer of the property,[9] although it makes such a transfer subject to the outcome of the litigation. As such, it tends to scare off diligent, reputable lenders and careful buyers. Thus, the owner is not prevented from selling the land for (non-borrowed) cash, pledging it as security for a speculative loan, or giving it away—subject to the outcome of the lawsuit. However, once the *lis pendens* is recorded, the recipient (a "purchaser" or "grantee *pendente lite*")[10] would be deemed to have notice of the litigation, and thus would not be a *bona fide* purchaser, and the title might be regained.

While it is generally thought of in connection with real property (land, buildings, and the like), the doctrine of *lis pendens* also applies to personal property.[11] Frequently, *lis pendens* statutes only apply to real property, so the common-law doctrine probably still applies to personal property.

References

[1] Black's Law Dictionary, p. 950 (8th ed.), 1999.

[2] *E.g.*, *McAteer v. Lauterbach*, 908 A.2d 1168, 1170 (D.C. 2006).

[3] Art. 16 - 20 Brussels II Regulation

[4] *E.g.*, *First Maryland Financial Services Corp. v. District-Realty Title Insurance Corp.*, 548 A.2d 787, 791 (D.C. 1988); *Malcolm v. Superior Court (Green)*, 29 Cal.3d 518, 523 (1981).

[5] *District of Columbia Redevelopment Land Agency v. Dowdey*, 618 A.2d 153, 161 fn. 14 (1992).

[6] *E.g.*, *Lewis v. Jordan Investments, Inc.*, 725 A.2d 495, 500 (D.C. 1999).

[7] *E.g.*, Calif. Code of Civil Procedure §§ 405–405.61; D.C. Code § 42-1207 (formerly § 45-906.1), enacted 2000.

[8] R.I. Weil & I.A. Brown, Jr., California Practice Guide: Civil Procedure Before Trial ¶ 15:1.

[9] *E.g.*, *1st Atlantic Guaranty Corp. v. Tillerson*, 916 A.2d 153, 157 (D.C. 2007); see also *Morrison v. Shuster*, 1 Mackey 190, 200, 1881 U.S.App.Lexis 2702 (1881).

[10] *1st Atl. Guar. Corp. v. Tillerson*, 916 A.2d 153, 157, quoting Powell on Real Property § 82A.01 [1] (2006).

[11] *Weightman v. Washington Critic Co.*, 4 App. D.C. 136 (1894).

Compare with *Lis alibi pendens*.

Locus in quo

Locus in quo means, in British common law, the "scene of the event"[1] , or

The phrase comes from the Latin language, meaning "The place in which".[2] [3] [4]

In law, *locus in quo* refers to the "the place where the cause of action arose", that is, the land to which the defendant trespassed.[5] It may also be used, more generally, as any place mentioned, that is, the venue or place mentioned.[6] [7]

See also

- Trespass
- Tort law
- Latin phrases

References

[1] Clickdocs.com (http://www.clickdocs.co.uk/glossary/locus-in-quo.htm)
[2] Latin phrases site (http://www.sacklunch.net/Latin/L/locusinquo.html).
[3] Merriam-Webster dictionary (http://www.m-w.com/dictionary/locus+in+quo).
[4] Answers.com (http://www.answers.com/topic/locus-in-quo)
[5] Legal phrase web page (http://www.oocities.com/CapeCanaveral/Hall/6670/glossary.html). (Technically, it was called Trespass *quare clausum fregit*, "Wherefore he broke the close.")
[6] Infoplease.com (http://www.infoplease.com/dictionary/brewers/locus-quo.html)
[7] Bartleby's (http://www.bartleby.com/81/10436.html), citing E. Cobham Brewer, Dictionary of Phrase and Fable (1898).

Locus standi

Standing or ***locus standi*** is the term for the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenged to support that party's participation in the case. In the United States, the current doctrine is that a person cannot bring a suit challenging the constitutionality of a law unless the plaintiff can demonstrate that the plaintiff is (or will *imminently* be) harmed by the law. Otherwise, the court will rule that the plaintiff "lacks standing" to bring the suit, and will dismiss the case without considering the merits of the claim of unconstitutionality. To sue to have a court declare a law unconstitutional, there must be a valid reason for whoever is suing to be there. The party suing must have something to lose in order to sue unless they have automatic standing by action of law.

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In United States law, the Supreme Court of the United States has stated, "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues".[1]

There are a number of requirements that a plaintiff must establish to have standing before a federal court. Some are based on the case or controversy requirement of the judicial power of Article Three of the United States Constitution, § 2, cl.1. As stated there, "The Judicial Power shall extend to all Cases . . .[and] to Controversies . . ." The requirement that a plaintiff have standing to sue is a limit on the role of the judiciary and the law of Article III standing is built on the idea of separation of powers.[2] Federal courts may exercise power only "in the last resort, and as a necessity".[3]

The American doctrine of standing is assumed as having begun with the case of *Frothingham v. Mellon*, 262 U.S. 447 [4] (1923). But, legal standing truly rests its first prudential origins in *Fairchild v. Hughes*, [5] (1922) which was authored by Justice Brandeis. In *Fairchild*, a citizen sued the Secretary of State and the Attorney General to challenge the procedures by which the Nineteenth Amendment was ratified. Prior to it the doctrine was that all persons had a right to pursue a private prosecution of a public right.[6] Since then the doctrine has been embedded in judicial rules and some statutes.

Standing requirements

There are three standing requirements:

1. **Injury:** The plaintiff must have suffered or imminently will suffer injury—an invasion of a legally protected interest that is concrete and particularized. The injury must be actual or imminent, distinct and palpable, not abstract. This injury could be economic as well as non-economic.
2. **Causation:** There must be a causal connection between the injury and the conduct complained of, so that the injury is fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party who is not before the court.[7]
3. **Redressability:** It must be likely, as opposed to merely speculative, that a favorable court decision will redress the injury.[8]

Prudential limitations

Additionally, there are three major prudential (judicially-created) standing principles. Congress can override these principles via statute:

1. **Prohibition of Third Party Standing:** A party may only assert his or her own rights and cannot raise the claims of a third party who is not before the court; exceptions exist where the third party has interchangeable economic interests with the injured party, or a person unprotected by a particular law sues to challenge the oversweeping of the law into the rights of others, for example, a party suing that a law prohibiting certain types of visual material may sue because the 1st Amendment rights of others engaged in similar displays might also be damaged as well as those suing. Additionally, third parties who don't have standing may be able to sue under the next friend doctrine if the third party is an infant, mentally handicapped, or not a party to a contract. One example of a statutory exception to the prohibition of third party standing exists in the qui tam provision of the Civil False Claims Act.[9]
2. **Prohibition of Generalized Grievances:** A plaintiff cannot sue if the injury is widely shared in an undifferentiated way with many people. For example, the general rule is that there is no federal taxpayer standing, as complaints about the spending of federal funds are too remote from the process of acquiring them. Such grievances are ordinarily more appropriately addressed in the representative branches.
3. **Zone of Interest Test:** There are in fact two tests used by the United States Supreme Court for the Zone of Interest
    1. Zone of Injury - The injury is the kind of injury that Congress expected might be addressed under the statute.[10]
    2. Zone of Interests - The party is within the zone of interest protected by the statute or constitutional provision.[11]

Recent development of the doctrine

In 1984, the Supreme Court reviewed and further outlined the standing requirements in a major ruling concerning the meaning of the three standing requirements of injury, causation, and redressability.[12]

In the suit, parents of black public school children alleged that the Internal Revenue Service was not enforcing standards and procedures that would deny tax-exempt status to racially discriminatory private schools. The Court found that the plaintiffs did not have the standing necessary to bring suit.[13] Although the Court established a significant injury for one of the claims, it found the causation of the injury (the nexus between the defendant's actions and the plaintiff's injuries) to be too attenuated.[14] "The injury alleged was not fairly traceable to the Government conduct respondents challenge as unlawful".[15]

In another major standing case, the Supreme Court elaborated on the redressability requirement for standing.[8] The case involved a challenge to a rule promulgated by the Secretary of the Interior interpreting §7 of the Endangered

Species Act of 1973 (ESA). The rule rendered §7 of the ESA applicable only to actions within the United States or on the high seas. The Court found that the plaintiffs did not have the standing necessary to bring suit, because no injury had been established.[16] The injury claimed by the plaintiffs was that damage would be caused to certain species of animals and that this in turn injures the plaintiffs by the reduced likelihood that the plaintiffs would see the species in the future. The court insisted though that the plaintiffs had to show how damage to the species would produce imminent injury to the plaintiffs.[17] The Court found that the plaintiffs did not sustain this burden of proof. "The 'injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured".[18] The injury must be imminent and not hypothetical.

Beyond failing to show injury, the Court found that the plaintiffs failed to demonstrate the standing requirement of redressability.[19] The Court pointed out that the respondents chose to challenge a more generalized level of Government action, "the invalidation of which would affect all overseas projects".[20] This programmatic approach has "obvious difficulties insofar as proof of causation or redressability is concerned".[20]

In a 2000 case, *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000)[21] , the United States Supreme Court endorsed the "partial assignment" approach to qui tam relator standing to sue under the False Claims Act — allowing private individuals to sue on behalf of the U.S. government for injuries suffered solely by the government.[22]

Taxpayer standing

The initial case that established the doctrine of standing, *Frothingham v. Mellon*, was a taxpayer standing case.

Taxpayer standing is the concept that any person who pays taxes should have standing to file a lawsuit against the taxing body if that body allocates funds in a way that the taxpayer feels is improper. The United States Supreme Court has held that taxpayer standing is *not* a sufficient basis for standing against the United States government, unless the government has allocated funds in a way that violates the Establishment Clause found in the First Amendment of the Constitution.[23] The Court has consistently found that the conduct of the federal government is too far removed from individual taxpayer returns for any injury to the taxpayer to be traced to the use of tax revenues.

In *DaimlerChrysler Corp. v. Cuno*,[24] the Court extended this analysis to state governments as well. However, the Supreme Court has also held that taxpayer standing *is* "constitutionally" sufficient to sue a municipal government in a federal court.

States are also protected against lawsuits by their sovereign immunity. Even where states waive their sovereign immunity, they may nonetheless have their own rules limiting standing against simple taxpayer standing against the state. Furthermore, states have the power to determine what will constitute standing for a litigant to be heard in a state court, and may deny access to the courts premised on taxpayer standing alone.

In Florida, a taxpayer has standing to sue if the state government is acting unconstitutionally with respect to public funds, or if government action is causing some special injury to the taxpayer that is not shared by taxpayers in general. In Virginia, the Supreme Court of Virginia has more-or-less adopted a similar rule. An individual taxpayer generally has standing to challenge an act of a city or county where they live, but does not have general standing to challenge state expenditures.

Standing to challenge statutes

With limited exceptions, a party cannot have standing to challenge the constitutionality of a statute unless they will be subjected to the provisions of that statute. Courts will accept First Amendment challenges to a statute on overbreath grounds, where a person who is only partially affected by a statute can challenge parts that do not affect them on the grounds that laws that restrict speech have a chilling effect on other people's right to free speech.

The only other way someone can have standing to challenge the constitutionality of a statute is if the existence of the statute would otherwise deprive them of a right or a privilege even if the statute itself would not apply to them. The Virginia Supreme Court made this point clear in the case of *Martin v. Ziherl* 607 S.E.2d 367 (Va. 2005). Martin and Ziherl were girlfriend and boyfriend when Martin discovered that Ziherl gave her herpes. She sued him for damages. Because (at the time the case was filed) it was illegal to have sex with someone you're not married to, Martin could not sue Ziherl because joint tortfeasors - those involved in committing a crime - cannot sue each other over acts occurring as a result of a criminal act (*Zysk v. Zysk*, 404 S.E.2d 721 (Va. 1990)). Martin argued that because of the U.S. Supreme court decision in *Lawrence v. Texas* (finding that state's sodomy law unconstitutional), Virginia's anti-fornication law was also unconstitutional for the reasons cited in Lawrence. Martin argued, therefore, she could, in fact, sue Ziherl for damages.

Lower courts decided that because the Commonwealth's Attorney doesn't prosecute fornication cases, Martin had no risk of prosecution and thus lacked standing to challenge the statute. Martin appealed. Since Martin has something to lose - the ability to sue Ziherl for damages - if the statute is upheld, she had standing to challenge the constitutionality of the statute. And since the U.S. Supreme Court in *Lawrence* has found that there is a privacy right in one's private, noncommercial sexual practices, the Virginia Supreme Court decided that the statute against fornication was unconstitutional. The finding gave Martin standing to sue Ziherl since the decision in *Zysk* is no longer applicable.

However, the only reason Martin had standing to challenge the statute was that she had something to lose if it stayed on the books.

State law

State law on standing differs substantially from federal law and varies considerably from state to state.

California

On December 29, 2009, the California Court of Appeal for the Sixth District ruled that California Code of Civil Procedure Section 367 cannot be read as imposing a federal-style standing doctrine on California's code pleading system of civil procedure.[25] In California, the fundamental inquiry is *always* whether the plaintiff has sufficiently pleaded a cause of action, not whether the plaintiff has some entitlement to judicial action separate from proof of the substantive merits of the claim advanced.[25] The court acknowledged that the word "standing" is often sloppily used to refer to what is really *jus tertii*, and held that *jus tertii* in state law is not the same thing as the federal standing doctrine.[25]

Canada

In Canadian administrative law, whether an individual has standing to bring an application for judicial review, or an appeal from the decision of a tribunal, is governed by the language of the particular statute under which the application or the appeal is brought. Some statutes provide for a narrow right of standing while others provide for a broader right of standing.[26]

Frequently a litigant wishes to bring a civil action for a declaratory judgment against a public body or official. This is considered an aspect of administrative law, sometimes with a constitutional dimension, as when the litigant seeks to have legislation declared unconstitutional.

Public interest standing

The Supreme Court of Canada developed the concept of public interest standing in three constitutional cases commonly called "the Standing trilogy": *Thorson v. Canada (Attorney General)*,[27] *Nova Scotia Board of Censors v. McNeil*,[28] and *Minister of Justice v. Borowski*.[29] The trilogy was summarized as follows in *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*:[30]

> It has been seen that when public interest standing is sought, consideration must be given to three aspects. First, is there a serious issue raised as to the invalidity of legislation in question? Second, has it been established that the plaintiff is directly affected by the legislation or if not does the plaintiff have a genuine interest in its validity? Third, is there another reasonable and effective way to bring the issue before the court?[31]

Public-interest standing is also available in non-constitutional cases, as the Court found in *Finlay v. Canada (Minister of Finance)*.[32]

United Kingdom

In British administrative law, the applicant needs to have a sufficient interest in the matter to which the application relates.[33] This sufficient interest requirement has been construed liberally by the courts. As Lord Diplock put it:[34]

> "[i]t would...be a grave *lacuna* in our system of public law if a pressure group...or even a single public sprited taxpayer, were prevented by outdated technical rules of *locus standi* from bringing the matter to the attention of the court to vindicate the rule of law and get the unlawful conduct stopped."

See also

- Injunction
- Merit (legal)

External links

- Article on the history of standing in Canada [35]

References

[1] *Warth v. Seldin*, 422 U.S. 490, 498 (1975).
[2] *Allen v. Wright*, 468 U.S. 737, 752 (1984).
[3] *Id.* at 752.
[4] http://www.law.cornell.edu/supct-cgi/get-us-cite?262+447
[5] http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=us&vol=258&invol=126
[6] The Metaphor of Standing and the Problem of Self-Governance, by Steven L. Winter, 40 *Stan. L. Rev.* 1371, July, 1988. Link (http://www.constitution.org/duepr/standing/winter_standing.htm)

[7] For example, *Massachusetts v. Environmental Protection Agency* (global warming caused by EPA's refusal to regulate carbon dioxide emissions satisfied element of causation for Massachusetts's alleged injury of loss of coastland).
[8] *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).
[9] See Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000) Text of Vermont Agency of Natural Resources v. United States ex rel. Stevens* (http://docs.justia.com/cases/supreme/529/765.swf)
[10] *Federal Election Commission v. Akins*, 524 U.S. 11 (1998).
[11] *Allen v. Wright*, 468 U.S. 737 (1984).
[12] *Allen v. Wright*, 468 U.S. at 752 (1984).
[13] *Id.* at 755.
[14] *Id.*
[15] *Id.* at 757.
[16] *Id.* at 562.
[17] *Id.* at 564.
[18] *Id.* at 563.
[19] *Id.* at 568.
[20] *Id.*
[21] Text of Vermont Agency of Natural Resources v. United States ex rel. Stevens (http://docs.justia.com/cases/supreme/529/765.swf)
[22] See also Nathan D. Sturycz, *The King and I?: An Examination of the Interest Qui Tam Relators Represent and the Implications for Future False Claims Act Litigation*, 28 St. Louis Pub. L. Rev. 459 (2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1537749.For the general standing rule, *see* Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)
[23] See *Flast v. Cohen*, 392 U.S. 83 (1968).
[24] *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006).
[25] *Jasmine Networks, Inc. v. Superior Court (Marvell Semiconductor, Inc.)*, 180 Cal. App. 4th 980 (2009).
[26] For example, under s. 18(1) the *Federal Court Act*, an application for review may be made by "anyone directly affected by the matter in respect of which the relief is sought".
[27] *Thorson v. Canada (Attorney General)*, [1975] 1 S.C.R. 138.
[28] *Nova Scotia Board of Censors v. McNeil*, [1976] 2 S.C.R. 265.
[29] *Minister of Justice v. Borowski*, [1981] 2 S.C.R. 575.
[30] *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 236
[31] http://scc.lexum.umontreal.ca/en/1992/1992rcs1-236/1992rcs1-236.html
[32] *Finlay v. Canada (Minister of Finance)*, [1986] 2 S.C.R. 607 (http://scc.lexum.umontreal.ca/en/1986/1986rcs2-607/1986rcs2-607.html).
[33] Supreme Court Act 1981 s.31(3).
[34] Inland Revenue Commissioners Appellants v National Federation of Self-Employed and Small Businesses Ltd. Respondents [1982] A.C. 617.
[35] http://www.yorku.ca/journal2/archive/articles/33_1_ross.pdf

Mala fides

Bad faith (Latin: ***mala fides***) is a legal concept in which a malicious motive on the part of a party in a lawsuit undermines their case. It has an effect on the ability to maintain causes of action and obtain legal remedies. Generally speaking, courts will not just look at the legal rights of parties in pursuing a transaction or a lawsuit, but will look behind the activity at the motives of the persons attempting to obtain the assistance of the court. If a court feels that the reasons behind the transaction or lawsuit have the effect of abusing the power of the law, or the court, it will generally deny a party the ability to rely on a legal remedy that they will otherwise be entitled to. It is related to the equitable powers of common law courts to look beyond the law.

Relevance

Bad faith is relevant in the following areas of law:

Transactions that affect creditors - If creditors are denied the opportunity to realize on the proceeds of property that was previously owned by the debtor, they will often look at the motives of the parties involved in a purported sale, primarily when the sale is for little or no consideration. For example, if a spouse puts title to the family home in the other spouse's name before embarking on a risky business venture, this will usually be treated as a good faith attempt to lessen the exposure of his or her family to creditors. However, if the same transaction takes place after a spouse has been sued for a debt, the sale will generally be held void against the creditors, allowing them to look at the equity in the house for satisfaction of debt.

Possession of property - The torts of detinue and conversion allow a person who has lost possession of personal property to regain possession of that property, even if it had been transferred to another after its loss or conversion. However, the court will only order such a remedy if the person with possession of the property obtained it in bad faith - for example that they obtained it for free or for nominal consideration. In other words, a person buying a stereo out of the back of someone's car has no defense to a claim in detinue where a person buying a stereo from a pawnbroker would most likely be able to show that the transaction was made in good faith even if it later turned out the pawnbroker didn't have valid title to the goods.

Punitive damages - If the more powerful party to a transaction refuses to properly deal with its legal obligations and must be sued in order to force it to pay money that is clearly owing, courts will often punish litigants who take the position that the worst thing that can happen after a trial is that they will have to pay the money owed anyway. For example, if a check is sent and cashed in error and it is clear that the person receiving the money had no right to keep it, the court would most likely rule that simply ordering the payment of the money was an insufficient remedy for the plaintiff, who was put through the time and expense of trial for no reason. In Canada, one of the leading cases of this type resulted in a record punitive damages award of $1 million CAD when an insurance company pressed a claim for arson when its own experts and adjusters had come to the conclusion the fire was accidental and the lawyer advised the client that the desperate insured parties would be willing to settle for much less than what they were owed (Whiten v. Pilot Insurance Co., 2002 SCC 18) [1].

Remedies in equity - When a party is seeking an extraordinary remedy such as an injunction or specific performance, the court must be convinced that the party seeking the remedy has no ulterior motive for doing so. If the defending party can show that the complaining party has abused the process or the power of the court, the court will generally deny the remedy even though the complaining party would otherwise be entitled to the relief claimed.

See also

- Good faith
- Insurance bad faith

References

[1] http://www.canlii.org/en/ca/scc/doc/2002/2002scc18/2002scc18.html

Malum in se

Malum in se (plural *mala in se*) is a Latin phrase meaning *wrong or evil in itself*. This concept is a part of the **value consensus model** explanation of the origins of the criminal law. The phrase is used to refer to conduct assessed as inherently wrong by nature, independent of regulations governing the conduct. It is distinguished from *malum prohibitum*, which is wrong only because it is prohibited.

For example, murder of human beings is universally agreed to be wrong by other human beings, regardless of whether a law exists or where the conduct occurs, and is thus recognizably *malum in se*. In contrast, consider driving laws. In the U.S., people drive on the right-hand side of the road. In the UK and other states of the Commonwealth, people drive on the left-hand side. Violation of these rules is an example of a *malum prohibitum* law because the act is not inherently bad, but is forbidden by policy, as set forth by the policy-makers of the jurisdiction. *Malum prohibitum* crimes are criminal not because they are inherently bad, but because the prohibited act is forbidden by the policy of the state.

This concept was used to develop the various common law offences.[1] It may be criticized by remarking that if murder and rape may be considered generally defined as crimes, the inclusion of different behaviors that can be punished under such indictments are culturally variable (see marital rape, statutory rape, infanticide).

References

[1] Canadian Law Dictionary, John A. Yogis, Q.C., Barrons: 2003

Malum prohibitum

Malum prohibitum (plural *mala prohibita*, literal translation: "wrong [as or because] prohibited") is a Latin phrase used in law to refer to conduct that constitutes an unlawful act only by virtue of statute,[1] as opposed to conduct evil in and of itself, or *malum in se*.[2] Conduct that was so clearly violative of society's standards for allowable conduct that it was illegal under English common law is usually regarded as "malum in se". An offense that is *malum prohibitum*, for example, may not appear on the face to directly violate moral standards. The distinction between these two cases is discussed in *State of Washington v. Thaddius X. Anderson* [3] :

> Criminal offenses can be broken down into two general categories *malum in se* and *malum prohibitum*. The distinction between *malum in se* and *malum prohibitum* offenses is best characterized as follows: a *malum in se* offense is "naturally evil as adjudged by the sense of a civilized community," whereas a *malum prohibitum* offense is wrong only because a statute makes it so. *State v. Horton*, 139 N.C. 588, 51 S.E. 945, 946 (1905).
>
> "Public welfare offenses" are a subset of *malum prohibitum* offenses as they are typically regulatory in nature and often "'result in no direct or immediate injury to person or property but merely create the danger or probability of it which the law seeks to minimize.'" Bash, 130 Wn.2d at 607 (quoting Morissette v. United States, 342 U.S. 246, 255-56, 72 S. Ct. 240, 96 L. Ed. 288 (1952)); see also State v. Carty, 27 Wn. App. 715, 717, 620 P.2d 137 (1980).

Some examples of *mala prohibita* include parking violations, copyright violations, tax laws, cultural taboos, and doing certain things without a license.

Crimes and torts that many claim are malum prohibitum, but not malum in se, include:

- Illegal drug use and sale.
- Prohibition of alcohol.
- Illegal immigration.
- Criticism of government (in countries where freedom of speech either does not exist, or is significantly watered-down).
- Restrictions on the ownership and/or carrying of weapons by private citizens.

See also

- Victimless crime (political philosophy)
- Public order crime
- Laws without ethical content

References

[1] "Malum prohibitum - LII / Legal Information Institute - Cornell University Law School" (http://topics.law.cornell.edu/wex/malum_prohibitum). . Retrieved 19 May 2010.

[2] "Malum in se - LII / Legal Information Institute - Cornell University Law School" (http://topics.law.cornell.edu/wex/malum_in_se). . Retrieved 19 May 2010.

[3] "No. 67826-0. - STATE v. ANDERSON - Supreme Court of the State of Washington, 67826-0, decided August 2000" (http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=wa&vol=678260di1&searchval&invol=1). . Retrieved 19 May 2010.

Mandamus

A **writ of mandamus** or ***mandamus*** (which means "we command" in Latin), or sometimes *mandate*, is the name of one of the prerogative writs in the common law, and is "issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly".[1]

Mandamus is a judicial remedy which is in the form of an order from a superior court to any government subordinate court, corporation or public authority to do or forbear from doing some specific act which that body is obliged under law to do or refrain from doing, as the case may be, and which is in the nature of public duty and in certain cases of a statutory duty.[2] It cannot be issued to compel an authority to do something against statutory provision.

Mandamus may be a command to do an administrative action or not to take a particular action, and it is supplemented by legal rights. In the American legal system it must be a judicially enforceable and legally protected right before one suffering a grievance can ask for a mandamus. A person can be said to be aggrieved only when he is denied a legal right by someone who has a legal duty to do something and abstains from doing it.

Legal requirements

The applicant pleading for the writ of mandamus to be enforced should be able to show that he has a legal right to compel the respondent to do or refrain from doing the specific act. The duty sought to be enforced must have two qualities:[3] It must be a duty of public nature and the duty must be imperative and should not be discretionary.

Purpose

The purpose of mandamus is to remedy defects of justice. It lies in the cases where there is a specific right but no specific legal remedy for enforcing that right. It also lies in cases where there is an alternative remedy but the mode of redress is less convenient, less beneficial or less effectual. Generally, it is not available in anticipation of any injury except when the petitioner is likely to be affected by an official act in contravention of a statutory duty or where an illegal or unconstitutional order is made. The grant of mandamus is therefore an equitable remedy; a matter for the discretion of the court, the exercise of which is governed by well-settled principles.[4]

Mandamus, being a discretionary remedy, the application for that must be made in good faith and not for indirect purposes. Acquiescence cannot, however, bar the issue of mandamus. The petitioner must, of course, satisfy the Court that he has the legal right to the performance of the legal duty as distinct from mere discretion of authority.[5] A mandamus is normally issued when an officer or an authority by compulsion of statute is required to perform a duty and which despite demand in writing has not been performed. In no other case will a writ of mandamus issue unless it be to quash an illegal order.

Types

There are three kinds of mandamus:

1. **Alternative Mandamus**: A mandamus issued upon the first application for relief, commanding the defendant either to perform the act demanded or to appear before the court at a specified time to show cause for not performing it.
2. **Peremptory Mandamus**: An absolute and unqualified command to the defendant to do the act in question. It is issued when the defendant defaults on, or fails to show sufficient cause in answer to, an alternative mandamus.[6] [7]
3. **Continuing Mandamus**: A Mandamus issued to a lower authority in general public interest asking the officer or the authority to perform its tasks expeditiously for an unstipulated period of time for preventing miscarriage of justice.[8]

In various countries

Parliamentary democracies

Under the Australian legal system, mandamus is available through section 75(v) of the Australian Constitution. In England and Wales, mandamus was originally known as a **'writ of mandamus'** and more recently as an **'order of mandamus'** . This procedure was renamed by *The Civil Procedure (Modification of Supreme Court Act 1981) Order 2004* to become a **'mandatory order'** in India, the *sine qua non* for mandamus is the existence of a statutory public duty incumbent upon the person or body against whom the mandamus is sought. There must equally co-exist a corresponding right in the petitioner entitling him to claim the enforcement of such public duty. These two preconditions form the foundation for the issue of mandamus. The primary scope and function of mandamus is to "command" and "execute" rather than to "enquire" and "adjudicate". It cannot be issued to change the decision of a body so as to suit the petitioner. Obligations which are not of statutory nature cannot be enforced by mandamus.[9] The writ petition is not maintainable when a remedy provided for under the Code of Civil Procedure is available. For example, the High Court cannot entertain writ petitions for mandamus to the Government who fails to deposit and pay in the requisite time an enhanced compensation account as ordered by a lower Court. The petitioners in this case would be directed to approach the executing Court for appropriate relief.[10]

Supreme Court and High Courts are only empowered to exercise Writ Jurisdiction, under Art. 32 and 226 of Constitution. No other courts are empowered to issue writ.

United States

In the administrative law context in the United States, the requirement that mandamus can be used only to compel a ministerial act has largely been abandoned. By statute or by judicial expansion of the writ of mandamus in most of the U.S. states, acts of administrative agencies are now subject to judicial review for abuse of discretion. Judicial review of agencies of the United States federal government, for abuse of discretion, is authorized by the U.S. Administrative Procedures Act.

Federal courts

In modern practice, the Court has effectively abolished the issuance of writs of mandamus, although it theoretically retains the power to issue them.

In the context of *mandamus* from a United States Court of Appeals to a United States District Court, the Supreme Court has ruled that the appellate courts have discretion to issue *mandamus* to control an abuse of discretion by the lower court in unusual circumstances, where there is a compelling reason not to wait for an appeal from a final judgment. This discretion is exercised very sparingly. It is exercised with somewhat greater frequency, although still sparingly, in the context of discovery disputes involving privileged materials, since a district court order erroneously forcing the disclosure of privileged material may never be remediable through a later appeal.

The authority of the United States district courts to issue mandamus has been expressly abrogated by Rule 81(b) of the Federal Rules of Civil Procedure, but relief in the nature of mandamus can be had by other remedies provided for in the Rules, where provided by statute, or by use of the District Court's equitable powers.

State courts

In some state court systems, *mandamus* has evolved into a general procedure for discretionary appeals from non-final trial court decisions. In some U.S. states, such as California, the writ is now called *mandate* instead of *mandamus*, and may be issued by *any* level of the state court system to any lower court or to any government official. It is still common for Californians to bring "taxpayer actions" against public officials for wasting public funds through mismanagement of a government agency, where the relief sought is a writ of mandate compelling the official to stop wasting money and fulfill his duty to protect the public fisc.[11] The writ of mandate is also used in

California for interlocutory appeals. In this context, the party seeking the writ is treated on appeal like a plaintiff, the trial court becomes the defendant, and the opponent is designated as the "real party in interest."

In Virginia, the Supreme Court has "original jurisdiction" under the state constitution for mandamus involving the Virginia courts.[12]

Other states, including New York, have replaced *mandamus* (as well as the other prerogative writs) with statutory procedures. In New York, this is known as an *Article 78* review after the civil procedure law provision that created the relevant procedure. In still other states, such as Illinois, the state court of last resort has original jurisdiction in mandamus actions.[13]

See also

- Judicial review
- Administrative law
- Habeas corpus

References

[1] Bryan A Garner, Black's Law Dictionary, p. 980, 8th Ed., St. Paul, USA, 2004.
[2] A.T. Markose: Judicial Control of Administrative Action in India, p.364.
[3] RK Choudhary's Law of Writs; Mandamus.
[4] Gangadhar Narsingdas Agrawal v. Union of India, AIR 1967 Goa 142 (147); Regional Director v. AS Bhangoo, (1969) 73 Cal. WN 267; Megh Nath v. Director, Technical Education, UT Chandigarh, 1990 (1) RSJ 126.
[5] Basantilal v. Laxminarayan, 1970 MPLJ (Note) 6.
[6] Legal Dictionary (http://legal-dictionary.thefreedictionary.com/peremptory+writ+of+mandamus).
[7] Mongabay.com (http://law.mongabay.com/news/peremptory_writ_of_mandate.html).
[8] Vineet Narain v. Union of India, AIR 1996 SC 3386.
[9] R.P. Kapoor v. Delhi Development Authority.
[10] Government of AP v. Puniparthi Narayana Rajiu, 2002 Andhr. LT. 113 at pp. 113-114.
[11] See, e.g., *Humane Society of the United States v. State Bd. of Equalization*, 152 Cal. App. 4th 349 (http://online.ceb.com/CalCases/CA4/152CA4t349.htm) (2007).
[12] Child Custody Resources (http://www.arielconsult.com/childcustodyVA)
[13] Illinois Constitution, Article VI (http://www.ilga.gov/commission/lrb/con6.htm).

Mare clausum

Mare clausum (legal latin meaning "closed sea") is a term used in international law to mention a sea, ocean or other navigable body of water under the jurisdiction of a state that is closed or not accessible to other states. *Mare clausum* is an exception to *mare liberum* (latin for "free sea"), meaning a sea that is open to navigation to ships of all nations.[1] [2] In the generally accepted principle of International waters, oceans, seas, and waters outside national jurisdiction are open to navigation by all and referred to as "high seas" or *mare liberum*. Portugal and Spain defended a *Mare clausum* policy during the age of discovery. [3] This was soon challenged by other European nations.

History

From 30 BC to 117 AD the roman empire came to surround the Mediterranean by controlling most of its coasts. Romans started then to name this sea *mare nostrum* (latin for "our sea")[4] . At those times the period between November and March was considered the most dangerous for navigation, so it was declared *"mare clausum"* (closed sea), although bans on navigation were probably never enforced.[5] In classical law the ocean was not territorial. However since the Middle Ages maritime republics like the Republic of Genoa and the Republic of Venice claimed a "Mare clausum" policy in the Mediterranean. Also Nordic kingdoms and England, required passage rates, monopolies on fishing and blocked foreign ships in their neighboring seas.

Mare clausum in the Age of discovery

During Age of discovery, between the 15th and 17th century, sailing that had been mostly coastal became oceanic. Thus, the main focus was on long-haul routes. Countries of the Iberian Peninsula were pioneers in this process, seeking exclusive property and exploration rights over lands discovered and to be discovered. Given the amount of new lands and the resulting influx of wealth, the Kingdom of Portugal and the united kingdoms of Castile and Aragon began to compete openly. To avoid hostilities, they resorted to secrecy and diplomacy, marked by the signing of the Treaty of Alcáçovas in 1479 and the Treaty of Tordesillas in 1494. The papacy helped legitimize and strengthen these claims, since Pope Nicholas V, who by the bull Romanus Pontifex of 1455, prohibited to navigate the seas under the Portuguese exclusive without permission of the king of Portugal. The very titling of Portuguese kings announced this claim to the seas: "King of Portugal and the Algarves, within and beyond the sea in Africa, Lord of Commerce, Conquest and Shipping of Arabia, Persia and India". With the discovery of sea route to India and later the route of Manila the the concept of "Mare clausum" in the treaty was realized. This policy was refused by European nations like France, Holland and England, who were then barred from expanding and trading, and engaged in privateering and piracy of routes, products and colonies.

Mare clausum versus Mare liberum

In 1609 Hugo Grotius, a jurist of the Dutch Republic, formulated a new principle that the sea was international territory and all nations were free to use it for seafaring trade. In the *The Free Sea* (*Mare Liberum*). Grotius, by claiming 'free seas', provided suitable ideological justification for the Dutch breaking up of various trade monopolies through its formidable naval power (and then establishing its own monopoly).

Reaction followed. In 1625 Portuguese priest Serafim de Freitas published the book *De Iusto Imperio Lusitanorum Asiatico* (Of the just Portuguese Asian Empire) adressing step by step the arguments of the Dutch.[6] Despite his arguments, the international situation demanded an end to the *Mare clausum* policy, and freedom of the seas as an essential condition for the development of maritime trade.[7]

England, competing fiercely with the Dutch for domination of world trade, opposed Grotius ideas and claimed sovereignty over the waters around the British Isles. In *Mare clausum* (1635) John Selden coined the term, endeavoring to prove that the sea was in practice virtually as capable of appropriation as terrestrial territory. As

conflicting claims grew out of the controversy, maritime states came to moderate their demands and base their maritime claims on the principle that it extended seawards from land. A workable formula was found by Cornelius Bynkershoek in his *De dominio maris* (1702), restricting maritime dominion to the actual distance within which cannon range could effectively protect it. This became universally adopted and developed into the three-mile limit.

Bibliography

- Anand Prakash, "Origin and development of the law of the sea: history of international law revisited," BRILL, 1983, ISBN 90-247-2617-4
- Tuck, Richard, Natural rights theories: their origin and development, Cambridge University Press, 1981, ISBN 0-521-28509-7
- Ferreira, Ana Maria Pereira, O Essencial sobre Portugal e a Origem da Liberdade dos Mares, [Lisboa], Imprensa Nacional Casa da Moeda, [sd]. (Basics of Portugal and the Origin of Freedom of the Seas, in Portuguese)
- Merêa, Paulo, «Os Jurisconsultos Portugueses e a Doutrina do “Mare Clausum”, Revista de História, nº 49, Lisboa, 1924, ("The Jurists and the Doctrine of the Portuguese" Mare clausum ", Journal of History, in Portuguese)
- Saldanha, António Vasconcelos de, «Mare Clausum» Dicionário de História dos Descobrimentos Portugueses, vol. II, pp. II, pp. 685-686. (Dictionary of the History of Discoveries, in Portuguese)

See also

- Treaty of Tordesillas
- Treaty of Alcáçovas
- Romanus Pontifex
- Mare liberum
- Hugo Grotius
- John Selden

References

[1] Robert McKenna, "The Dictionary of Nautical Literacy" (http://books.google.com/books?id=R8bmQL-ijCMC&lpg=1), p.225 McGraw-Hill Professional, 2003, ISBN 0-07-141950-0

[2] Gabriel Adeleye, Kofi Acquah-Dadzie, Thomas J. Sienkewicz, James T. McDonough, "World dictionary of foreign expressions: a resource for readers and writers" (http://books.google.com/books?id=tzW0IasL5EQC&lpg=1), p.240, Bolchazy-Carducci Publishers, 1999, ISBN 0-86516-423-1

[3] The licensing of vessels by the Portuguese was initiated by Prince Henry the Navigator in 1443, after Prince Pedro granted him the monopoly of navigation, war and trade in the lands south of Cape Bojador. Later this law would be enforced by the Bulls Dum Diversas (1452) and Romanus Pontifex (1455), more buls and treaties followed, the most significant being the Treaty of Tordesillas.

[4] Tellegen-Couperus, Olga (1993). Short History of Roman Law, p.32. Routledge. ISBN 0-415-07251-4.

[5] Conrad Gempf, "The Book of Acts in Its Graeco-Roman Setting" (http://books.google.com/books?id=W-L1DA1ptKQC&lpg=1), p.23, Volume 2, Wm. B. Eerdmans Publishing, 1994, ISBN 0-8028-4847-8

[6] Freitas, Frei Serafim de, Do Justo Império Asiático dos Portugueses. Freitas, Frei Serafim de, Just Do the Portuguese Asian empire. De Iusto Imperio Lusitanorum Asiatico, 2 vols. (in Portuguese)

[7] António Costa Canas, "Mare Clausum", 2003, (http://cvc.instituto-camoes.pt/conhecer/bases-tematicas/navegacoes-portuguesas.html) in Portuguese

Mens rea

In criminal law, **mens rea** – the Latin term for **"guilty mind"**[1] – is usually one of the necessary elements of a crime. The standard common law test of criminal liability is usually expressed in the Latin phrase, *actus non facit reum nisi mens sit rea*, which means "the act does not make a person guilty unless the mind be also guilty". Thus, in jurisdictions with due process, there must be an *actus reus* accompanied by some level of *mens rea* to constitute the crime with which the defendant is charged (see the technical requirement of concurrence). The Criminal Law does not usually apply to a person who has acted with the absence of mental fault; this is the general rule.

The exception is strict liability crimes (in the civil law, it is not usually necessary to prove a subjective mental element to establish liability, say for breach of contract or a tort, although if intentionally committed, this may increase the measure of damages payable to compensate the plaintiff as well as the scope of liability).

Quite simply therefore *mens rea* refers to the mental element of the offence that accompanies the *actus reus*. In some jurisdictions the terms *mens rea* and *actus reus* have been superseded by alternative terminology. In Australia for example the elements of all federal offences are now designated as "fault elements" (mens rea) and "physical element" (actus reus). This terminology was adopted in order to replace the obscurity of the Latin terms with simple and accurate phrasing.[2]

Element types

Under the traditional common law, the guilt or innocence of a person relied upon whether they had committed the crime, *actus reus*, and whether they intended to commit the crime, *mens rea*. However, many modern penal codes have created levels of *mens rea* called modes of culpability which vary depending on the offense elements of the crime: the conduct, the circumstances, and the result, or what the Model Penal Code calls CAR (conduct, attendant circumstances, result). The definition of a crime is thus constructed using only these elements rather than the colorful language of *mens rea* in traditional common law:[3]

> Murder is the unlawful killing of a human being with malice aforethought.
>
> —18 U.S.C. §1111 (traditional common law)
>
> A person commits an offense if he:
> (1) intentionally or knowingly causes the death of an individual
>
> —*portion of* Texas Penal Code ch. 19 §19.02 (modern offense element)

The traditional common law definitions and the modern definitions approach the crime from different angles.

In the traditional common law approach, the definition includes:

1. *actus reus*: unlawful killing of a human being
2. *mens rea*: malice aforethought

Modern Law approaches the analysis somewhat differently. Homicide is a "results" crime in that it forbids *any* "intentional" or "knowing" conduct that *results* in the death of another human being. "Intentional" in this sense means the actor possessed a "purpose" or "desire" that his or her objective (i.e. death of another human being) be achieved. "Knowing" means that the actor was aware or practically certain that the death would result. Thus, the *actus reus* and *mens rea* of homicide in a modern criminal statute can be considered as follows:

1. *actus reus*: Any conduct resulting in the death of another individual.
2. *mens rea*: The conduct resulting in the death was done intentionally or knowingly.

In the modern offense element approach, the attendant circumstances tend to take over for the traditional *mens rea*, indicating the level of culpability as well as other circumstances, i.e. the crime of *theft of government property* would include as an attendant circumstance that the property belong to the government.[3]

Modes of culpability

The levels of *mens rea* and the distinction between them vary between jurisdictions. Although common law originated from England, the common law of each jurisdiction with regard to culpability varies as precedents and statutes vary.

England

- *Direct intention* - the actor has a clear foresight of the consequences of his actions, and desires those consequences to occur. It's his aim or purpose to achieve this consequence (death).
- *Oblique intention* - the result is a virtually certain consequence or a 'virtual certainty' of the defendant's actions, and that the defendant appreciates that such was the case..[4] [5] [6]
- *Knowingly* - the actor knows, or should know, that the results of his conduct are reasonably certain to occur
- *Recklessness* - the actor foresees that particular consequences may occur and proceeds with the given conduct, not caring whether those consequences actually occur or not[7] [8] [9]
- *Criminal negligence* - the actor did not actually foresee that the particular consequences would flow from his actions, but a reasonable person, in the same circumstances, would have foreseen those consequences

United States

Title 18 of the United States Code does not have a culpability scheme but relies on more traditional definitions of crimes taken from common law. For example, *malice aforethought* is used as a requirement for committing capital murder.[10]

American Law Institute's Model Penal Code

Prior to the 1960s, *mens rea* in the United States was a very slippery, vague and confused concept. Since then, the formulation of *mens rea* set forth in the Model Penal Code has been highly influential throughout North America in clarifying the discussion of the different modes of culpability.[11]

- *Purposefully* - the actor has the "conscious object" of engaging in conduct and believes or hopes that the attendant circumstances exist.
- *Knowingly* - the actor is practically certain that his conduct will lead to the result.
- *Recklessly* - the actor is aware that the attendant circumstances exist, but nevertheless engages in the conduct that a "law-abiding person" would have refrained from.
- *Negligently* - the actor is unaware of the attendant circumstances and the consequences of his conduct, but a "reasonable person" would have been aware
- *Strict liability* - the actor engaged in conduct and his mental state is irrelevant

Ignorance of the law and mens rea

The general rule under U.S. law is that "ignorance of the law or a mistake of law is no defense to criminal prosecution." See *Cheek v. United States*, 498 U.S. 192 (1991). There are exceptions to this rule which are sometimes referred to as crimes of "specific intent",

> Specific intent crime. Crime in which defendant must not only intend the act charged but also intend to violate law. U.S. v. Birkenstock, C.A.Wis., 823 F.2d 1026, 1028. One in which a particular intent is a necessary element of the crime itself. Russell v. State, Fla.App., 373 So.2d 97, 98. See also Mens rea; Specific intent.
>
> —Black's Law Dictionary, Sixth Edition

For example, in the case of *tax evasion* under 26 U.S.C. § 7201 [12] the defendant must be shown to have a specific intent to violate an actually known legal duty. See Tax avoidance and tax evasion.

Subjective and objective tests

The test for the existence of *mens rea* may be:

> (a) subjective, where the court must be satisfied that the accused actually had the requisite mental element present in his or her mind at the relevant time (for purposely, knowingly, recklessly etc) (see concurrence);
>
> (b) objective, where the requisite *mens rea* element is imputed to the accused, on the basis that a reasonable person would have had the mental element in the same circumstances (for negligence); or
>
> (c) hybrid, where the test is both subjective and objective.

The court will have little difficulty in establishing *mens rea* if there is actual evidence – for instance, if the accused made an admissible admission. This would satisfy a *subjective* test. But a significant proportion of those accused of crimes make no such admissions. Hence, some degree of objectivity must be brought to bear as the basis upon which to impute the necessary component(s). It is always reasonable to assume that people of ordinary intelligence are aware of their physical surroundings and of the ordinary laws of cause and effect (see causation). Thus, when a person plans what to do and what not to do, he will understand the range of likely outcomes from given behaviour on a sliding scale from "inevitable" to "probable" to "possible" to "improbable". The more an outcome shades towards the "inevitable" end of the scale, the more likely it is that the accused both foresaw and desired it, and, therefore, the safer it is to impute intention. If there is clear subjective evidence that the accused did *not* have foresight, but a reasonable person would have, the hybrid test may find criminal negligence. In terms of the burden of proof, the requirement is that a jury must have a high degree of certainty before convicting. It is this reasoning that justifies the defences of infancy, and of lack of mental capacity under the M'Naghten Rules, and the various statutes defining mental illness as an excuse. Self-evidently, if there is an irrebuttable presumption of *doli incapax* - that is, that the accused did not have sufficient understanding of the nature and quality of his actions – then the requisite *mens rea* is absent no matter what degree of probability might otherwise have been present. For these purposes, therefore, where the relevant statutes are silent and it is for the common law to form the basis of potential liability, the reasonable person must be endowed with the same intellectual and physical qualities as the accused, and the test must be whether an accused with these specific attributes would have had the requisite foresight and desire.

In English law, s8 Criminal Justice Act 1967 provides a statutory framework within which *mens rea* is assessed. It states:

> A court or jury, in determining whether a person has committed an offence,
>
> > (a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reasons only of its being a natural and probable consequence of those actions; but
> >
> > (b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.

Under s8(b) therefore, the jury is allowed a wide latitude in applying a hybrid test to impute intention or foresight (for the purposes of recklessness) on the basis of all the evidence.

Relevance of motive

One of the mental components often raised in issue is that of motive. If the accused admits to having a motive consistent with the elements of foresight and desire, this will add to the level of probability that the actual outcome was intended (it makes the prosecution case more credible). But if there is clear evidence that the accused had a different motive, this may decrease the probability that he or she desired the actual outcome. In such a situation, the motive may become subjective evidence that the accused did not intend, but was reckless or willfully blind.

Motive cannot be a defence. If, for example, a person breaks into a laboratory used for the testing of pharmaceuticals on animals, the question of guilt is determined by the presence of an *actus reus*, i.e. entry without consent and damage to property, and a *mens rea*, i.e. intention to enter and cause the damage. That the person might have had a

clearly articulated political motive to protest such testing does not affect liability. If motive has any relevance, this may be addressed in the sentencing part of the trial, when the court considers what punishment, if any, is appropriate.

Recklessness (United States: "willful blindness")

In such cases, there is clear subjective evidence that the accused foresaw but did not desire the particular outcome. When the accused failed to stop the given behavior, he took the risk of causing the given loss or damage. There is always some degree of intention subsumed within recklessness. During the course of the conduct, the accused foresees that he may be putting another at risk of injury: A choice must be made at that point in time. By deciding to proceed, the accused actually intends the other to be exposed to the risk of that injury. The greater the probability of that risk maturing into the foreseen injury, the greater the degree of recklessness and, subsequently, sentence rendered. For example, at common law, an unlawful homicide committed recklessly would ordinarily constitute the crime of voluntary manslaughter. One committed with *"extreme"* or *"gross"* recklessness as to human life would constitute murder, sometimes defined as *"depraved heart"* or *"abandoned and malignant heart"* murder.

Criminal negligence

Here, the test is both subjective and objective. There is credible subjective evidence that the particular accused neither foresaw nor desired the particular outcome, thus potentially excluding both intention and recklessness. But a reasonable person with the same abilities and skills as the accused would have foreseen and taken precautions to prevent the loss and damage being sustained. Only a small percentage of offences are defined with this *mens rea* requirement. Most legislatures prefer to base liability on either intention or recklessness and, faced with the need to establish recklessness as the default *mens rea* for guilt, those practising in most legal systems rely heavily on objective tests to establish the minimum requirement of foresight for recklessness.

See also

- Animus nocendi
- Command responsibility
- Henry de Bracton
- *Morissette v. United States*
- Voluntas necandi

References

Sources

- Dubber, Markus D. (2002). *Criminal Law: Model Penal Code*. Foundation Press.

External links

- Criminal Responsibility and Intent [13]

References

[1] Elizabeth A. Martin, ed. (2003), *Oxford Dictionary of Law*, Oxford: Oxford University Press, ISBN 0198607563
[2] Brent Fisse, "Howard's Criminal Law" (1990) 12-13.
[3] Dubber p. 46
[4] R v Nedrick [1986]
[5] R v Woollin [1998]
[6] R v Matthews & Alleyne [2004]
[7] R v Cunningham [1957]

[8] R v G & R [2003]
[9] R v Caldwell [1982]
[10] Dubber p. 55
[11] Dubber pp. 60-80
[12] http://www.law.cornell.edu/uscode/26/7201.html
[13] http://www.jaapl.org/cgi/content/full/35/1/124?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&searchid=1&FIRSTINDEX=0&minscore=5000&resourcetype=HWCITCriminal

Muniment

A **Muniment** or **Muniment of Title** is a legal term for a document, or other evidence, that indicates ownership of an asset. The word is derived from *munimentum*, the Latin word for a defensive fortification. In other words, "muniments of title" means the written evidence which a land owner can use to defend title to his estate.[1]

An example of *Muniment of Title* would include but is not limited to using a death certificate of a joint tenant to prove that Title resides with living joint tenant.

Muniments may take the form of myriad documents relating to property and the ownership thereof, including deed covenants and restrictions, title deeds, and several others. The definition of "muniment" may differ in statutes state by state.

For example, states often have their own version of a Marketable Record Title Act (MRTA) which will extinguish various interests, restrictions, or claims to a property within a certain time period unless renewed during that time period by muniments.

> "A muniment of title is any documentary evidence upon which title is based. Muniments of title are deeds, wills, and court judgments through which a particular land title passes and upon which its validity depends. Muniments of title need not be recorded to be valid notwithstanding that the recording statutes give good faith purchasers certain rights over the rights of persons claiming under unrecorded muniments of title. Muniments of title do more than merely "affect" title; they must carry title and be a vital link in the chain of title."[2]

External links

- "Muniment". *Encyclopædia Britannica* (11th ed.). 1911.

References

[1] Black's Law Dictionary 1019 (6th ed. 1990)
[2] Cunningham v. Haley, 501 So. 2d 649 (Fla. 5th DCA 1986)

Mutatis mutandis

Mutatis mutandis is a Latin phrase meaning "by changing those things which need to be changed" or more simply "the necessary changes having been made". The term is used when comparing two situations with a multiplicity of common variables set at the same value, in which the value of only one variable is allowed to differ – "all other things being equal" –thereby making comparison easier (cf. *ceteris paribus*).

It carries the connotation that the reader should pay attention to the corresponding differences between the current statement and a previous one, although they are analogous. This term is used frequently in economics, philosophy and in law, to parameterize a statement with a new term, or note the application of an implied, mutually understood set of changes. The phrase is also used in the study of counter-factuals, wherein the requisite change in the factual basis of the past is made and the resulting causalities are followed.

Examples

- A local chapter of a national organization may adopt a rule that the national organization's procedure for something will apply, *mutatis mutandis*, to the local chapter. Thus, even though the chief officer of the national organization may be called the "president", and the chief officer of the local chapter may be called the "chairman", instances of "president" would be changed to "chairman" when applying the national procedure. This is commonly done by subordinate units (such as localities or chapters) to avoid duplication of text in local ordinances or rules that is sufficiently covered by state or national laws or rules.
- "His cat" and "His dog" should be changed to "Her cat" and "Her dog", *mutatis mutandis* for pony, sheep and cow. (That is, "His pony" becomes "Her pony", and so on.)
- What we said about oil goes *mutatis mutandis* for natural gas.
- The two parties finally signed the contract *mutatis mutandis*.
- 1982 Convention in Jamaica (The law of the sea), ARTICLE 111: Section 2. The right of hot pursuit shall apply 'mutatis mutandis' to violations in the exclusive economic zone or on the continental shelf, including safety zones around continental shelf installations, of the laws and regulations of the coastal State applicable in accordance with this Convention to the exclusive economic zone or the continental shelf, including such safety zones.

Etymology

Both "mutatis" and "mutandis" come from the Latin verb "muto" (principal parts: muto, mutare, mutavi, mutatum), meaning "to change." **Mutatīs** is the perfect passive participle (ablative plural neuter), literally "having been changed." **Mutandīs** is the gerundive (ablative plural neuter), literally "being about to be changed."

Used as a substantive plural it means "the things that have changed" and the gerundive gives the idea of necessity, meaning, "things which need to be changed". The phrase is an ablative absolute construction, which is reflected by the "with" given in the full translation, "with those things having been changed which need to be changed."

The construction is not valid in Classical Latin, where the gerundive was not employed as a noun in plural neuter, except in the nominative or accusative cases (*aut facere scribenda aut scribere legenda*, "either to perform deeds worthy of description or to write about deeds worthy of being read"[1] . It is therefore probably of mediaeval origin. The Oxford English Dictionary states that its first instance in British Latin is from 1272.

Contrast with *ceteris paribus*

Mutatis mutandis is similar to *ceteris paribus*. Where the latter serves to hold all other things constant to emphasize the effects of one change, *mutatis mutandis* often serves to suggest (or require) a set of changes which may (or shall) be made without loss of validity.

Quotes

- "We can in fact only define a weed, *mutatis mutandis*, in terms of the well-known definition of dirt—as matter out of place. What we call a weed is in fact merely a plant growing where we do not want it." — E.J. Salisbury, *The Living Garden*, 1935.
- "The proof that **Q** is universal relative to the set of all 3-bit gates applies step by step, *mutatis mutandis*, to $\mathbf{Q}_4$." — D. Deutsch, Quantum computational networks, *Proc. R. Soc. Lond.* A **425**, pp. 85, 1989.
- "A friend of mine has a son whose case, mutatis mutandis, is very much like yours" - Proust, *Within a Budding Grove*.

See also

- Nunc pro tunc ("now for then", legal term with similar effect)
- List of Latin phrases

References

[1] Pliny, "16", **6**

Nasciturus pro iam nato habetur, quotiens de commodis eius agitur

Nasciturus pro iam nato habetur, quotiens de commodis eius agitur is a Latin phrase which refers to a law which enables a foetus to inherit property. In normal circumstances, a foetus may not inherit, as it does not legally become a "person" until it is born. Under this law, the foetus is legally presumed to have been born for the purposes of inheritance. Such laws were common in Roman law and are used today in most European countries and in South Africa.

The phrase is translated as: "The unborn is deemed to have been born to the extent that its own benefits are concerned". "Nasciturus" (literally, "one who is to be born") refers to a child which has been conceived, but has not yet been born, i.e. a foetus.

This rule is an exception, and applies exclusively for the purpose of inheritance. Some additional conditions are required for this exception to be legally valid; primarily, the foetus has to be fully born and physically and mentally healthy.

Notable cases of the application of this maxim include John I of France, the short-lived posthumous son of King Louis X, who inherited the throne *in utero* and, once born, reigned for the five days of his life. Similarly, when Queen Victoria inherited the British throne, her accession proclamation specified that her inheritance was "...saving the rights of any issue of his late Majesty King William IV, which may be born of his late Majesty's consort" Queen Adelaide, since any such unborn offspring would have had a prior claim to the throne and displace Victoria as monarch.

Ne Temere

Ne Temere (literally meaning "not rashly" in Latin) was a decree (named for its opening words) of the Roman Catholic Congregation of the Council regulating the canon law of the Church about marriage for practising Roman Catholics.

The notable effect of the decree was the requirement for a non-Catholic spouse to agree to educate and raise his/her children as Roman Catholics. In some cases it was also expected for that spouse to convert to Catholicism before the marriage, to ensure compliance.

Tametsi, 1545

To the clandestinity requirements of the decree Tametsi of the Counter-Reformation Council of Trent, it reiterated the requirements that the marriage be witnessed by a priest and two other witnesses (adding that this requirement had now universal), added requirements that the priest (or bishop) being witness to the marriage must be the pastor of the parish (or the bishop of the diocese), or be the delegate of one of those, the marriage being invalid otherwise, and the marriage of a couple, neither one resident in the parish (or diocese), while valid, was illicit. It also required that marriages be registered and provided some instances in which the priest was not required.

It explicitly laid out that non-Catholics, including baptized ones, were not bound by Catholic canon law for marriage, and therefore could contract valid and binding marriages without compliance.

Ne Temere, 1908

The decree was issued under Pope Pius X, 10 August 1907, and took effect on Easter 19 April 1908. This decree was voided for marriages in Germany by the subsequent decree *Provida*.

The result made official civil marriages difficult for lapsed Catholics in some Church-dominated nations. It also meant that, because a priest could refuse to perform *mixed marriages* between Roman Catholics and non-Roman Catholics, he could impose conditions such as an obligation for any children to be baptised and brought up as Catholics, and for the non-Catholic partners to submit to religious education with the aim of converting them to Catholicism.[1]

On the success of a divorce action brought by a non-Catholic spouse, the Catholic spouse was still considered married in the eyes of the Church, and could not remarry to a third party in church.

Conflicts of laws

Before and after 1907 legal reforms across Europe were slowly creating new personal freedoms. *Ne Temere* was widely criticised by non-Catholics for restricting choice in family matters.[2]

The issue of the Roman Catholic Church's Canon law declaring marriages invalid, which were however recognised as valid by the State, raised major political and judicial issues in Canada, especially Quebec,[3] and in Australia. In New South Wales, the legislature came within one vote of making a criminal offence the promulgation of the decree.[4]

The use of the decree to extract commitments in mixed marriages led to enforcement in the Republic of Ireland courts such as the *Tilson v. Tilson* judgement where Judge Gavan Duffy said

> "In my opinion, an order of the court designed to secure the fulfilment of an agreement peremptorily required before a mixed marriage by the Church, whose special position in Ireland is officially recognised as the guardian of the faith of the Catholic spouse, cannot be withheld on any ground of public policy by the very State which pays homage to that Church."[5]

A similar dispute led to the Fethard-on-Sea incident. The New Ulster Movement publication "Two Irelands or one?" in 1972 contained the following recommendation regarding any future United Ireland:[6]

> "The removal of the protection of the courts, granted since the Tilson judgement of 1950, to the *Ne temere* decree of the Roman Catholic Church. This decree which requires the partners in a mixed marriage to promise that all the children of their marriage be brought up as Roman Catholics, is the internal rule of one particular Church. For State organs to support it is, therefore, discriminatory."

Matrimonia Mixta, 1970

Ne Temere was replaced in 1970 with the more relaxed *Matrimonia Mixta*.[7]

See also

Elopement

External links

- *Ne Temere* [8]
- *Catholic Encyclopedia* "Clandestinity (in Canon Law)" [9] -- see section "New Legislation on Clandestine Marriage"

References

[1] Ne temere text online (http://www.ewtn.com/library/CURIA/NETEMERE.htm)
[2] British parliament debate, 1911 (Hansard) (http://hansard.millbanksystems.com/lords/1911/feb/28/marriage-law-the-ne-temere-decree)
[3] http://www.umanitoba.ca/colleges/st_pauls/ccha/Back%20Issues/CCHA1981/Moir.html
[4] http://www.uniya.org/publications/pdfs/politics.pdf#search=%22ne%20temere%22
[5] Irish Law Times Report LXXXVI 1952, pages 49-73.
[6] "Two Irelands or one?" text online (http://cain.ulst.ac.uk/othelem/organ/num/num72b.htm)
[7] Matrimonia Mixta online; accessed Dec 2009 (http://www.catholicdoors.com/misc/marriage/mixed.htm)
[8] https://www.ewtn.com/library/CURIA/NETEMERE.HTM
[9] http://www.newadvent.org/cathen/04001a.htm

Ne bis in idem

Ne bis in idem, which translates literally from Latin as "not twice for the same", means that no legal action can be instituted twice for the same cause of action. It is a legal concept originating in Roman Civil Law, but essentially as the **double jeopardy** (*autrefois acquit*) clauses found in common law jurisdictions.

The International Covenant on Civil and Political Rights guarantees the right to be free from double jeopardy, however, it does not apply to prosecutions by two different sovereigns[1] (unless the relevant extradition treaty expresses a prohibition). The Rome Statute of the International Criminal Court creates a different form of *ne bis in idem*.

See also

- Extradition
- List of legal Latin terms

References

[1] see eg,A.P. v Italy, UN HRC CCPR/C/31/D/204/1986

Nec vi, nec clam, nec precario

Nec vi, nec clam, nec precario, is a Latin legal term meaning 'not by force, nor stealth, nor licence'. It is the principle by which rights may be built up over time, principally public rights of way in the United Kingdom. Specifically, if a path is used – openly, not against protests, and *without* permission of the landowner – for an extended period (20 years) then a permanent legal right to such use is established.

It is often referred to in the context of *adverse possession* and other land law issues. It is also relevant to the creation of easements whereby the law 'prescribes' an easement in the absence of a deed. In order for the law to do so the right of way or easement needs to have been enjoyed without force, without secrecy, and without permission for a period of time, usually 20 years.

Nemo dat quod non habet

Nemo dat quod non habet, literally meaning "no one [can] give what he does not have" is a legal rule, sometimes called the **nemo dat rule**, that states that the purchase of a possession from someone who has no ownership right to it also denies the purchaser any ownership title. This rule usually stays valid even if the purchaser does not know that the seller has no right to claim ownership of the object of the transaction (a bona fide purchaser); however it is often difficult for courts to make judgements as in many cases there is more than one innocent party. As a result of this there are numerous exceptions to the general rule which aim to give a degree of protection to bona fide purchasers as well as original owners.

United States

In American law, a bona fide purchaser who unknowingly purchases and subsequently sells stolen goods will, at common law, be held liable in trover for the full market value of those goods as of the date of conversion. Since the true owner retains legal title, this is true even in a chain of successive bona fide purchasers (ie, the true owner can successfully sue the fifth bona fide purchaser in trover). However, there is a remedy for successive bona fide purchasers. If the jurisdiction recognises an implied warranty that the seller has title to the property (Article 2 of the Uniform Commercial Code (UCC) in the United States), the bona fide purchaser can sue the seller for breach of that implied warranty. There are also other various exceptions traditionally recognised in courts of equity, which likely gave rise to the idea embodied in the modern UCC.

This rule is exemplified in circumstances such as the Holocaust reconciliation movement where property, such as works of art, that was stolen or confiscated by the Nazis is returned to the families of the original owners. Anyone who purchased the art or thought they had ownership are denied any rights over the litigious property due to the nemo dat rule.

There are numerous exceptions to the nemo dat rule. Legal tender, for example, does not adhere to the rule in certain circumstances. If a rogue buys goods from a bona fide merchant, that merchant will not have to return the bills to the true owner. To hold the rule to be otherwise would be disruptive to the economy and prevent the free flow of goods in an economy. The same may be true of other "negotiable" instruments, such as cheques. If a thief A steals a cheque from B and sells it to innocent C, C is entitled to deal with the cheque, and A cannot claim it back from C (though the name appearing on the cheque may affect the validity of such a transfer).

English law

The original owner can obtain protection against the former owner through the doctrine of estoppel (see also, s 21(1) of the Sale of Goods Act 1979 '...unless the owner of the goods is by his conduct *precluded* from denying the seller's authority to sell). Methods of the estoppel can be by words, by conduct, or by negligence.

Estoppel by words, or representation by a seller through words that he is the true owner or has the owner's authority to sell:

- *Henderson & Co v Williams* [1895] 1 QB 521
- *Shaw v Commissioner of Metropolitan Police* [1987] 1 WLR 1332, following *Henderson*

Estoppel by conduct:

- *Farquharson Bros v J King & Co Ltd* [1902] AC 325
- *Merchantile Bank of India Ltd v Central Bank of India* [1938] AC 287, upholding *Farquharson*
- *Central Newbury Car Auctions Ltd v Unity Finance Ltd* [1957] 1 QB 371

Mistake about identity:

- *Shogun Finance Ltd v Hudson* [2003] UKHL 62

See also

- English property law
- Corpus Juris Civilis

Nemo iudex in causa sua

Nemo iudex in causa sua (or *nemo iudex in sua causa*) is a Latin phrase that means, literally, no-one should be a judge in their own cause. It is a principle of natural justice that no person can judge a case in which they have an interest. The rule is very strictly applied to any appearance of a possible bias, even if there is actually none: "Justice must not only be done, but must be seen to be done".

May also be called:

- nemo iudex idoneus in propria causa est
- nemo iudex in parte sua
- nemo debet esse iudex in propria causa
- in propria causa nemo iudex

The other principle of natural justice is "Hear the other party" (Audi alteram partem) otherwise put "Reasonable opportunity must be given to each party, to present his side of the case".

The legal effect of a breach of natural justice is normally to stop the proceedings and render any judgment invalid; it should be quashed or appealed, but may be remitted for a valid re-hearing.

See also

- List of legal Latin terms

Nihil novi

Nihil novi nisi commune consensu ("Nothing new without the common consent") is the original Latin title of a 1505 act adopted by the Polish *Sejm* (parliament), meeting in the royal castle at Radom.

History

Nihil novi effectively established "nobles' democracy" in what came to be known as the Polish "Commonwealth [or, Republic] of the Nobility." That First Polish Republic would come to an end in 1795 with the Third and final Partition of the Polish-Lithuanian Commonwealth.

"***Nihil novi***," in this political sense, is interpreted in the vernacular as "Nothing about us without us" (in the Polish, "*Nic o nas bez nas*").

The Latin expression, "*nihil novi*" ("nothing new"), had previously appeared in the Vulgate Bible phrase, "*nihil novi sub sole*" ("there is nothing new under the sun"), in *Ecclesiastes* 1:9.[1]

Plaque at Radom Castle, commemorating 500th anniversary of adoption there, in 1505, of Act of *Nihil novi*

Nihil novi

The *Sejm*'s 1505 Act of *Nihil novi nisi commune consensu* marked an important victory for Poland's nobility over her Kings. It forbade the King to issue laws without the consent of the nobility, represented by the *Senat* and Chamber of Deputies, except for laws governing royal cities, crown lands (*królewszczyzny*), mines, fiefdoms, royal peasants, and Jews.

Nihil novi invalidated the Privilege of Mielnik, which had strengthened only the magnates, and it thus tipped the balance of power in favor of the Chamber of Deputies (the formally lower chamber of the Parliament), where the ordinary nobility held sway. *Nihil novi* is often regarded as initiating the period in Polish history known as "Nobles' Democracy," which was but a limited democracy as only males with titles of nobility were able to participate (the nobility constituting some ten percent of the Republic's population).

The act of *Nihil novi* was signed by King Alexander Jagiellon on May 3, 1505, during a *Sejm* session held at the royal castle in Radom.

That same year, the nobility further expanded their power by abrogating most cities' voting rights in the *Sejm* and by forbidding peasants to leave their lands without the permission of their feudal lords, thereby firmly establishing a "second serfdom" in Poland.

Text

> Whereas general laws and public acts pertain not to an individual but to the nation at large, wherefore at this General Sejm held at Radom we have, together with all our kingdom's prelates, councils and land deputies, determined it to be fitting and just, and have so resolved, that henceforth for all time to come *nothing new* shall be resolved by us or our successors, *without the common consent* of the senators and the land deputies, that shall be prejudicial or onerous to the Commonwealth [or "Republic"] or harmful and injurious to anyone, or that would tend to alter the general law and public liberty.[2]

See also

- Polish-Lithuanian Commonwealth

References

- Norman Davies, *God's Playground: A History of Poland in Two Volumes. Volume I: The Origins to 1795*, New York, Columbia University Press, 1982, ISBN 0-231-05351-7.
- Sebastian Piątkowski, *Radom: zarys dziejów miasta* (Radom: A Brief History of the City), Radom, 2000, ISBN 83-914912-0-X.
- Adam Zamoyski, *The Polish Way: A Thousand-Year History of the Poles and Their Culture*, New York, Hippocrene Books, 1994, ISBN 0-7818-0200-8.

References

[1] *King James Version*: "The thing that hath been, it is that which shall be; and that which is done is that which shall be done: and there is no new thing under the sun." *New International Version*: "What has been will be again, what has been done will be done again; there is nothing new under the sun."

[2] Translated from Polish.

Nihil dicit

Nihil dicit is Latin for "he says nothing"; a judgment for want of a plea. The name of a judgment which a judge may render against a defendant who failed to plead and failed to answer a plaintiff's declaration or complaint within the prescribed time limit. The defendant failed to say why the court should not issue the judgment against him. The failure to say constitutes an admission of the justice of the cause of action against the defendant; it does so more strongly than a mere default. [1] [2]

References

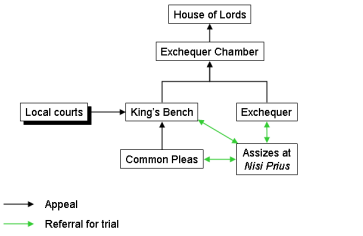
[1] Vide 15 Vin. Ab. 556; Dane's Ab. Index, h.t. nothing why it should not.

[2] Vide 15 Vin. Ab. 556; Dane's Ab. Index, h.t.

Nisi prius

Nisi prius is a historical term in English law. In the nineteenth century, it came to be used to denote generally all legal actions tried before judges of the King's Bench Division[1] and in the early twentieth century for actions tried at assize by a judge given a commission.[2] Used in that way, the term has had no currency since the abolition of assizes in 1971.[3] *Nisi prius* is a common legal term in the United States, however. As the term's Latin meaning ("unless first") indicates, the term "[court of] *nisi prius*" denotes the court or tribunal that originally decided a case or an interlocutory matter rather than a higher court being appealed to. In that sense, at least, it serves as a synonym for "court of original jurisdiction."[4]

Trial at *nisi prius*



Trial at *nisi prius* before the Judicature Act 1873

Before the reforms of the Judicature Act 1873, civil cases at common law were begun in one of the three courts that sat in Westminster Hall: the Court of Common Pleas, Court of Exchequer and King's Bench. Because of their historical origins, these courts were to some extent in competition, especially as their respective judges and officers lived off the fees deriving from them. Given that travel to London was an onerous burden during the medieval period, however, the Statute of Westminster II provided in 1285 for trial of fact in civil cases at the local assizes. *Nisi prius* translates as "if not sooner" or "if not before" in addition to "unless first": when the action was started in London, the sheriff was ordered to have the jurors there for trial on a certain day "unless before" (*nisi prius*) that day the case was heard at assize in the claimant's county.[2] [5] After trial at the assizes, the case could be referred back to the original court, from where there was a possibility of further appeal to the Court of Exchequer Chamber.[6]

After the reform of the common law courts in 1873, actions were only said to be tried at *nisi prius*, and a judge said to sit at *nisi prius*, when he sat, usually in the King's Bench Division, for the trial of actions. By a resolution passed by the judges of the King's Bench Division in 1894 it was declared of the utmost importance that there should be at least three courts of *nisi prius* sitting continuously throughout the legal year: one for special jury causes, one for common jury causes, and one for causes without juries.[1]

Magna Carta and the Assize of Clarendon provided for the trial of serious criminal cases on circuit.

Nisi prius record

The ***nisi prius* record** was, before the Judicature Acts, the name of the formal copy of proceedings showing the history of the case up to the time of trial. After the trial it was endorsed with the *postea*, showing the result of the trial, and delivered by the officer of the court to the successful party, whose possession of the *postea* was his title to judgment. Since the Judicature Acts there is no *nisi prius* record in civil actions, the nearest approach to it being the deposit of copies of the statements of case for the use of the judge, and there is no *postea*, the certificate of the associate or Master as to the result of the trial superseding it.[1]

Cultural references

Nisi prius is mentioned in the Gilbert & Sullivan operetta *The Mikado*, in the Song "As some day it May Happen": "And that Nisi Prius nuisance, who just now is rather rife, The Judicial humorist—I've got him on the list!"[7]

Bibliography

- [Anon.] (1911) "Nisi Prius [8]", *Encyclopaedia Britannica*
- Cornish, W. R. & Clark, G. de N. (1989). *Law and Society in England 1750-1950*. London: Sweet & Maxwell. pp. 23–26, 75. ISBN 0421311509.
- Curzon, L. B. (2002). *Dictionary of Law* (6th ed.). London: Longman. p. *p.*287 ***nisi prius***. ISBN 0-582-43809-8.
- Glesson, T. (2006). "Curtmantle - the common law king". *Justice of the Peace* **170**: 171.

References

[1] [Anon.] (1911)
[2] Curzon (2002)
[3] Courts Act 1971
[4] Black, Henry Campbell. *Black's Law Dictionary* (Rev. 4th Ed.) by The Publisher's Editorial Staff. West Publishing, St. Paul, Minn., 1968.
[5] Cornish & Clark (1989) *p.*23
[6] Cornish & Clark (1989) *p.*25
[7] http://math.boisestate.edu/gas/mikado/webopera/mk105a.html
[8] http://www.1911encyclopedia.org/Nisi_Prius

Nolle prosequi

Nolle prosequi (pronounced /ˈnɒli ˈprɒsəkwaɪ/;[1] Latin: [ˈnoliːe ˈproːsekwiː]) is a Latin legal phrase meaning "be unwilling to pursue"[2] a Latin construction that amounts to "please do not prosecute". It is the term used in many common law criminal jurisdictions to describe a prosecutor's application to discontinue criminal charges before trial, or up until, but before verdict.[3]

Explanation

Nolle prosequi is a declaration made by a prosecutor in a criminal case or by a plaintiff in a civil lawsuit either before or during trial, meaning the case against the defendant is being dropped. The declaration may be made because the charges cannot be proved, the evidence has demonstrated either innocence or a fatal flaw in the prosecution's claim, or the prosecutor no longer thinks the accused is guilty, and/or the accused has died. It is generally made after indictment, but is not a guarantee that the person will not be reindicted.

In civil cases, a *nolle prosequi* may be entered as to one of several counts or to one of several defendants. In a criminal case, it has been held improper for a court to enter an order of *nolle prosequi* on its own without a motion by the prosecutor. As long as a jury trial has not been commenced, the entry of a *nolle prosequi* is not an adjudication on the merits of the prosecution, and the legal protection against double jeopardy will not automatically bar the charges from being brought again in some fashion.

Nolle prosequi is similar to a declination of prosecution, which is an agreement not to prosecute which may be made by an attorney, but also by the aggrieved party. In contrast, *nolle prosequi* is usually made after a decision to prosecute has already been made. A declination of prosecution may be made for many reasons, such as weak evidence or a conflict of interest.

Notable cases

- The 1902 Peasenhall Murder in Suffolk in England.
- In 1924, Connecticut prosecutor Homer Stille Cummings dismissed charges against Harold Israel, a vagrant accused of murdering a popular priest in Bridgeport, Connecticut. Cummings demolished the evidence his own office had compiled against Israel in a 90-minute courtroom presentation. The case became the basis of the 1947 film *Boomerang!*.[4]
- In 1925, prosecutors elected to dismiss murder charges against the remaining ten defendants in the famous case of People vs. Ossian Sweet. It involved a black family that had defended its home against a white mob. They were defended by attorney Clarence Darrow, who was retained by the National Association for the Advancement of Colored People. The trial was presided over by Detroit Recorder's Court Judge Frank Murphy, who went on to become an Associate Justice of the Supreme Court of the United States. After an initial mistrial, Henry Sweet (Ossian's brother who admitted he fired the shot) was acquitted by a jury on grounds of self defense; the dismissals of the charges against the ten remaining defendants followed.[5]
- In 1957 John Bodkin Adams, who worked in Eastbourne, England, was tried for the murders of two elderly widows, Edith Alice Morrell and Gertrude Hullett. When he was found not guilty of killing the former, Attorney-General, Sir Reginald Manningham-Buller controversially entered a nolle prosequi regarding the latter charge. Not only was there seemingly little reason to enter it (Adams wasn't suffering from ill health), the Hullett charge was deemed to be the stronger of the two cases. Lord Justice Patrick Devlin, the presiding judge, in his post-trial book termed this "an abuse of power".[6] Detective Superintendent Herbert Hannam of Scotland Yard, the chief investigator, suspected political interference,[7] and Home Office pathologist Francis Camps suspected Adams of killing 163 patients.[7]
- In 2004, rape charges against basketball player Kobe Bryant were dropped after the complainant refused to testify.

See also

- Confession of judgment: When used by the Solicitor General of the United States, it has the same effect as a *nolle prosequi*, but may be used in civil suits as well.
- Opportunity principle: in Dutch law, this is a generalized (principalized) form of *nolle prosequi*.

References

- Cullen, Pamela V. (2006) *A Stranger in Blood: The Case Files on Dr John Bodkin Adams*, London : Elliott & Thompson, ISBN 1-904027-19-9
- Devlin, Patrick (1985) *Easing the Passing : the trial of Dr John Bodkin Adams*, London : The Bodley Head, ISBN 0-370-30627-9
- Courts seldom adjudicate on the application for *nolle prosequi*. Instead, courts typically sign an order prepared by the prosecution or make a docket entry reflecting the case has been "nolle pros'ed."
- Federal Rules of Criminal Procedure 48(a) [8]

References

[1] " nolle prosequi (http://oed.com/cgi/findword?query_type=word&find=Find+word&queryword=nolle+prosequi)". *Oxford English Dictionary*. Oxford University Press. 2nd ed. 1989.
[2] http://dictionary.reference.com/browse/Nolle+prosequi
[3] A nolle prosequi can be entered at any time after the indictment or information has been signed and before verdict: R v Dunn (supra); R v Colling (1847) 2 Cox CC 184; R v Sneesby (1951) St R Qd 26; R v Economou (1989) 51 SASR 421; R v Heald (1979) Tas R 185 source: R v Michael Charles Baenisch SASC 5679 (28 June 1996) para. 12
[4] Mckenna, Marian C. (2002). *Franklin Roosevelt and the great constitutional war* (http://books.google.com/books?id=oPBjQegx8ZIC&pg=PA8&lpg=PA8&dq=harold+israel+cummings&source=bl&ots=b_UL7qAP9c&sig=gAO1gXkB_H6UZG9FOssVUxGeItA&hl=en&ei=fZDDSvDaG4rflAfHs6TIBQ&sa=X&oi=book_result&ct=result&resnum=1#v=onepage&q=harold israel cummings&f=false). Fordham University Press. pp. 8–9. ISBN 0-8232-2154-7. .
[5] Boyle, Kevin, *Arc of Justice: A Saga of Race, Civil Rights and Murder in the Jazz Age* (Henry Holt & Company, New York: 2004) (National Book Award Winner). ISBN 0-8050-7933-5; ISBN 978-0-8050-7933-3.
[6] Devlin, 1985
[7] Cullen, 2006
[8] http://www.law.cornell.edu/rules/frcrmp/Rule48.htm

Nolo contendere

Nolo contendere is a legal term that comes from the Latin for "I do not wish to contend." It is also referred to as a plea of **no contest**.

In criminal trials, and in some common law jurisdictions, it is a plea where the defendant neither admits nor disputes a charge, serving as an alternative to a pleading of guilty or not guilty.

A no contest plea, while not technically a guilty plea, has the same immediate effect as a guilty plea, and is often offered as a part of a plea bargain.[1] In many jurisdictions a plea of *nolo contendere* is not a right, and carries various restrictions on its use.

Origin

Derived from English common law, several common law jurisdictions, including the United States, also adopted the *nolo contendere* concept.

United States

In the United States, state law determines whether, and under what circumstances, a defendant may plead no contest. Several other common law countries, however, prohibit the plea altogether.

Residual effects

A *nolo contendere* plea has the same immediate effects as a plea of guilty, but may have different residual effects or consequences in future actions. For instance, a conviction arising from a *nolo contendere* plea is subject to any and all penalties, fines, and forfeitures of a conviction from a guilty plea in the same case, and can be considered as an aggravating factor in future criminal actions. However, unlike a guilty plea, a defendant in a *nolo contendere* plea may not be required to allocute the charges. This means that a *nolo contendere* conviction typically may not be used to establish either negligence *per se*, malice, or whether the acts were committed at all in later civil proceedings related to the same set of facts as the criminal prosecution.[2]

Under the Federal Rules of Evidence,[3] [4] and most state rules which parallel them, *nolo contendere* pleas may not be used to defeat the hearsay prohibition if offered as an "admission by [a] party-opponent".[5] Assuming the appropriate gravity of the charge, and all other things being equal, a guilty plea to the same charge would cause the reverse effect: An opponent at trial could introduce the plea, over a hearsay objection, as evidence to establish a

certain fact.[6]

Alaska

In Alaska, a criminal conviction based on a *nolo contendere* plea may be used against the defendant in future civil actions. The Alaska Supreme Court ruled in 2006 that a "conviction based on a no contest plea will collaterally estop the criminal defendant from denying any element in a subsequent civil action against him that was necessarily established by the conviction, as long as the prior conviction was for a serious criminal offense and the defendant in fact had the opportunity for a full and fair hearing"[7] [8] .

Florida

In Florida, the state Supreme Court held in 2005 that no contest convictions may be treated as prior convictions for the purposes of future sentencing.[9] .

Texas

In Texas, the right to appeal the results of a plea bargain taken from a plea of *nolo contendere* is highly restricted. Defendants who have entered a plea of *nolo contendere* may only appeal the judgment of the court if the appeal is based on written pretrial motions ruled upon by the court[10] .

Virginia

Virginia deviates from the federal evidentiary rule in that a *nolo contendere* plea entered in a criminal case is admissible in a related civil proceeding.

See also

- *Nolle prosequi*
- Alford plea

References

[1] Stephano Bibas (July 2003). "Harmonizing Substantive Criminal Law Values and Criminal Procedure: The Case of *Alford* and *Nolo contendere[[Category:Articles containing Latin language text* (http://www.pbs.org/wgbh/pages/frontline/shows/plea/four/nolo.html)] *Pleas"].* Cornell Law Review ***vol. 88*** *(no. 6). . Retrieved May 10, 2007.*

[2] Legal Information Institute. "United States Federal Rules of Evidence, Rule 410(2)" (http://www.law.cornell.edu/rules/fre/rules.htm#Rule410). Cornell Law School. . Retrieved April 22, 2010.

[5] Legal Information Institute. "United States Federal Rules of Evidence, Rule 801(d)(2)" (http://www.law.cornell.edu/rules/fre/rules.htm#Rule801). Cornell Law School. . Retrieved April 22, 2010.

[6] Legal Information Institute. "United States Federal Rules of Evidence, Rule 803(22)" (http://www.law.cornell.edu/rules/fre/rules.htm#Rule803). Cornell Law School. . Retrieved April 22, 2010.

[7] "Drunk driver who pled no contest can't relitigate issue of recklessness" (http://www.allbusiness.com/services/legal-services/4112972-1.html),*All Business*, December 18, 2006, retrieved April 22, 2010

[8] "Lamb v. Anderson No. 6078 (S-11936), P3d 736" (http://www.state.ak.us/courts/sp.htm). Alaska Supreme Court. November 17, 2006. .

[9] "Sheldon Montgomery vs. Florida" (http://www.floridasupremecourt.org/decisions/2005/sc02-1943.pdf). March 17, 2005. .

[10] "Texas Rules of Appellate Procedure, Rule 25.2(a)" (http://www.supreme.courts.state.tx.us/Rules/TRAP/trap-jan07.htm). Supreme Court of Texas. January 1, 2007. . Retrieved May 10, 2007.

Non compos mentis

Overview

The term **non compos mentis** means 'not of sound mind'. *Non compos mentis* derives from the Latin *non* meaning "not", *compos* meaning "having (command of)", and *mentis* (genitive singular of *mens*), meaning "mind".

Although typically used in law, this term can also be used metaphorically or figuratively; i.e. when one is in a confused state, intoxicated, or not of sound mind.

Also applicable in health care, when a determination of competency needs to be made by a physician for purposes of obtaining informed consent for treatments and, if necessary, assigning a surrogate to make health care decisions. While the proper sphere for this determination is in a court of law, this is practically, and most frequently, made by physicians in the clinical setting.[1]

In English law, the rule of *non compos mentis* was most commonly used when the defendant invoked religious or magical explanations for behaviour.

References

[1] Assessment of Patients' Competence to Consent to Treatment (http://content.nejm.org/cgi/content/full/357/18/1834)

Non liquet

In law, a **non liquet** is a situation where there is no applicable law. *Non liquet* translates into English from Latin as "it is not clear." [1] **Lacuna** is a similar word which means gap, and is used to indicate a gap in the law.[2]

That is to say, a court comes to the conclusion that the situation engaged in a case has no answer from the governing system of law. This is of particular relevance to international law since international courts, be it the ICJ or ad hoc tribunals, cannot invent law to redress a *lacuna*. As has now become the practice, the last resort that can be taken recourse to in deciding contentious cases is the widely accepted law of civilized nations (see generally Barcelona Traction, as accepting the doctrine of estoppel as part of international law). The ex aequo et bono jurisdiction has to date never been accepted by states, and it is believed that states would never accept it. Thus, absence of determinable international law leads to the court declaring something *non liquet*. But it has been argued by many that invoking of the *non liquet* doctrine is opposed to the notion of law being a complete system with no loose ends anywhere to be tied. Note that municipal courts enforcing international law are not constrained to declare an area *non liquet*.[3]

External links

- "Rice Defends Actions on Iraq Corruption", Dan Robinson, *VOA news*, 25 October 2007 [4]

References

[1] Black's Law Dictionary (8th ed. 2004)
[2] Garner BA. (2001). A dictionary of modern legal usage, p. 496 (http://books.google.com/books?id=35dZpfMmxqsC&pg=PA496). Oxford University Press.
[3] Nourse LJ to that effect in [1988] 3 WLR 1118 : 80 ILR 135
[4] http://voanews.com/english/2007-10-25-voa66.cfm

Nulla bona

Nulla bona is a Latin legal term meaning "no goods" -- a sheriff writes this when he can find no property to seize in order to pay off a court judgment. Synonymous with **return nulla bona**, it denotes the return of a writ of execution signifying that the officer made strict and diligent search but was unable to find any property of the defendant liable to seizure under the writ, whereof to make a levy. 30 Am J2d Exec § 561.

It may also be used as a plea by a garnishee, denying that he holds property of, or is indebted to, the defendant.

Nulla poena pro vitium Abyssus

Nulla poena pro vitium Abyssus (Latin: "No penalty for the crimes of Hell"), is a defunct English common law doctrine which prohibited a judge from taking into consideration criminal offences committed in a foreign jurisdiction whilst passing sentence for a crime committed in England.[1]

Origin

The doctrine of *Nulla poena pro vitium Abyssus* was first promulgated by Judge Cochrain in the case of *R. v. Huggins* [1730] 17 St. Tr. 309 at 376. On 17th November 1730 a merchant mariner by the name of Jonathan Huggins appeared before Judge Cochrain at the Devon and Cornwall Winter Assizes having pleaded guilty to stealing one tod of apples (28 pounds or 12.7 kg). It was known that Huggins had spent many years abroad and had a reputation for theft in the ports of the Spanish colonies. Huggins argued that it would be unjust to consider his reputation when passing sentence because foreign-born men and English men living in foreign climbs had a natural proclivity to steal.

Judge Cochrain agreed with Huggins' submission and his judgment was recorded thus:

> *With regard to the substantial question in the case - whether the sentence passed upon the prisoner should reflect not just the offence before this court but a considerable antecedent history of larceny committed outside of His Majesty's realm - the law is that an Englishman's conduct so far as it relates to his habits, persuasions and proclivities should at all points in time whilst domicile in any county of England conform to the highest standards of probity. It is accepted that men conceived and nurtured beyond these shores can rarely aspire to attain a comparable disposition but should contemplate a prolonged servitude to malicious malappropriation, wanton fornication and temporal degradation. It is in this case that I must give consideration to an English man who by his own volition has forsaken His Majesty's aegis and committed himself to an extended sojourn amongst innate supplicants. I profess my disappointment that the prisoner was unable to inoculate himself against their conventions but do not profess surprise. It may be possible to speculate that the prisoner would have found himself in considerable danger had he not conformed to the prevailing iniquity of his surroundings. I am content to limit my speculation as to that possibility and to none other. This court is of the opinion that a sin committed past the gates of hell is no sin at all. Likewise, a crime committed beyond His Majesty's writ is not a crime for which a court in England can assay a man's repute. Consequently, I will confine the prisoner's sentence to a term of imprisonment consummate with the gravity of the offence for which he has been arraigned and no more than the gravity of that offence.*

Abolition

Parliament abolished the doctrine of *Nulla poena pro vitium Abyssus* in the early 20th Century by enacting s.29 of the Criminal Justice Act 1929. By that time jurists and politicians considered the doctrine to be an anachronism and potentially contrary to the public good in view of the increased mobility of the population and the increasing affordability of foreign travel.

References

[1] Courtney Stanhope Kenny, A Selection of Cases Illustrative of English Criminal Law (Cambridge University Press, 1931),p.193.

Nulla poena sine lege

The phrase ***Nulla poena sine lege*** (Latin: "no penalty without a law") refers to the legal principle that one cannot be punished for doing something that is not prohibited by law. This principle is accepted as just and upheld by the penal codes of constitutional states, including virtually all modern democracies. It is related to the principle called "*Nullum crimen, nulla poena sine praevia lege poenali*", which means penal law cannot be enacted retroactively.

One complexity is the lawmaking power of judges under common law. Even in civil law systems that do not admit judge-made law, it is not always clear when the function of interpretation of the criminal law ends and judicial lawmaking begins.

The question of jurisdiction may sometimes come to contradict this principle. For example, customary international law allows the prosecution of pirates by any country (applying universal jurisdiction), even if they did not commit crimes at the area that falls under this country's law. A similar principle has appeared in the recent decades with regard to crimes of genocide (see genocide as a crime under domestic law); and UN Security Council Resolution 1674 "reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity"[1] even if the State in which the population is being assaulted does not recognise these assaults as a breach of domestic law. However, it seems that universal jurisdiction is not to be expanded substantially to other crimes, so as to satisfy *Nulla poena sine lege*.

The argument has been proposed that this exercise does not violate nulla poena sine lege, since these acts, even if not prohibited under the law of any country, are in violation of international law, which many legal theorists view as being equally law. However, this view depends on accepting as law mere intent, presumption and personal preference, rather than something that has been formally codified, which is a step many legal practicians are not quite prepared to make, all theories aside.

Natural law theorists or divine command theorists would further add that nulla poena sine lege is not violated if the punished act is against natural law or the law of God, respectively, even if it violates no positive law.

See also

- Nullum crimen, nulla poena sine praevia lege poenali
- Ex post facto law

References

- Mokhtar, A. (2005). "Nullum Crimen, Nulla Poena Sine Lege: Aspects and Prospects". *Statute Law Review* **26**: 41. doi:10.1093/slr/hmi005.

References

[1] Resolution 1674 (2006) (http://domino.un.org/UNISPAl.NSF/361eea1cc08301c485256cf600606959/e529762befa456f8852571610045ebef!OpenDocument)

Nullum crimen, nulla poena sine praevia lege poenali

Nullum crimen, nulla poena sine praevia lege poenali (Latin, *lit.* "No crime, no punishment without a previous penal law") is a basic maxim in continental European legal thinking. It was written by Paul Johann Anselm Ritter von Feuerbach as part of the Bavarian Criminal Code in 1813.

The maxim itself is sometimes rendered:

- *nullum delictum, nulla poena sine praevia lege poenali*
- *nullum crimen, nulla poena sine praevia lege poenali*
- *nullum crimen, nulla poena sine lege praevia*

or abbreviated to:

- *nullum crimen et nulla poena sine lege* (also *nullum crimen et nulla poene sine lege*[1])
- *nullum crimen, nulla poena sine lege*
- *nullum crimen sine lege*
- *nulla poena sine lege*

The maxim states that there can be no crime committed, and no punishment meted out, without a violation of penal law as it existed at the time. Another consequence of this principle is that only those penalties that had already been established for the offence in the time when it was committed can be imposed. Thus, not only the existence of the crime depends on there being a previous legal provision declaring it to be a penal offense (nullum crimen sine praevia lege), but also, for a specific penalty to be imposed in a certain case, it is also necessary that the penal legislation in force at the time when the crime was committed ranked the penalty to be imposed as one of the possible sanctions to that crime (nulla poena sine praevia lege).

This basic legal principle has been incorporated into international criminal law. It thus prohibits the creation of *ex post facto laws* to the disadvantage of the defendant.

International criminal law

Since the Nuremberg Trials, penal law is taken to include the prohibitions of international criminal law, in addition to those of domestic law. Thus prosecutions have been possible of such individuals as Nazi war criminals[2] and officials of the German Democratic Republic responsible for the Berlin Wall[3] , even though their deeds may have been allowed or even ordered by domestic law. Also, courts when dealing with such cases will tend to look to the letter of the law at the time, even in regimes where the law as it was written was generally disregarded in practice by

its own authors.

However, some legal scholars criticize this, because generally, in the legal systems of Continental Europe where the maxim was first developed, "penal law" was taken to mean statutory penal law, so as to create a guarantee to the individual, considered as a fundamental right, that he would not be prosecuted for an action or omission that was not considered a crime according to the statutes passed by the legislators in force at the time of the action or omission, and that only those penalties that were in place when the infringement took place would be applied. Also, even if one considers that certain actions are prohibited under general principles of international law, critics point out that a prohibition in a general principle does not amount to the establishment of a crime, and that the rules of international law also do not stipulate specific penalties for the violations.

In an attempt to address those criticisms, the statute of the recently established International Criminal Court provides for a system in which crimes and penalties are expressly set out in written law, that shall only be applied to future cases.

This principle is enshrined in several national constitutions, and a number of international instruments. See e.g. European Convention on Human Rights, article 7(1); Rome Statute of the International Criminal Court, articles 22 and 23 (see [4])

Common law

In English criminal law there are offences of common law origin. For example, murder is still a common law offence and lacks a statutory definition.

See also

- Ex post facto law
- Rechtsstaat
- 1942-43 Riom Trial

References

- Mokhtar, A. (2005). "Nullum Crimen, Nulla Poena Sine Lege: Aspects and Prospects". *Statute Law Review* **26**: 41. doi:10.1093/slr/hmi005.

References

[1] nullum crimen et nulla poene sine lege (http://www.philosophyideas.com/response_philosopherTe_detail.asp?id=7294&PN=3439) — Primary source (Grayling,A.C.: 'Among the Dead Cities' [Bloomsbury 2006], p.245) confirmed July 27, 2007

[2] Nuremberg Principles I & II state; "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment." and "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law" respectively.

[3] Case of Streletz, Kessler and Krenz v. Germany (Applications nos. 34044/96, 35532/97 and 44801/98) (2001) 33 E.H.R.R. 31

[4] http://cs.anu.edu.au/~James.Popple/publications/articles/retroactive/2.html

Nullum tempus occurrit regi

Nullum tempus occurrit regi (English: "**no time runs against the king**"), sometimes abbreviated **nullum tempus**, is a common law doctrine originally expressed by Bracton in his *De legibus et consuetudinibus Angliae* in the 1250s. It states that the crown is not subject to statute of limitations.[1] The doctrine is still in force in common law systems today, in republican governments often referred to as ***nullum tempus occurrit reipublicae***.[2]

Further reading

- Donald W. Sutherland, *Quo Warranto Proceedings in the Reign of Edward I, 1278-1294* (Oxford; Clarendon Press, 1963)

References

[1] Mack, Joseph (2006-04-01). "Nullum tempus: governmental immunity to statutes of limitation, laches, and statutes of repose." (http://www.accessmylibrary.com/coms2/summary_0286-15163859_ITM). Defense Counsel Journal. . Retrieved 2008-08-21.

[2] Cushman,, Robert F; G. Christian Hedemann (1995). *Architect and Engineer Liability* (http://books.google.com/books?id=_nRy-EwHTXUC). Aspen Publishers Online. pp. p. 351. ISBN 0735506663. .

Nunc pro tunc

Nunc pro tunc is a Latin expression in common legal use in the English language. It means **Now for then**. In general, a court ruling "nunc pro tunc" applies retroactively to correct an earlier ruling.

Definition

Nunc pro tunc is a phrase which theoretically applies to acts that are allowed to be done after the time expires. In the probate of an estate, if real property, such as lands, mineral interests, etc., are discovered after the Final Decree or Order, a nunc pro tunc order can include these after-discovered lands or assets into the estate, as well as clarify how those assets were meant to be distributed.

Corporate application

A corporation may have been created by an individual, but since a corporation has the standing in law of a person (although not a natural person), it is possible for its human creator to go bankrupt and for the assets of the corporation to be seized to satisfy unpaid taxes. Then, if others bought the assets from the tax authority and the corporation shell passed into other hands, it is possible for the person who bought the assets to also buy the corporation shell and upon payment of corporate franchise taxes, for that individual to claim that the corporation is the original corporation with the original assets.

IRS application

According to IRS Notice 2007-30, the following is considered a "frivolous" position and is subject to $5,000 fine. Inserting the phrase “nunc pro tunc” or similar arguments on a return or other document submitted to the Service has no legal effect, such as reducing a taxpayer’s tax liability, and such phrase is described as frivolous in Rev. Rul. 2006-17, 2006-15 I.R.B. 748.

Litigation

A judgment nunc pro tunc is an action by a trial court correcting a clerical (rather than judicial) error in a prior judgment. A nunc pro tunc may be signed even after the trial court loses its plenary power. For appellate purposes, a nunc pro tunc judgment correctly taken ordinarily does not extend appellate deadlines.

References

- Black's Law Dictionary = *Nunc pro tunc*
- Barron's Law Dictionary = *Nunc pro tunc*

External links

- Lectric Law Library [1] = offers a definition where, by forgetfulness, a final decree is not requested in a divorce, yet one party has remarried. The court may grant a nunc pro tunc leave to file the papers to enable the granting of a retroactive divorce. An editorial opinion is offered that application of nunc pro tunc is granted to render justice, but never injustice. However, rendering justice does not necessarily mean doing no harm and because corrupt courts do exist, it is possible to do that which is legal for unethical reasons.
- Missouri tax case [2] = "*Wherefore, the docket entry of 1st day of October 2001 has been removed, the entry for the 4th day of October 2001 does not speak to the facts, the entry of the 2nd day of October 2001 was a belated entry, and the entry of the 27th day of July 2001 is not accurate, plaintiff must request correction of the official record. Plaintiff must request relief from the court to correct its own record.*"
- Virginia grand larceny case [3] = "*We hold the trial court's entry of the sentencing order nunc pro tunc was proper and contained an implicit finding of guilt for the charged offense.*"
- Ohio federal bankruptcy case [4] = objection by United States Trustee.
- Michigan Probate Court [5] = adoption case relating to Social Security.
- Oregon court case [6] = reversal of nunc pro tunc order for attorney fees.

References

[1] http://www.lectlaw.com/def2/n083.htm
[2] http://www.plf.net/dorsunshine/nunc.shtml
[3] http://www.courts.state.va.us/txtops/2301022.txt
[4] http://www.local3047.com/PDF_files/Docket_0290.pdf#search='nunc%20pro%20tunc'
[5] http://www.ssa.gov/OP_Home/rulings/oasi/53/SSR66-22-oasi-53.html
[6] http://www.publications.ojd.state.or.us/A110625.htm

Obiter dictum

An ***obiter dictum*** (plural *obiter dicta*, often referred to simply as *dicta* or *obiter*) is Latin for a statement "said by the way." *Merriam-Webster Online Dictionary* gives *obiter dictum* three definitions:

- "literally, something said [*dictum*] in passing [*obiter*] . . ."
- "an incidental remark or observation"
- "an incidental and collateral opinion that is uttered by a judge but is not binding"

In the third meaning, an *obiter dictum* is a remark or observation made by a judge that, although included in the body of the court's opinion, does not form a necessary part of the court's decision. In a court opinion, *obiter dicta* include, but are not limited to, words "introduced by way of illustration, or analogy or argument."[1] Unlike the *rationes decidendi*, *obiter dicta* are not the subject of the judicial decision, even if they happen to be correct statements of law. Under the doctrine of *stare decisis*, statements constituting *obiter dicta* are therefore not binding, although in some jurisdictions, such as England and Wales, they can be strongly persuasive.

An example of an instance where a court opinion may include *obiter dicta* is where a court rules that it lacks jurisdiction to hear a case or dismisses the case on a technicality. If the court in such a case offers opinions on the merits of the case, such opinions may constitute *obiter dicta*. Less clear-cut instances of *obiter dicta* occur where a judge makes a side comment in an opinion to provide context for other parts of the opinion, or makes a thorough exploration of a relevant area of law. Another example would be where the judge, in explaining his ruling, provides a hypothetical set of facts and explains how he or she believes the law would apply to those facts.

In reaching decisions, courts sometimes quote passages of *obiter dicta* found in the texts of the opinions from prior cases, with or without acknowledging the quoted passage's status as *obiter dicta*. A quoted passage of *obiter dicta* may become part of the holding or ruling in a subsequent case, depending on what the latter court actually decided and how that court treated the principle embodied in the quoted passage.

Obiter dicta can be influential. One example in United States Supreme Court history is the 1886 case Santa Clara County v. Southern Pacific Railroad. A passing remark from Chief Justice Morrison R. Waite, recorded by the court reporter before oral argument, now forms the basis for the doctrine that juristic persons are entitled to protection under the Fourteenth Amendment. Whether or not Chief Justice Waite's remark constitutes binding precedent is arguable, but subsequent rulings treat it as such.

The arguments and reasoning of a dissenting opinion also constitute *obiter dicta*.

References

[1] Black's Law Dictionary p. 967 (5th ed. 1979).

Opinio juris sive necessitatis

Opinio juris sive necessitatis ("an opinion of law or necessity") or simply ***opinio juris*** ("an opinion of law") is the belief that an action was carried out because it was a legal obligation. This is in contrast to an action being the result of different cognitive reaction, or behaviors that were habitual to the individual. This term is frequently used in legal proceedings such as a defense for a case.

Opinio juris is the subjective element of custom as a source of law, both domestic and international, as it refers to beliefs. The other element is state practice, which is more objective as it is readily discernible. To qualify as state practice, the acts must be consistent and general international practice.

State applications

A situation where *opinio juris* would be feasible is a case concerning self-defense. A condition must be met where the usage of force is limited to the situation at hand. The act of striking an attacker may be done with legal justification; however, legal territory limits the acceptability of such a claim. Even in this case, the usage of force must be acceptable to the conditions of the environment, the attacker, and the physical conditions of the people involved, as well as any weapons or tools used.

International applications

In international law, *opinio juris* is the subjective element which is used to judge whether the practice of a state is due to a belief that it is legally obliged to do a particular act.[1] It can sometimes be difficult to establish *opinio juris,* but where there is consistent practice over a length of time, the need for opinio juris is lessened. Where there is more sporadic state practice, the presence of *opinio juris* becomes more important. In addition, the existence of custom in general need not be worldwide, but can also be restrained to the region. Customary international law has been deemed a source of international law under Article 38(1)(b) of the Statute of the International Court of Justice.

References

[1] Bederman, David J., *International Law Frameworks* (New York, New York: Foundation Press, 2001) at 15-16

Pacta sunt servanda

Pacta sunt servanda (Latin for "agreements must be kept"[1]), is a brocard, a basic principle of civil law and of international law.

In its most common sense, the principle refers to private contracts, stressing that contained clauses are law between the parties, and implies that non-fulfilment of respective obligations is a breach of the pact. The general principle of correct behaviour in commercial praxis — and implies the *bona fide* — is a requirement for the efficacy of the whole system, so the eventual disorder is sometimes punished by the law of some systems even without any direct penalty incurred by any of the parties.

With reference to international agreements, "every treaty in force is binding upon the parties to it and must be performed by them in good faith."[2] *Pacta sunt servanda* is based on good faith. This entitles states to require that obligations be respected and to rely upon the obligations being respected. This good faith basis of treaties implies that a party to the treaty cannot invoke provisions of its municipal (domestic) law as justification for a failure to perform.

The only limit to *pacta sunt servanda* are the peremptory norms of general international law, called *jus cogens* (compelling law). The legal principle *clausula rebus sic stantibus*, part of customary international law, also allows for treaty obligations to be unfulfilled due to a compelling change in circumstances.

See also

- Breach of contract
- Fundamental breach
- Breach of the peace

Notes

[1] Black's Law Dictionary (8th ed. 2004)

[2] From the Vienna Convention on the Law of Treaties, signed at Vienna on May 23, 1969, entered into force on January 27, 1980, art. 26, and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, signed at Vienna on March 21, 1986, *not yet entered into force*, art. 26.

- Britannica Online Encyclopedia - Pacta sunt servanda (http://www.britannica.com/eb/topic-930509/pacta-sunt-servanda)

Parens patriae

Parens patriae is Latin for "parent of the nation". In law, it refers to the public policy power of the state to intervene against an abusive or negligent parent, legal guardian or informal caretaker, and to act as the parent of any child or individual who is in need of protection. For example, some children, incapacitated individuals, and disabled individuals lack parents who are able and willing to render adequate care, requiring state intervention. In U.S. litigation, *parens patriae* can be invoked by the state to create its standing to sue; the state declares itself to be suing on behalf of its people. For example, the Hart-Scott-Rodino Antitrust Improvement Act of 1976 (15 USC 15(c) [1]), through Section 4C of the Clayton Act, permits state attorneys general to bring *parens patriae* suits on behalf of those injured by violations of the Sherman Antitrust Act.

Discussion

Parens patriae relates to a notion initially invoked by the King's Bench in the sixteenth century in cases of *non compos mentis* adults. The notion dates from at least 1608, as recorded in Coke's Report of Calvin's Case, wherein it is said "that moral law, honora patrem...doubtless doth extend to him that is pater patriœ."[2] The *parens patriae* doctrine was gradually applied to children throughout the seventeenth and eighteenth centuries, and has since evolved from one granting absolute rights to the sovereign to one more associated with rights and obligations of the state and courts towards children and incapacitated adults.[3] [4]

In most jurisdiction (area)s, this appears in the principle that makes the protection of the best interests of any child the first and single most important concern of the courts. For example, in any proceedings affecting the validity of a marriage, the children will not be parties in their own right, nor will they be parties to any agreement that the spouses may make. In these proceedings, the courts will often be invited to accept and enforce any agreement between a husband and wife regarding parental responsibility for their children. This will usually be done so long as the agreement is seen to be in the best interests and welfare of the children. Courts are not obliged to invoke the *parens patriae* doctrine in cases involving children and not all courts, particularly newer courts such as the Australian Family Court (est 1975), have specific *parens patriae* jurisdiction.

In the United States, invocation of the Parens Patriae Doctrine is constrained by the constitutional Parental Liberty Doctrine.[5] This has the effect of limiting civil rights abuses caused by unjustified government interference with minors.

In some situations, the parties may have submitted their dispute to formal arbitration proceedings. Such proceedings, whether judicial or quasi-judicial, cannot displace the supervisory power of the court in the exercise of its *parens patriae* function to the child. To the extent that such an award conflicts with the best interests of the child, the courts will treat it as void in respect of the child, even though it might be binding on the parents. The test of the best interests of the child can always be the basis of a challenge by a parent, grandparent, an interested relative, or the child acting through a friend. Thus, for example, the spouses might already have been through a religious form of divorce known as the *get* before the *Beth Din*, the Jewish rabbinical court, which included provision for the children. Even though there might appear to be a grant of custody in absolute terms by this court, public policy always requires that it can be reviewed by a secular court and, if the state court is of the view that it is not in the best interests of the child, it will be set aside (see *Stanley G. v. Eileen G.* New York Law Journal, 10-13-94, P.22, Col.6, Sup. Ct., NY Co.).

Within the EU, the right of the child to be heard in any proceedings is a fundamental right provided in Article 24 Charter of Fundamental Rights of the European Union. The views of the child shall be considered on matters which concern them in accordance with their age and maturity. It also provides that the child's best interest shall be the primary consideration in all actions relating to children, whether taken by public authorities or private institutions.

The same principles apply to individuals whose mental capacity is impaired and who are being abused by carers or other individuals, whether family members or otherwise. Since these individuals cannot protect themselves, the courts have an inherent jurisdiction to appoint a guardian ad litem for particular proceedings. In English Law, long-term care is arranged through the Court of Protection.

See also

- *Qui tam*
- Private attorney general

Further Reading

- *Suing the Tobacco and Lead Pigment Industries: Government Litigation as Public Health Prescription* [6] by Donald G. Gifford. Ann Arbor, University of Michigan Press, 2010. ISBN: 978-0-472-11714-7

References

[1] http://www.law.cornell.edu/uscode/html/uscode15/usc_sec_15_00000015---c000-.html
[2] http://books.google.ca/books?id=PlYDAAAAQAAJ&as_brr=1&client=firefox-a&pg=PA21#v=onepage&q=&f=false
[3] People v. Bennett: Analytic Approaches to Recognizing a Fundamental Parental Right Under the Ninth Amendment, 1996 BYU Law Review 186, 227-34 (http://lawreview.byu.edu/archives/1996/1/1996-01 Cmt &Note Witte.pdf)
[4] Removing Classrooms from the Battlefield: Liberty, Paternalism, and the Redemptive Promise of Educational Choice, 2008 BYU Law Review 377, 386 n.30 (http://lawreview.byu.edu/archives/2008/2/8WITTE.FIN.pdf)
[5] Parens Patriae -- Quaqua Society (http://www.quaqua.org/parenspatriae.htm)
[6] http://www.press.umich.edu/titleDetailDesc.do?id=291047

Pari passu

Pari passu is a Latin phrase that literally means "equal footstep" or "equal footing." It is sometimes translated as "part and parcel," "hand-in-hand," "with equal force," or "moving together," and by extension, "fairly," "without partiality."

In law, this term is commonly used as legal jargon. Black's Law Dictionary (8th ed., 2004) defines *pari passu* as "proportionally; at an equal pace; without preference."

In finance, this term refers to two or more loans, bonds, classes of shares having equal rights of payment or level of seniority.[1] For asset management firms, the term denotes an equal allotment of trades to strategically identical funds or managed accounts.

This term is also often used in bankruptcy proceedings where creditors are said to be paid *pari passu*, or each creditor is paid *pro rata* in accordance with the amount of his claim. Here its meaning is "equally and without preference."

See also

- Statute of Bankrupts Act 1542, introducing the *pari passu* principle for creditors of insolvent persons. Pari Passu means treat at par from the previous issue
- Seniority (finance)
- List of Latin Phrases

External links

- FINANCIAL MARKETS LAW COMMITTEE ISSUE 79 — PARI PASSU CLAUSES [2]
- THE *PARI PASSU* CLAUSE IN SOVEREIGN DEBT INSTRUMENTS [3]
- SECTION 334 AND THE PARI PASSU PRINCIPLE [4]

References

[1] Investopedia.com (http://www.investopedia.com/terms/p/pari-passu.asp)
[2] http://www.fmlc.org/papers/fmlc79mar_2005.pdf
[3] http://www.law.georgetown.edu/international/documents/Pam.pdf
[4] http://home.pacific.net.sg/~chanpal/article12.htm

Partus sequitur ventrem

Partus sequitur ventrem, often abbreviated to *partus*, was a legal doctrine on slavery, derived from the Roman civil law; it held that the status of a child followed that of his or her mother. It, unlike much of the civil law, was widely adopted into the law of slavery in the United States. The Latin phrase literally means "that which is brought forth follows the womb."[1]

History

Prior to the adoption of this doctrine in the American colonies in the 1660s, English Common Law had held that a child's status was inherited from its father. The law provided that only livestock inherited status through the mother, therefore the 'partus *doctrine could be said to have "set a psychological basis for popular culture's seeing slaves as less than fully human"* [2] *- or at least to be an obvious symptom of this view.*

The legal doctrine was embedded in legislation passed in 1662 by the Virginia House of Burgesses, and by other colonies soon after. It held that "all children borne in this country shall be held bond or free only according to the condition of the mother..."[3] It followed by several years the successful suit of Elizabeth Key, who gained freedom from slavery because her natural father was a free Englishman (and member of the House of Burgesses), and because he had arranged to have her baptized as Christian in the Church of England. Even under contemporary terms of indenture for illegitimate mixed-race children, Key had succeeded her term of service by several years.

The doctrine of *partus* gave cover to the power relationships by which white planters, their sons and overseers took advantage of enslaved women. Mixed-race children were thereby confined to slave quarters. The new law meant that slave-owners were not required to emancipate or legally acknowledge their illegitimate children by their slaves. It also meant that people whose ancestry was primarily European, and whose appearance may have been indistinguishable from that of free whites, could be held as slaves. Slaveholders did not have to support the children begotten upon slaves they forced, as was required in earlier years; they could also sell their issue and profit further.[4]

Sexual slavery was common throughout the slave-owning South and part of the patriarchal nature of the institution of slavery. Widowers sometimes took slave companions (as did both Thomas Jefferson and his father-in-law John Wayles before him); young men were likely to have affairs with young slave women before they married; female

slaves were always at risk by adult white males. Southern diarist Mary Chesnut famously wrote that "This only I see: like the patriarchs of old our men live all in one house with their wives their concubines, the Mulattoes one sees in every family exactly resemble the white children -- every lady tells you who is the father of all the Mulatto children in every body's household, but those in her own, she seems to think drop from the clouds or pretends so to think..." [5] Fanny Kemble, an English actress married to an American planter in antebellum years, also wrote about the mixed-race children fathered by elite white men, in her *Journal of a Residence on a Georgia Plantation in 1838-1839*[6] , although she did not publish it until 1863.

See also

- Freedom of wombs
- Law of the Free Womb
- Elizabeth Key
- Polly Berry
- Lucy Delaney
- Sally Miller

References

[1] Definition (http://www.powells.com/review/2005_03_21.html), Powells, accessed

[2] Frank W. Sweet, "Essays on the Color Line and the One-Drop Rule" (http://backintyme.com/Essay050101.htm), Backintyme Essays, accessed 21 Apr 2009

[3] Frank W. Sweet, "The Transition Period" (http://backintyme.com/Essay050101.htm), Backintyme Essays, accessed 21 Apr 2009

[4] *Baily, John (2003). *The Lost German Slave Girl*. Atlantic Monthly Press. ISBN 0-87113-921-9.

[5] "1861: This Day in Georgia History" (http://www.cviog.uga.edu/Projects/gainfo/tdgh-mar/mar18.htm), compiled Ed Jackson and Charles Pou, University of Georgia

[6] Fanny Kemble (1863). "Journal of a Residence on a Georgia Plantation in 1838-1839" (http://books.google.com/books?id=w34FAAAAQAAJ&dq=Journal+of+a+Residence+on+a+Georgia+Plantation+in+1838-1839&printsec=frontcover&source=bn&hl=en&ei=q-kuS8D8AYKsswP72qWHBA&sa=X&oi=book_result&ct=result&resnum=4&ved=0CBoQ6AEwAw#v=onepage&q=&f=false). Google Books. . Retrieved December 20, 2009.

Pedis possessio

In the common law there is a legal concept which has been responsible for establishing ownership throughout history. This concept involves the establishment of first possession of land. By walking on a property and defining its bounds, possession is established. A legal phrase - **Pedis Possesseo** has been used in the law to describe walking on a property to establish possession. Legal dictionaries[1] put forth this definition. Pedis Possessio has been described as the actual possession of land within bounds set forth by the need of a mine claimant and operator to improve and work a claim for its mineral value. Violation of set boundaries are avoided and violence prevented by the establishment of title using the concept of pedis possesseo.[2]

References

[1] "PEDIS POSSESSIO : on Law Dictionary" (http://www.law-dictionary.org/PEDIS+POSSESSIO.asp?q=PEDIS+POSSESSIO). . Retrieved 2008-04-28.

[2] "Dictionary of Mining, Mineral, and Related Terms" (http://www.maden.hacettepe.edu.tr/dmmrt/index.html). . Retrieved 2008-04-28.

Pendente lite

Pendente lite is a Latin term meaning "while the litigation is pending" which is used for court orders or legal agreements entered into while a matter (such as a divorce) is pending. In divorce a *pendente lite* order is often used to provide for the support of the lower income spouse while the legal process moves ahead.

Pendente lite should not be confused with *lis pendens*. *Lis pendens* also means pending lawsuit. But *lis pendens* is a document filed in the public records of the county where particular real property is located stating that a pending lawsuit may affect the title to the property. Because nobody wants to buy real estate if its ownership is in dispute, a *lis pendens* notice effectively ties up the property until the case is resolved. *Lis pendens* notices are often filed in divorce actions when there is disagreement about selling or dividing the family home.

See also

- Interlocutory appeal

Per quod

Per quod is a Latin phrase (meaning *whereby*) used to illustrate that the existence of a thing or an idea is on the basis of external circumstances not explicit.

Legal Example

"Statements are considered defamatory *per quod* if the defamatory character of the statement is not apparent on its face, and extrinsic facts are required to explain its defamatory meaning." *Kolegas v. Heftel Broadcasting Corp*., 607 N.E.2d 201, 206 (Ill. 1992)(*Emphasis in original*).

With Defamation per quod, the plaintiff has to prove actual monetary damages, as compared to defamation per se where the damages are presumed.

Per incuriam

Literally translated as "through lack of care", ***per incuriam*** refers to a judgment of a court which has been decided without reference to a statutory provision or earlier judgment which would have been relevant. The significance of a judgment having been decided *per incuriam* is that it does not then have to be followed as precedent by a lower court. Ordinarily, in the common law, the rationes of a judgment must be followed thereafter by lower courts hearing similar cases. A lower court is free, however, to depart from an earlier judgment of a superior court where that earlier judgment was decided *per incuriam*.

The Court of Appeal in Morelle Ltd v. Wakeling [1955] 1 All ER 708, [1955] 2 QB 379 stated that as a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned: so that in such cases some part of the decision or some step in the reasoning on which it is based is found, on that account, to be demonstrably wrong.

In R v. Northumberland Compensation Appeal Tribunal, ex parte Shaw [1951], 1 All ER 268, a divisional court of the King's Bench Division declined to follow a Court of Appeal decision on the ground that the decision had been reached per incuriam as a relevant House of Lords decision had not been cited to the Court of Appeal.

Some academic critics have suggested that Polemis [1921] 3 KB 560 was decided per incuriam as it did not rely upon the earlier decision in Hadley v. Baxendale.

See also

- Stare decisis

Per Incuriam means "in error" or "in ignorance"

Per minas

Per minas, in British common law, to engage in behavior "by means of menaces or threats".[1]

The term comes from Latin.[2]

Per minas has been used as a defense of duress to certain crimes, as affecting the element of *Mens rea*.[3] [4] William Blackstone, the often-cited Judge and Legal scholar, addressed the use of "duress *per minas*" under the category of self-defense as a means of securing the "right of personal security", that is, the right to Self-defense.[5]

The classic case involves a person who is blackmailed into robbing a bank.

In Contract law, Blackstone used *per minas* to describe the defense of duress, as affecting the element of **Contract intent**, **Mutual assent**, or Meeting of the minds.[6] [7]

See also

- Assault
- Coercion
- Contract law
- Criminal law
- Duress
- Intimidation
- Intrinsic fraud
- Fraud
- Scienter
- Self-defense

References

[1] Clickdocs web site (http://www.clickdocs.co.uk/glossary/per-minas.htm)

[2] List of Latin legal phrases (http://www.sanjeev.net/latin/latin-phrases-starting-with-p-07.html).

[3] Duress *per minas* as a defense (sic.) to crime (http://www.springerlink.com/content/p3g0kt866r448302/), from *Law and Philosophy*, 185-195 (August 1982).

[4] JSTO site (http://links.jstor.org/sici?sici=1558-3813(187504)23:4<201:ACOWAT>2.0.CO;2-U), from *A Consideration of What Amounts to Duress Per Minas at Law*, in the American Law Register, Vol. 23, No. 4, (April 1875), pp. 201-207.

[5] (http://press-pubs.uchicago.edu/founders/documents/amendIXs1.html), citing Blackstone, (I)(2) (1765).

[6] Law-dictionary-com (http://www.law-dictionary.org/PER+MINAS.asp?q=PER+MINAS), citing I Blackstone's Commentaries 131.

[7] Online Law dictionary (http://onlinedictionary.datasegment.com/word/per+minas), citing Bouvier's Law Dictionary, Revised 6th Ed (1856).

Per stirpes

Per stirpes (pronounced /pɜr ˈstɜrpiːz/ "by branch") is a legal term in Latin. An estate of a decedent is distributed per stirpes, if each *branch* of the family is to receive an equal share of an estate. When the heir in the first generation of a branch predeceased the decedent, the share that would have been given to the heir would be distributed among the heir's issues in equal shares. It may also be known as **right of representation distribution**, and differs from distribution **per capita** as members of the same generation may inherit different amounts.

Examples

Example 1A: The testator *A*, specifies in his will that his estate is to be divided among his descendants living at his death in equal shares *per stirpes*. *A* has three children, *B*, *C*, and *D*. *B* is already dead, but has left two children (grandchildren of *A*), *B1* and *B2*. When *A*'s will is executed, under a distribution *per stirpes*, *C* and *D* each receive one-third of the estate, and *B1* and *B2* each receive one-sixth. *B1* and *B2* constitute one "branch" of the family, and collectively receive a share equal to the shares received by *C* and *D* as branches (figure 1).

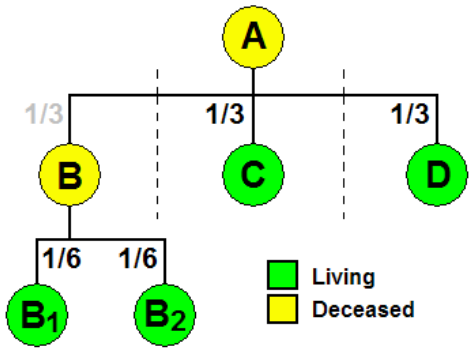


Figure 1. *A*'s estate is divided equally between each of the three branches. *B*, *C* and *D* each receive one third. As *B* pre-deceased *A*, *B*'s two children - *B1* and *B2* - each receive one half of *B*'s share, equivalent to one-sixth of the estate.

Example 1B: If grandchild *B1* had predeceased *A*, leaving two children *B1a* and *B1b*, and grandchild *B2* had also died leaving three children *B2a*, *B2b* and *B2c*, then distribution *per stirpes* would give one-third each to *C* and *D*, one-twelfth each to *B1a* and *B1b*, who would constitute a branch, and one-eighteenth each to *B2a*, *B2b* and *B2c*. Thus, the *B*, *C*, and *D* branches receive equal shares of the whole estate, the *B1* and *B2* branches receive equal shares of the *B* branch's share, *B1a* and *B1b* receive equal shares of the *B1* branch's share, and *B2a*, *B2b* and *B2c* receive equal shares of the *B2* branch's share.

Per capita at each generation

Per capita at each generation is an alternative way of distribution, where heirs of the same generation will each receive the same amount. The estate is divided into equal shares at the generation closest to the deceased with surviving heirs. The number of shares is equal to the number of original members either surviving or with surviving descendants. Each surviving heir of that generation gets a share. The remainder is then equally divided among the next-generation descendants of the deceased descendants in the same manner.

Example 2A: In the first example, children *C* and *D* survive, so the estate is divided at their generation. There were three children, so each surviving child receives one-third. The remainder - *B*'s share - is then divided in the same manner among *B*'s surviving descendants. The result is the same as under *per stirpes* because *B*'s one-third is distributed to *B1* and *B2* (one-sixth to each).

Example 2A: The *per capita* and *per stirpes* results would differ if *D* also pre-deceased with one child, *D1* (figure 2). Under *per stirpes*, *B1* and *B2* would each receive one-sixth (half of *B*'s one-third share), and *D1* would receive one-third (all of *D*'s one-third share). Under *per capita*, the two-thirds remaining after *C*'s one-third share was taken would be divided equally among all three children of *B* and *D*. Each would receive two-ninths: *B1*, *B2*, and *D1* would all receive two-ninths.

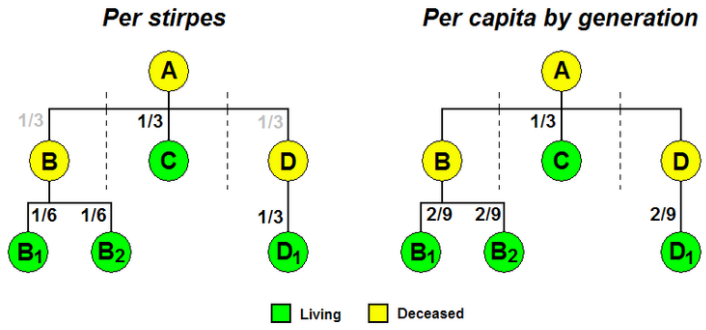


Figure 2. Comparison between *per stirpes* inheritance and *per capita by generation* inheritance. On the left, each branch receives one third of the estate. On the right, *A*'s only surviving descendant, *C*, receives one third of the estate. The remaining two thirds are divided between the descendants in the next generation.

Notes:

- To give the effect indicated in these examples the clause should also include a provision that no beneficiary being a grandchild or remoter descendant will take a share if his or her parent is alive and takes a share.
- The spouses of the children (that is, spouses of *B*, *C*, and *D*) are not considered. Spouses are not a part of the branch. Therefore, even if *B*, *C*, or *D* died leaving a spouse as well as children, all (100%) of the assets pass to the children and (0%) nothing passes to the spouses of *A*'s children *B*, *C*, and *D*. From the example above, if *A*'s child *B* died before *A*'s death, *A*'s grandchildren *B1* and *B2* would each receive half of *B*'s share. Even if *B* had a living spouse at the time of *A*'s death, that person would receive nothing from *A*'s estate.

Modifications

At least in one state, New York, a statute modified this definition. Under New York law, the number of branches is determined by reference to the generation nearest the testator which has a surviving descendant. Thus, in the first example, if *C* and *D* also are already dead, and each left one child, named (respectively and appropriately) *C1* and *D1*, then each of *B1*, *B2*, *C1* and *D1* would receive one quarter of the estate. This method is actually applied by the states of Alaska, Arizona, Colorado, Hawaii, Maine, Michigan, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Utah, and West Virginia.

Texas also uses this 'modified' version of per stirpes distribution. Although the caption of Texas Probate Code §43 contains the phrase 'per stirpes,' the distribution method described is actually what is known as "per capita with representation." The distribution method for New York (based on the description above) would also be called "per capita with representation."

External links

- A Per Stirpes Calculator [1]
- California Probate Code 245-247 [2]

References

[1] http://www.mystatewill.com/per_stirpes_calc.htm
[2] http://www.leginfo.ca.gov/cgi-bin/displaycode?section=prob&group=00001-01000&file=245-247

Persona non grata

Persona non grata (Latin, plural: *personae non gratae*), literally meaning "an unwelcome person", is a term used in diplomacy with a specialized and legally defined meaning. The antonym of *persona non grata* is *persona grata*.

Diplomacy

Under the Vienna Convention on Diplomatic Relations Article 9, a receiving State may "at any time and without having to explain its decision" declare any member of a diplomatic staff *persona non grata.* A person so declared is considered unacceptable and is usually recalled to his or her home nation. If not recalled, the receiving State "may refuse to recognize the person concerned as a member of the mission."

While diplomatic immunity protects mission staff from prosecution for violating civil and criminal laws, depending on rank, under Articles 41 and 42 of the Vienna Convention, they are bound to respect national laws and regulations (amongst other issues). Breaches of these articles can lead to *persona non grata* being used to 'punish' erring staff. It is also used to expel diplomats suspected of espionage ("activities incompatible with their status") or any overt criminal act (example: drug trafficking), or as a symbolic indicator of displeasure (e.g. the Italian expulsion of the Egyptian First Secretary in 1984). So-called "tit-for-tat" exchanges have occurred, notably during the Cold War. Notable recent occurrences include exchanges between the United Kingdom and Egypt, the United Kingdom and Iran, the United States and Venezuela, the United States and Belarus, the United Kingdom and Russia, between Russia and Georgia, between the United States and Bolivia, between India and Pakistan and between Australia and Fiji.

- The Treaty of Lausanne in 1923 included the list of 150 personae non gratae of Turkey, which forbade the entry of mainly a group of former Ottoman Empire officials and about 100 other persons to Turkey, until the lifting of this status in 1938.
- Kurt Waldheim, former Secretary-General of the United Nations and President of Austria, and his wife were given *personae non gratae* status in the U.S. and other countries when he was accused of having known about Nazi war crimes and not having done anything about them.[1]
- In September 1952, the American Ambassador to the Soviet Union, George F. Kennan, was declared persona non grata after making a statement which the Soviets believed linked them to Nazi Germany. The Soviets refused to allow Kennan to reenter the Soviet Union.[2]
- In 1995, Croatia declared Carl Bildt a persona non grata announcing that he had "lost the credibility necessary for the role of a peace mediator". Bildt had suggested that the President of Croatia, Franjo Tuđman was as guilty of war crimes as the Krajina Serb leader, Milan Martić.[3]
- In 2007, the US Commonwealth of the Northern Marianas Islands House of Representatives voted a Saipan resident and US citizen, Ron Hodges, persona non grata by resolution[4]. Hodges was castigated for his letter writing campaign critical of CNMI governance and abuses against alien workers, entitled Chamberonomics[5]. His letters supported a US takeover of CNMI labor and immigration. Labor and human abuses in the CNMI garment industry had long been the subject of international criticism. The resolutions validity hinged on the question of CNMI sovereignty, but was never enforced and became moot after President Bush signed PL-2739[6] into law, thus federalizing CNMI labor and immigration.[7]
- In 2008, President of Bolivia Evo Morales declared U.S. Ambassador Philip Goldberg *persona non grata*, claiming that the U.S. government conspired against him and supported his opponents.[8]
- Following Bolivia's expulsion of Goldberg, President of Venezuela Hugo Chavez declared U.S. Ambassador Patrick D. Duddy "persona non grata" in solidarity with Morales' action. Chavez did not cite any specific alleged infractions by Duddy.
- In October 2008 Serbia expelled ambassadors of Montenegro and the Republic of Macedonia[9] after these countries recognized the independence of Kosovo. In November 2008 Serbia also expelled the ambassador from

Malaysia[10] after Malaysia recognized Kosovo's independence.

- On December 23, 2008 Fiji followed through on a threat to expel New Zealand's high commissioner to the island nation, the expulsion came a day after the interim Prime Minister of Fiji announced he would not expel New Zealand's top diplomat because he wanted to improve his relationship with New Zealand. In retaliation to the expulsion, New Zealand declared Fiji's High Commissioner in Wellington persona non grata, John Key already stating that there would be retaliatory action if its commissioner was expelled.[11]
- In January 2009, following Venezuela expelling Israeli diplomats due to Israel's offensive in the Gaza Strip, Israel ordered Venezuelan diplomats to leave the country, declaring them "persona non grata in Israel".[12]
- In March 2009, President Evo Morales of Bolivia declared a member of the US embassy (political division) persona non grata[13] .
- On April 8, 2009, President of Moldova Vladimir Voronin declared Romanian Ambassador Filip Teodorescu and Councilor-Minister, Ioan Gaborean, *personae non gratae*, claiming that "their activity was inconsistent with their diplomatic status"[14] [15] after the Moldovan flag on the Parliament building was torn down and replaced with Romanian and EU flags during post-election riots in Moldova.
- On June 8, 2009, Russia declared Finnish diplomat Simo Pietiläinen, *persona non grata*, due to a controversial action by Simo Pietiläinen where he smuggled Anton Salonen out of Russia following a long custody dispute between his Finnish father and Russian born lover.[16]
- On August 21, 2009 Slovakia declared Hungarian President László Sólyom a *persona non grata* (this exact term was not used, only "unwelcome person", and he was not allowed to cross the border), on the day when the president had been due to unveil a statue of Saint Stephen of Hungary in Komárno. The date is the next day after the Hungarian national holiday celebrating the saint king. The main reason of the ban was that this date is also the day of the anniversary of the Warsaw Pact invasion of Czechoslovakia in which Hungary's armed forces also took part in order to crush the Prague Spring of 1968. Slovak Prime Minister Robert Fico has also expressed his concerns that the president "attempted to stress the Hungarian statehood on sovereign Slovak soil".[17] [18]
- On November 3, 2009, the Prime Minister of Fiji declared Australian and New Zealand diplomats to Fiji *personae non gratae*. In response, one day later the Australian and New Zealand Governments declared the respective Fijian Representatives *persona non grata* and they were given 24 hours to depart the country. The move comes as international tension between Fiji and Australia/New Zealand intensifies following a decision by Fijian Prime Minister - Commodore Josaia Voreqe Bainimarama's decision to indefinitely delay elections in the country.
- On January 8, 2010, the Egyptian Foreign Ministry declared Respect MP George Galloway "persona non grata" after he attempted to take 200 aid trucks into the Gaza Strip, along with international activists. He was subsequently deported from Egypt back to the UK.

Non-diplomatic usage

In non-diplomatic usage, referring to someone as *persona non grata* is to say that he or she is ostracized, so as to be figuratively nonexistent. In police circles, this often meant any officer who broke the Blue Wall by informing against fellow officers, e.g. testifying against officers who were corrupt. Frank Serpico was one real life example, while a cultural example is Paul Newman's character in *Fort Apache, The Bronx*, who informed on a fellow officer after witnessing him throw an unarmed man off a rooftop during a riot.

See also

- *damnatio memoriae*
- refugee

External links

- eDiplomat.com: Glossary of Diplomatic Terms [19]
- Text of the Vienna Convention - PDF [20]

References

[1] Schmemann, Serge (Date unknown). "Kurt Waldheim" (http://topics.nytimes.com/top/reference/timestopics/people/w/kurt_waldheim/index.html). *The New York Times*. . Retrieved 2009-01-09.

[2] Kennan, George F. (1967), Memoirs: 1925–1950, Boston: Little, Brown and Company, OCLC 484922. 152

[3] Emma Daly (August 8, 1995). "Flight from Croatia: Refugee column hit from the air" (http://findarticles.com/p/articles/mi_qn4158/is_/ai_n13999209). BNET. . Retrieved 2009-01-09.

[4] http://www.saipantribune.com/newsstory.aspx?cat=15&newsID=74684

[5] http://unheardnomore.blogspot.com/2008/01/chamberonomics-series-1-29-highlights.html

[6] http://www.saipantribune.com/newsstory.aspx?newsID=79507&cat=1

[7] Ron Hodges (December 6, 2007). "Chamberonomics "spit in the soup"" (http://www.washingtonwatch.com/bills/show/110_HR_3079.html). Marianas Variety News. . Retrieved 2007-12-06.

[8] "Biography of Philip S. Goldberg" (http://www.state.gov/r/pa/ei/biog/73005.htm). United States Department of State. . Retrieved 2009-01-09.

[9] "Serbia Expels Macedonian, Montenegrin Envoys Over Kosovo" (http://www.dw-world.de/dw/article/0,,3704625,00.html). Deutsche Welle Online. 2008-10-10. . Retrieved 2009-04-09.

[10] "Serbia expels Malaysia's ambassador, EU" (http://www.guardian.co.uk/worldlatest/story/0,,-7969763,00.html). London: Guardian News. 2008-11-01. . Retrieved 2009-04-09.

[11] "NZ and Fiji expel high commissioners" (http://msn.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10549546&ref=rss). New Zealand Herald. 2008-12-23. . Retrieved 2009-07-28.

[12] "Israel expels Venezuela envoy" (http://news.bbc.co.uk/2/hi/middle_east/7856612.stm). BBC News Online. 2009-01-28. . Retrieved 2009-02-01.

[13] "Bolivia orders US diplomat to go" (http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/americas/7933846.stm?ad=1). BBC News Online. 2009-03-09. . Retrieved 2009-02-01.

[14] "Moldovan president accuses Romania of being behind protests" (http://www.dw-world.de/dw/article/0,,4162384,00.html). Deutsche Welle Online. 2009-04-08. . Retrieved 2009-04-09.

[15] "Moldova declares 2 Romanian diplomats persona non grata" (http://www.itar-tass.com/eng/level2.html?NewsID=13774498&PageNum=0). ITAR-TASS News Agency. 2009-04-08. . Retrieved 2009-04-09.

[16] "Russia Declares Finnish Diplomat in Anton Case Persona Non Grata" (http://yle.fi/uutiset/news/2009/06/russia_declares_finnish_diplomat_in_anton_case_persona_non_grata_789403.html). YLE, AP, AFP. 2009-06-08. . Retrieved 2009-06-09.

[17] "Fico: Slovakia denying entry to Hungarian President László Sólyom" (http://www.spectator.sk/articles/view/36285/10/fico_slovakia_denying_entry_to_hungarian_president_laszlo_solyom.html). The Rock, s.r.o.. 2009-08-22. . Retrieved 2009-08-23.

[18] "Fico: Prezidenta Maďarska na Slovensko nevpustíme" (http://aktualne.centrum.sk/domov/politika/clanek.phtml?id=1188984). Novinky – centrumholdings.cz (http://sk.centrumholdings.com) **(Czech)**. 2009-08-21. . Retrieved 2009-08-23.

[19] http://www.ediplomat.com/nd/glossary.htm

[20] http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

Persona designata

The ***persona designata*** doctrine is a doctrine in law, particularly in Canadian and Australian constitutional law which states that, although it is generally impermissible for a federal judge to exercise non-judicial power, it is permissible for a judge to do so if the power has been conferred on the judge personally, as opposed to powers having been conferred on the court. The doctrine in the more general sense has been recognised throughout the British legal system (including the United States). Persona designata, according to Black's Law Dictionary, means "A person considered as an individual rather than as a member of a class", thus it may be a person specifically named or identified in a lawsuit, as opposed to the one belonging to an identified category or group.[1] While it has its origin in Montesquieu's doctrine of the separation of powers, it can be traced back as far as Aristotle's Politics.

In Australia the doctrine is considered to be an exception to the Boilermakers' doctrine of separation of powers, which holds that conferral of non-judicial power on a Chapter III court (a federal court) is unconstitutional.[2]

Background

While the Australian system of government is parliamentary, with a "fusion of powers" between the executive and the legislature, the separation of powers with respect to the judiciary has long been accepted as an important aspect of the Constitution of Australia.[3] The importance of the principle is traditionally said to have reached its high point in 1956 with the Boilermakers' case,[3] in which the High Court of Australia held that non-judicial power could not be conferred on a court established under Chapter III of the Australian Constitution.[4] However, Australia also has a long history of judges being appointed to non-judicial positions.[3]

The idea that some non-judicial functions can be conferred on judges in their personal capacity had been present in Australian law for some time; some trace it to cases such as *Medical Board of Victoria v Meyer*[5] in 1937,[2] while others regard the doctrine as settled law since at least 1906,[3] and the case of *Holmes v Angwin*.[6]

Development of the doctrine

The first clear expression of the doctrine in the post-Boilermakers context was in the 1979 Federal Court of Australia case of *Drake v Minister for Immigration & Ethnic Affairs*, which concerned a challenge to the appointment of Justice John Davies, of the Federal Court, to the position of Deputy President of the Administrative Appeals Tribunal. In their joint judgment, Chief Justice Bowen and Justice Deane said:

> "There is nothing in the Constitution which precludes a justice [of a Chapter III court] from, in his personal capacity, being appointed to an office involving the performance of administrative or executive functions including functions which are quasi-judicial in their nature. Such an appointment does not involve any impermissible attempt to confer upon a Chapter III court functions which are antithetical to the exercise of judicial power. Indeed, it does not involve the conferring of any functions at all on such a court."[7]

The doctrine was first clearly applied by the High Court of Australia in the 1985 case of *Hilton v Wells*, which involved a challenge to the constitutional validity of certain telecommunications legislation which permitted telephone tapping by way of a warrant, which had to be issued by "a judge".[2] The word "judge" in that piece of legislation was defined to mean a judge of the Federal Court or of the Supreme Court of the Australian Capital Territory, or, in certain circumstances, a judge of the Supreme Court of the Northern Territory or any of the State Supreme Courts.[2] In their majority judgment, Chief Justice Gibbs and Justices Wilson and Dawson acknowledged the difficulty of determining whether a function has been conferred on a court or on a judge of that court, saying that:

> "It is a question which involves fine distinctions, which some may regard as unsatisfactory... the question is one of construction. Where the power is conferred on a court, there will ordinarily be a strong presumption that the court as such is intended. Where the power is conferred on a judge, rather

> than on a court, it will be a question whether the distinction was deliberate, and whether the reference to "judge" rather than to "court" indicates that the power was intended to be invested in the judge as an individual who, because he is a judge, possesses the necessary qualifications to exercise it."[8]

The Justices continued, and considered the significance of the nature of the function being conferred to the question of whether the function is to be exercised by the judge in their capacity as a judge, or in their capacity as a regular person:

> "If the power is judicial, it is likely that it is intended to be exercisable by the judge by virtue of that character; if it is purely administrative, and not incidental to the exercise of judicial power, it is likely that it is intended to be exercised by the judge as a designated person." [8]

The High Court rejected the challenge to the constitutional validity of the legislation in a three to two decision.[2]

Limits

Two broad limits to the doctrine have been identified, which essentially act as preconditions to the conferral of a non-judicial function:

1. the judge must agree to the conferral of the function, and
2. the function must not be incompatible with the judge's judicial functions.

Incompatibility

The issue of incompatibility was expounded in the 1995 case of *Grollo v Palmer*, which concerned new provisions in the same telecommunications legislation that had been considered in *Hilton v Wells*. Following the decision in *Hilton*, the legislation had been amended to make it more explicit that the function of granting warrants was being conferred on judges in their personal capacity, and had made the judge's consent an eligibility requirement, but the changes had also introduced protections and immunities for judge's exercising the function, like those afforded to Justices of the High Court.[2] The court unanimously agreed that the function was being conferred on the judges as *personae designatae*, but the question was whether the function was incompatible with their judicial office.[2]

In a joint majority judgment, Chief Justice Brennan and Justices Deane, Dawson and Toohey, discussed what situations might enliven the incompatibility condition:

> "Incompatibility might consist in so permanent and complete a commitment to the performance of non-judicial functions by a judge that the further performance of substantial judicial functions by that judge is not practicable. It might consist in the performance of non-judicial functions of such a nature that the capacity of the judge to perform his or her judicial functions with integrity is impaired. Or it might consist in the performance of non-judicial functions of such a nature that public confidence in the integrity of the judiciary as an institution or in the capacity of the individual judge to perform his or her judicial functions with integrity is diminished."[9]

The majority held that, although the function of issuing warrants was closely connected with the purely executive process of law enforcement, it did not amount to judicial participation in a criminal investigation (which would be incompatible) and that the participation of impartial, independent judicial officers in the process would actually reinforce public confidence in the judiciary.[9] That is, the majority recognised that the incompatibility exception existed, but found that it did not apply in this situation.[2]

In 1996, the High Court applied the incompatibility condition in the case of *Wilson v Minister for Aboriginal and Torres Strait Islander Affairs*, which concerned the appointment of Justice Jane Mathews of the Federal Court to prepare an Indigenous heritage report in relation to the Hindmarsh Island bridge development. The court held that legislation authorising the appointment was invalid, because the functions conferred, which included forming opinions and giving advice about areas which should be protected under heritage legislation, were incompatible with judicial office.[2]

Criticisms

D M Gordon wrote in the Canadian Bar Review:[10]

"the whole persona designata conception could be scrapped without the slightest inconvenience or the least distortion of legal principles". This view has been upheld numerous times in Canadian Supreme Court decisions. For instance in Re Herman and Dep. A.-G. Can (1978), Chief Justice Larkin stated:

> "The concept of persona designata came from the Courts and it can be modified or abolished by the Courts. In my view, I think this Court should declare that whenever a statutory power is conferred upon a Judge or officer of a Court, the power should be deemed exercisable in official capacity as representing the Court unless there is express provision to the contrary. "[11]

and affirmed in Minister of Indian Affairs & Northern Development v. Ranville (1982) where Dickson J. held:

> " I was rather of the opinion that this troublesome notion of persona designata had been given its quietus in the recent Herman decision. The Chief Justice's aversion in Herman to the concept of persona designata could not have been more evident (at pp. 4-5 D.L.R., pp. 731-2 S.C.R.):
>
> - it is high time to relieve the Courts of the interpretative exercises that have been common in this country when they think that a decision has to be made whether a statutory jurisdiction has been vested in a Judge qua Judge or as persona designata. -
>
> In the test formulated in Herman I endeavoured to confine the notion of persona designata to the most exceptional circumstances. The Federal Court of Appeal and the provincial courts which have had to deal with the notion since the Herman decision have grasped how exceptional recourse to persona designata must be. So far as I am aware, in applying the test in Herman, no federally-appointed judge has yet been found to be a persona designata"[12]

See also

- Legal person
- Separation of powers in Australia

Additional references

- Groves M, Lee HP. Australian Administrative Law: Fundamentals, principles and doctrines. Cambridge 2007 [13]
- Northern Territory University: Australian Public Law [14]
- Lacey W. Inherent jurisdiction, judicial power and implied guarantees under chapter III of the Constitution. Fed Law Rev 2003 [15]

References

[1] See also Osborn's Concise Law Dictionary, 4th Edition., p.253.

[2] Blackshield, Tony & Williams, George (2006). *Australian Constitutional Law and Theory: Commentary and Materials (4th ed)*. Sydney, New South Wales: Federation Press. ISBN 1-86287-586-3.

[3] Brown, A J (1992). "The Wig or the Sword? Separation of Powers and the Plight of the Australian Judge". *Federal Law Review* (Australian National University) **21** (1): 48–89. ISSN 0067-205X.

[4] *R v Kirby; Ex parte Boilermakers' Society of Australia* [1956] HCA 10 (http://www.austlii.edu.au/au/cases/cth/HCA/1956/10.html); (1956) 94 CLR 254 (http://www.austlii.edu.au/au/cases/cth/high_ct/94clr254.html)

[5] (1937) 58 CLR 62 (http://www.austlii.edu.au/au/cases/cth/high_ct/58clr62.html)

[6] (1906) 4 CLR 297 (http://www.austlii.edu.au/au/cases/cth/high_ct/4clr297.html)

[7] *Drake v Minister for Immigration & Ethnic Affairs* (1979) 2 ALD 60; (1979) 46 FLR 409

[8] *Hilton v Wells* (1985) 157 CLR 57 (http://www.austlii.edu.au/au/cases/cth/high_ct/157clr57.html)

[9] *Grollo v Palmer* (1995) 184 CLR 348 (http://www.austlii.edu.au/au/cases/cth/high_ct/184clr348.html)

[10] 5 Can Bar Rev 174 (1927) at p.185

[11] 91 D.L.R. (3d) 3 at p.8 [1979] 1 S.C.R. 729

[12] 139 D.L.R. (3d) 1 [1982] 2 S.C.R. 518
[13] http://www.cambridge.org/catalogue/catalogue.asp?isbn=9780521697903&ss=cop
[14] http://www.cdu.edu.au/law/apl/caselinks/chapter_iii.htm
[15] http://www.austlii.edu.au/au/journals/FedLRev/2003/2.html

Posse comitatus (common law)

Posse comitatus or **sheriff's posse** is the common-law authority of a county sheriff or other law officer to conscript any able-bodied males to assist him in keeping the peace or to pursue and arrest a felon; compare *hue and cry*. Originally found in English common law, it is generally obsolete, and survives only in America, where it is the law enforcement equivalent of summoning the militia for military purposes.

Etymology

The term derives from the Latin *posse comitatus*, "power (force) of the county",[1] but legally means a sort of local militia. A posse comitatus may legally be organized by a group of citizens when it is determined that local law-enforcement or officials are unable or unwilling to enforce the law. Such was the case in several Southern localities where white perpetrators of violence against black citizens were brought to justice in spite of obstruction by local officials.

United Kingdom

English Civil War

In 1642, during the early stages of the English Civil War, local forces were employed everywhere by all sides that could. They produced valid written authority, inducing them to assemble. The two most common authorities used were, on the side of the Parliament, its own recent "Militia Ordinance"; or that of the king, the old-fashioned "Commissions of Array". But the Royalist leader in Cornwall, Sir Ralph Hopton, indicted the enemy before the grand jury of the county as disturbers of the peace, and had the *posse comitatus* called out to expel them.

In law

The powers of sheriffs for posse comitatus were codified by section 8 of the Sheriffs Act 1887, the first subsection of which stated that:

> Every person in a county shall be ready and apparelled at the command of the sheriff and at the cry of the country to arrest a felon whether within a franchise or without, and in default shall on conviction be liable to a fine, and if default be found in the lord of the franchise he shall forfeit the franchise to the Queen, and if in the bailiff he shall be liable besides the fine to imprisonment for not more than one year, or if he have not whereof to pay the fine, than two years.
>
> —section 8, Sheriffs Act 1887 (as passed) [2]

This permitted the (high) sheriff of each county to call every citizen to his assistance to catch a person who had committed a felony - that is, a serious crime. It provided for fines for those who did not comply. The provisions for posse comitatus were repealed by the Criminal Law Act 1967.[3] The second subsection provided for the sheriff to take 'the power of the county' if he faced resistance whilst executing a writ, and provided for the arrest of resisters.[4] This subsection is still in force.[5]

United States

The power presumably continues to exist in those U.S. states that have not repealed it by statute, however. Resort to the *posse comitatus* figures often in the plots of Western movies, where the body of men recruited is frequently referred to as a *posse*. Based on this usage, the word *posse* has come to be used colloquially to refer to various teams, cliques, or gangs, often in pursuit of a crime suspect (on horseback in the Westerns), sometimes without legal authority. In a number of states, especially in the western United States, sheriffs and other law enforcement agencies have called their civilian auxiliary groups "posses." The Lattimer Massacre of 1897 illustrated the danger of such groups, and thus ended their use in situations of civil unrest. Some states provide for the posse by statute.[6]

In the United States, a Federal statute known as the Posse Comitatus Act forbids the use of the United States Army, and through it, its offspring, the United States Air Force as a *posse comitatus* or for law enforcement purposes. A directive from the Secretary of Defense prohibits the use of the United States Navy and United States Marine Corps for law enforcement. No such limitation exists on the United States Coast Guard, which can be used for all law enforcement purposes (for example, Coast Guardsmen were used as temporary Air Marshals for many months after the 9/11 attacks) except when, as during WWII, a part of the Coast Guard is placed under the command of the Navy. This part would then fall under the regulations governing the Navy in this matter, rather than those concerning the Coast Guard. The limitation also does not apply to the National Guard when activated by a state's governor and operating in accordance with Title 32 of the U.S. Code (for example, National Guardsmen were used extensively by state governors during Hurricane Katrina response actions). Conversely, the limitation would apply to the National Guard when activated by the President and operating in accordance with Title 10 of the U.S. Code.[7]

During a July 17, 2008 speech, then-Senator Obama called for the creation of a federal posse comitatus to enhance national security, calling for "a civilian national security force that's just as powerful, just as strong, just as well funded" as the US Armed Forces.[8] An executive order signed Jan. 11, 2010 creating a Council of Governors[9] begins taking steps in that direction, but it remains questionable whether such a federal militia would be legal in the United States under Article 1, Section 8 of the Constitution, or whether, if organized as a force still belonging to the several states but under the command of the President, it would not violate the Posse Comitatus Act.

See also

- Commandeering
- Vigilante
- Posse Comitatus Act

References

[1] (http://www.etymonline.com/index.php?term=posse) (http://www.encyclopedia.com/doc/1O27-posse.html) (http://www.yourdictionary.com/posse) (http://dictionary.reference.com/browse/posse)
[2] http://www.opsi.gov.uk/acts/acts1887/pdf/ukpga_18870055_en.pdf
[3] Schedule 3, Part III, Criminal Law Act 1967 (http://www.statutelaw.gov.uk/content.aspx?parentActiveTextDocId=1186125&ActiveTextDocId=1186169)
[4] section 8, Sheriffs Act 1887 (as passed) (http://www.opsi.gov.uk/acts/acts1887/pdf/ukpga_18870055_en.pdf)
[5] section 8, Sheriffs Act 1887 (as amended) (http://www.statutelaw.gov.uk/content.aspx?parentActiveTextDocId=1060203&ActiveTextDocId=1060216)
[6] W.Va. Code 56-3-18
[7] U. S. Code Title 10 and Title 32
[8] http://www.youtube.com/watch?v=Tt2yGzHfy7s
[9] http://www.whitehouse.gov/the-press-office/president-obama-signs-executive-order-establishing-council-governors

Praecipe

A **praecipe** is a legal term in the U.S. that either (A) commands a defendant to appear and show cause why an act or thing should not be done; or (B) requests the clerk of court to issue a writ and to specify its contents. In Canada it is used in place of a notice of motion as an application for a desk order that is granted in the court registry without a hearing before a judge.

History

The word *praecipe* is base Latin. The word survived long after the Roman Empire and found its way into England, where it survived in the English law. The writ was often issued to amend or change a subsequent order or to correct an error that may have been missed earlier. Its appearance in American law is not surprising, as many of the English customs and traditions were passed on. Today its function has barely changed since those days of Roman times.

External links

- WWLIA Definition [1]
- US Legal Research [2]

References

[1] http://www.wwlia.org/Praecipe.htm
[2] http://www.uslegalforms.com/legaldefinitions/p/praecipe.php

Praemunire

In English history, **Praemunire** or **Praemunire facias** was a law that prohibited the assertion or maintenance of papal jurisdiction in England, against the supremacy of the Monarch. This law was enforced by the **Writ of Praemunire facias**, a writ of summons, from which the law takes its name.

The name *Praemunire* may denote the statute, the writ, or the offence.

Praemunire in classical Latin means *to fortify*. In medieval Latin, *praemunire* was confused with and used for *praemonere*, to forewarn, as the writ commanded that the sheriff do (*facias*) warn (*praemunire*) the summoned person to appear before the Court.[1]

Origin

The Statute of Praemunire was passed by the Parliament of England during the reign of Richard II, who purchased bulls from Rome in 1392. It was only one of numerous stringent measures passed for the purpose of restraining the Holy See and all forms of papal authority in England. From the beginning of the 14th century, papal intervention had been particularly active, more especially in two forms. The one, the disposal of ecclesiastical benefices, before the same became vacant, to men of the pope's own choosing; the other, the encouragement of resort to himself and his curia, rather than to the courts of the country, for legal justice.

The Statute of Provisors (1306), passed in the reign of Edward I, was, according to Sir Edward Coke, the foundation of all subsequent statutes of *praemunire*. This statute enacted "that no tax imposed by any religious persons should be sent out of the country whether under the name of a rent, tallage, tribute or any kind of imposition." A much greater check on the freedom of action of the popes was imposed by the Statute of Provisors (1350) and the Statute of *Praemunire* passed in the reign of Edward III.

The former of these, after premising "that the Pope of Rome, accroaching to him the seignories of possession and benefices of the holy Church of the realm of England doth give and grant the same benefices to aliens which did never dwell in England, and to cardinals, which might not dwell here, and to others as well aliens as denizens, as if he had been patron or advowee of the said dignities and benefices, as he was not of right by the laws of England . . .," ordained the free election of all dignities and benefices elective in the manner as they were granted by the king's progenitors.

Later developments

The Statute of Praemunire (the first statute so called) (1353), though expressly leveled at the pretensions of the Roman Curia, excludes any direct reference to it in actual words. By it, the king "at the grievous and clamorous complaints of the great men and commons of the realm of England" enacts "that all the people of the king's ligeance of what condition that they be, which shall draw any out of the realm in plea" or any matter of which the cognizance properly belongs to the king's court shall be allowed two months in which to answer for their contempt of the king's rights in transferring their pleas abroad. The penalties which were attached to the offence under this statute involved the loss of all civil rights, forfeiture of lands, goods and chattels, and imprisonment during the royal pleasure.

Many other statutes followed that of 1353, but that which was passed in the sixteenth year of Richard II's reign is, as mentioned before, usually referred to as the Statute of Praemunire. This statute, after first stating "that the right of recovering the presentments to churches, prebends, and other benefices . . . belongeth only to the king's court of the old right of his crown, used and approved in the time of all his progenitors kings of England," proceeds to condemn the practice of papal translation, and after rehearsing the promise of the three estates of the realm to stand with the king in all cases touching his crown and his regality, enacts "that if any purchase or pursue, or cause to be purchased or pursued in the 'court of Rome, or elsewhere, any such translations, processes, and sentences of excommunications, bulls, instruments or any other things whatsoever . . . he and his notaries, abettors and counsellors" shall be put out of the king's protection, and their lands escheat.

Praemunire declined in importance, but experienced a resurgence under Henry VIII as the Protestant Reformation unfolded. First individuals were indicted for *praemunire*, then groups of clergy, and lastly the entire English clergy was accused of being agents of a foreign power (the Pope). In time, Henry asserted himself as "of the Church of England in Earth under Jesus Christ Supreme Head", and the clergy of the Church of England no longer answered to a foreign power.

The Statute of Praemunire was finally repealed by Criminal Law Act 1967(section 13 and Schedule 4, Part 1), which removed several obsolete offences from the lawbooks.

During the course of the 19th century the Camerlengo of the time would on occasion communicate the death of a Pope to the British Monarch (along with other rulers), and occasional other communications there was some discussion as to whether the Statute of Praemunire meant that no response could be made: the compromises reached included conveying messages on a 'private' rather than 'official' level, or going via the Hanoverian minister at London (responding as King of Hanover). Eventually it was decided that there was no legal obstacle to establishing formal diplomatic relations. File FO 95/736 at The National Archives refers.

References

- Helmholz, R. H. *The Oxford History of the Laws of England*. Oxford University Press, 2004.
- Annotated text of the first (1353) statute (labelled, (G) [2]
- Annotated text of the second (1393) statute, labelled (F) [3]

References

[1] Oxford English Dictionary, s.v. praemunire. Second edition, 1989.

[2] http://www.constitution.org/sech/sech_062.htm

[3] http://www.constitution.org/sech/sech_064.htm

Prima facie

Prima facie (pronounced /ˈpraɪmə ˈfeɪʃiː/, from Latin *prīmā faciē)* is a Latin expression meaning *on its first appearance*, or *at first sight*. The literal translation would be "at first face", *prima* first, *facie* face, both in the ablative case. It is used in modern legal English to signify that on first examination, a matter appears to be self-evident from the facts. In common law jurisdictions, *prima facie* denotes evidence which – unless rebutted – would be sufficient to prove a particular proposition or fact. The term is used similarly in academic philosophy.

Most legal proceedings require a *prima facie* case to exist, following which proceedings may then commence to test it, and create a ruling. This may be called *facile princeps*, first principles.

Burden of proof

In most legal proceedings, one party has a burden of proof, which requires them to present *prima facie* evidence for all the essential facts in its case. If they cannot, their claim may be dismissed without any need for a response by other parties. A *prima facie* case might not stand or fall on its own; if an opposing party introduces other evidence or asserts an affirmative defense it can only be reconciled with a full trial. Sometimes the introduction of prima facie evidence is informally called *making a case* or *building a case*.

For example, in a trial under criminal law the prosecution has the burden of presenting *prima facie* evidence of each element of the crime charged against the defendant. In a murder case, this would include evidence that the victim was in fact dead, that the defendant's act caused the death, and evidence that the defendant acted with malice aforethought. If no party introduces new evidence the case stands or falls just by the *prima facie* evidence.

Prima facie evidence need not be conclusive or irrefutable: at this stage, evidence rebutting the case is not considered, only whether any party's case has enough merit to take it to a full trial.

In some jurisdictions such as the United Kingdom, the prosecution in a criminal trial must disclose all evidence to the defence. This includes the *prima facie* evidence.

An aim of the doctrine of *prima facie* is to prevent litigants bringing spurious charges which simply waste all other parties' time.

Res ipsa loquitur

Prima facie is often confused with *res ipsa loquitur* ("the thing speaks for itself"), the common law doctrine that when the facts make it self-evident that negligence or other responsibility lies with a party, it is not necessary to provide extraneous details, since any reasonable person would immediately find the facts of the case.

The difference between the two is that *prima facie* is a term meaning there is enough evidence for there to be a case to answer. *Res ipsa loquitur* means that **because** the facts are so obvious, a party need explain no more. For example:

> "There is a *prima facie* case that the defendant is liable. They controlled the pump. The pump was left on and flooded the plaintiff's house. The plaintiff was away and had left the house in the control of the defendant. *Res ipsa loquitur*."

Criticism of subjective *prima facie* interpretation

It is logically and intuitively clear that just because a matter *appears* to be self-evident from the facts that both the notion of the evidence presenting a case in a self-evident manner and the facts actually being facts (which, presumably, would require evidence of at least a minimum degree of quality) can often be reduced to entirely subjective interpretations that are independent of any truthful merit by sufficiently skilled individuals.

That is to say, appearances can be deceptive even to the objectively minded, and they can be subjectively interpreted (meaning that what amounts to a prima facie case for one judging individual would not do so for another). Just because a matter appears to be evident from a certain presentation of the facts it does not follow that that matter has any truthful validity - which would limit the common sensical utility of **prima facie evidence**.

As an example, consider the following:

Statement I : "John has been shot dead. Joe has been found near John with a smoking gun. Therefore, this is prima facie evidence of Joe having shot John with a smoking gun." [the infamous Smoking Gun example]

Apparently, this (in an overly simplified manner) indicates that we have a prima facie case for arresting (and convicting) Joe for shooting John.

However, add the following piece of evidence to the Prima Facie case calculations :

Statement II : "Both Joe and John were within a shooting club at the time at which John was shot dead. "

This example indicates that it is far from clear that Joe actually shot John dead due to certain facts having been selectively highlighted and presented for the purposes of the **prima facie** case. That is to say, due to the fact that relevant circumstances are either omitted or illogically/irrationally presented for the purposes of the prima facie case - it appears as if the statement made amounts to a prima facie case. This is because sufficient evidence has **apparently** been presented for the purposes of the prima facie case, but necessary evidence has been omitted (a reasonable argument would be that as much evidence concerning the particulars of the case are presented within a **prima facie** case as possible).

Given our informal presentation of the prima facie case in Statement I, we have **not** contradicted any of the evidence by introducing the facts of Statement II. However, it is clear that a reasonable person would find Statement I unpalatable as a Prima Facie case as it contains no information relating to the particulars of a case - and it seems clear that Statement II provides sufficient reason to throw out Statement I out as being a sufficient basis for a Prima Facie case on reasonable grounds.

These criticisms are conceptually inherent to the notion of a prima facie case or evidence. They do not relate to the example or the quality of the evidence. The situation arises due to the fact that **all** (or, at least, a reasonably water tight amount) of the relevant particulars of the case are not presented in an objective manner.

Other uses and references

The phrase *prima facie* is sometimes misspelled *prima facia* in the mistaken belief that *facia* is the actual Latin word; however, the word is in fact *faciēs* (fifth declension), of which *faciē* is the ablative.

The phrase is very commonly used in academic philosophy, in exactly the same sense as by lawyers. Among its most notable uses is in the theory of ethics first proposed by W. D. Ross, often called the *Ethic of Prima Facie Duties*, as well as in epistemology, as used, e.g. by Robert Audi. It is generally used in reference to an obligation. "I have a prima facie obligation to keep my promise and meet my friend" means that I am under an obligation but this may yield to a more pressing duty. A more modern usage prefers the title 'pro tanto obligation': an obligation that may be later overruled by another more pressing one; it exists only *pro tempore*.

In policy debate theory, *prima facie* is used to describe the mandates or planks of an affirmative case (or, in some rare cases, a negative counterplan). When the negative team appeals to *prima facie*, it appeals to the fact that the affirmative team cannot add or amend anything in its plan after being stated in the first affirmative constructive.

A common usage of the phrase, which the public may come into contact with, is the concept of a 'prima facie speed limit', which has been used in Australia and the United States. A prima facie speed limit is a default speed limit which applies when no other specific speed limit is posted, and which may be exceeded by a driver. However if the driver is detected/cited/charged by the police for exceeding the prima facie speed limit, the onus of proof is on the driver to show that the speed at which the driver was travelling, was safe under the circumstances. In most jurisdictions, this type of speed limit has been replaced by specific absolute speed limits.

See also

- Burden of proof
- List of Latin phrases
- Probable cause

References

- Herlitz. (1994). *The meaning of the term "prima facie"* 55 La.L.Rev. 391
- Audi, Robert (2003). *Epistemology, a contemporary introduction, second edition*, Routledge, p. 27

Privilegium de non appellando

The Latin-originating phrase "**privilegium de non appellando**" words meaning "privilege of (having the right to) not be appealed". The phrase denotes the status by which a person or an institution is exempted from the jurisdiction of the Imperial Courts in matters of appeal, in which a lower court's decision has its proceedings reviewed by a higher court.

Privilegium fori

The **privilegium fori**, Latin for "Privilege of the (legal) forum", is a generic term for legal privileges to be tried in a particular court or type of court of law.

Typically, it is an application of the principle of trial by one's peers, either by such a jury or at least by a specific court from that social segment, such as a soldier by a court martial, a cleric by a canon court.

Pro bono

Pro bono publico (usually shortened to ***pro bono***) is a phrase derived from Latin meaning "for the public good". The term is generally used to describe professional work undertaken voluntarily and without payment as a public service. It is common in the legal profession and is increasingly seen in marketing, technology, and strategy consulting firms. Pro bono service, unlike traditional volunteerism, uses the specific skills of professionals to provide services to those who are unable to afford them.

Pro bono publico is also used in the United Kingdom to describe the central motivation of large organizations such as the BBC, the National Health Service, and various other NGOs, which exist "for the public good", rather than for shareholder profit.

Pro bono legal counsel

Pro bono legal counsel may assist an individual or group on a legal case by filing government applications or petitions. A judge may occasionally determine that the loser should compensate a winning pro bono counsel.

United States

Lawyers in the United States are recommended under American Bar Association (ABA) ethical rules to contribute at least fifty hours of pro bono service per year.[1] Some state bar associations, however, may recommend fewer hours. The New York State Bar Association, for example, recommends just twenty hours of pro bono service annually,[2] while the New York City Bar promulgates the same recommendation as the ABA.[3] The ABA has conducted two national surveys of pro bono service: one released in August 2005[4] and the other in February 2009.[5]

The ABA Standing Committee and its project, the Center for Pro Bono, are a national source of information, resources and assistance to support, facilitate, and expand the delivery of pro bono legal help.[6] The ABA Standing Committee also sponsors Pro Bono Week during the week of October 24-30.[7] [8] The ABA Standing Committee on Legal Assistance for Military Personnel and Section of Litigation jointly sponsor the ABA Military Pro Bono Project, which delivers pro bono legal assistance to enlisted, active-duty military personnel.[9]

In an October 2007 press conference reported in *The Wall Street Journal* and *The New York Times*, the law student group Building a Better Legal Profession released its first annual ranking of top law firms by average billable hours, pro bono participation, and demographic diversity.[10] [11] The report found that most large firms fall short of their

pro bono targets.[12] The group has sent the information to top law schools around the country, encouraging students to take this data into account when choosing where to work after graduation.[13] As more students choose where to work based on the firms' rankings, firms face an increasing market pressure to increase their commitment to pro bono work in order to attract top recruits.[14]

United Kingdom

Many UK law firms and law schools have celebrated an annual Pro Bono Week—which encourages lawyers to offer pro bono services and increases general awareness of pro bono service since 2002.[15] [16] LawWorks (the operating name for the Solicitors Pro Bono Group) is a national charity that works with lawyers and law students, encouraging and supporting them in carrying out legal pro bono work. It also acts as a clearing house for pro bono casework. Individuals and community groups may apply to the charity for free legal advice and mediation, where they could not otherwise afford to pay and are not entitled to legal aid.[17]

See also

- Legal aid
- Professional courtesy
- Volunteer Centres Ireland
- Law Students in Action Project

External links

- American Bar Association's Center for Pro Bono [18] Resources for pro bono delivery and state-by-state listing of pro bono programs

References

[1] "ABA Model Rule 6.1 Voluntary Pro Bono Service." Pro Bono and Public Service. (http://www.abanet.org/legalservices/probono/rule61.html) Retrieved 2 June 2007.

[2] "NYSBA | Pro bono defined", Pro Bono Affairs. (http://www.nysba.org/Content/NavigationMenu/Attorney_Resources/Pro_Bono/Pro_bono_defined/Pro_bono_defined.htm) Retrieved 2 June 2007.

[3] "New York City Bar Association Releases Statement of Pro Bono Principles." Retrieved 2 June 2007. (http://www.nycbar.org/pdf/NOV 29 PRO BONO.pdf)

[4] "Supporting Justice: A Report on the Pro Bono Work of America's Lawyers" (http://www.abanet.org/legalservices/probono/report.pdf)

[5] "Supporting Justice II: A Report on the Pro Bono Work of America's Lawyers Pro Bono" (http://www.abanet.org/legalservices/probono/report2.pdf)

[6] http://www.abaprobono.org

[7] (http://www.abanet.org/abanet/media/release/news_release.cfm?releaseid=691) News release

[8] (http://www.jaxdailyrecord.com/showstory.php?Story_id=529116)

[9] http://www.militaryprobono.org

[10] Amir Efrati, You Say You Want a Big-Law Revolution, Take II, *Wall Street Journal*, October 10, 2007.

[11] Adam Liptak, In Students' Eyes, Look-Alike Lawyers Don't Make the Grade, *New York Times*, October 29, 2007, http://www.nytimes.com/2007/10/29/us/29bar.html?em&ex=1193889600&en=4b0cd84261ffe5b4&ei=5087%0A

[12] Thomas Adcock & Zusha Elinson, Student Group Grades Firms on Diversity, Pro Bono Work, *New York Law Journal*, October 19, 2007, http://www.law.com/jsp/nylj/PubArticleNY.jsp?hubtype=BackPage&id=1192698212305

[13] Henry Weinstein, Big L.A. law firms score low on diversity survey: The numbers of female, black, Latino, Asian and gay partners and associates lag significantly behind their representation in the city's population, according to a study, *Los Angeles Times*, October 11, 2007, http://www.latimes.com/news/local/la-me-diversity11oct11,1,661263.story?coll=la-headlines-california

[14] Linda Hershman, Perfect Information for Law Students, *The New Republic*, October 23, 2007, http://blogs.tnr.com/tnr/blogs/open_university/archive/2007/10/23/perfect-information-for-law-students.aspx

[15] Dyer, Clare. "Win or lose, no fee: pro bono week promotes free legal services." Pro Bono work. (http://www.guardian.co.uk/law/story/0,,1790285,00.html) The Guardian. 6 June 2007. Retrieved 2 June 2007.

[16] Dowell, Katy. "Attorney General sets up global pro bono database." Pro bono week. (http://www.thelawyer.com/cgi-bin/item.cgi?id=135731) The Lawyer. 17 November 2008. Retrieved 4 December 2008.

[17] The LawWorks website (http://www.lawworks.org.uk)
[18] http://www.abanet.org/legalservices/probono/

Pro Deo

Pro Deo may refer to:

- latin, meaning: 'for God', see *pro bono publico*
- a freeware chess engine, see REBEL (chess)

Pro rata

Pro rata is an adverb or adjective, meaning *in proportion*.[1] The term is used in many legal and economic contexts, and sometimes spelled *pro-rata*. But, this is technically a misspelling of a latin phrase. In North American English this term has been vernacularized to *prorated*.

Meanings of pro rata

More specifically, *pro rata* means:

1. In proportion to some factor that can be exactly calculated.[2] [3] [4]
2. To count based on amount of time that has passed out of the total time.
3. Proportional Ratio [5]

Pro-rata has a Latin etymology, from *pro*, according to, for, or by, and *rata*, feminine ablative of calculated (rate or change).[6]

Examples

Examples in law and economics include the following noted below.

Torts

When liability for a toxic tort or Products liability concerns many manufacturers, the liability under tort law is allocated proportionally.[7]

Partnership liability

Each of several partners "is liable for his own share or proportion only, they are said to be bound *pro rata*. An example ... may be found in the liability of partners; each is liable ... only *pro rata* in relation to between themselves."[8]

Bankruptcy law

When a debtor files for bankruptcy, and "the debtor is insolvent, creditors generally agree to accept a pro rata share of what is owed to them. If the debtor has any remaining funds, the money is divided proportionately among the creditors, according to the amount of the individual debts." [9] "A creditor of an insolvent estate is to be paid pro rata with creditors of the same class."[10]

Worker's pay and benefits

A worker's part-time work, overtime pay, and vacation time are typically calculated on **pro rata** basis.[11] [12] [13]

Under US Federal regulations, a government worker has the right, that, "When an employee's service is interrupted by a non-leave earning period, leave is earned on a pro rata basis for each fractional pay period that occurs within the continuity of employment."[14]

The American Federation of Teachers (AFT), a US labor union, argues that *all* part-time or adjunct instructors should get pro-rata pay for teaching college courses.[15] This is an important issue, as of 2007, for part-time faculty.[16]

Irish secondary school teachers are entitled to pro-rata pay for part-time work.[17]

Under British employment law, "Regulations state that, where appropriate, the pro rata principle should be applied to any comparison ... to be given ... holiday."[18]

Likewise, in Tasmania, Australia, the law clearly grants workers the privilege of part-time benefits for leave of absence.[19] [20] This is granted under the *Long Service Leave Act 1976*.[21]

Investment laws

In corporate practice, "a pro-rata dividend means that every shareholder gets an equal proportion for each share he or she owns." [5] kaushal

In banking, "Pro-rating also refers to the practice of applying interest rates to different time frames. If the interest rate was 12% per annum, you could pro-rate this number to be 1% a month (12%/12 months)." [5]

Insurance

In insurance, *pro rata* is used to determine risk based on the time the insurance policy is in effect.[22] It may also be used to describe *proportional liability* when more than one person is responsible for a loss or accident. [9]

Insurance cancellation method

Calculation of return premium of a cancelled insurance policy is done using a cancellation method call *pro rata*. First a return premium factor is calculated by taking the number of day remaining in the policy period divided by the number of total days of the policy. This factor is then multiplied by the policy premium to arive with the return premium. Traditionally this has been done manually using an paper wheel calculator. Today it is normally done using an online wheel calculator.[23]

College tuition

When a college student withdraws, colleges almost always refund tuition payments on a pro-rata basis.[24]

See also

- Employee Retirement Income Security Act
- Legal liability
- Vesting

References

[1] Farlex's The Free Dictionary (http://encyclopedia.farlex.com/pro+rata)

[2] Answers.com (http://www.answers.com/topic/pro-rata?cat=biz-fin). Accessed May 29, 2008.

[3] Investor Words web site (http://www.investorwords.com/5735/pro_rata.html)

[4] Ehrich, Eugene, *Amo, Amas, Amat and More*, p. 233 (New York, Harper Row 1985). ISBN 0-06-27217-1.

[5] Investopedia web site (http://www.investopedia.com/terms/p/pro-rata.asp). Accessed May 29, 2008.

[6] The Free Dictionary (http://www.thefreedictionary.com/pro+rata). Accessed May 29, 2008.

[7] (http://www.maine.gov/dep/rwm/ewaste/pdf/proratashares2007.pdf) State of Maine government web site **pdf file** listing of Pro Rata Share Responsibility.

[8] ClickDocs UK Legal web site (http://www.clickdocs.co.uk/glossary/pro-rata.htm) (quote marks changed to italics for clarity).

[9] Jrank.org legal web site (http://law.jrank.org/pages/9440/Pro-Rata.html)

[10] WWLIA legal web site (http://www.wwlia.org/Pro-Rata.htm)

[11] John Steven Niznik, *Pro Rata*, at Job Search Tech web site (http://jobsearchtech.about.com/od/careereducation/g/pro_rata.htm).

[12] TheSite.org web page about pro-rata payment for part-time work (http://www.thesite.org/homelawandmoney/askthesiteqandas/moneyqandas/proratapayment)

[13] Uk Answers.com blog (http://uk.answers.yahoo.com/question/index?qid=20070702040921AAK1Ie7)

[14] US Department of Commerce Office of Human Resources Management official web site (http://ohrm.os.doc.gov/Leave/DEV01_000063), citing 5 CFR 630.204.

[15] AFT web site (http://face.aft.org/index.cfm?action=article&articleID=0c3962ee-cc6a-40d4-bb1a-fe4666b5146c)

[16] California Part-time Faculty Association official web site page regarding pro-rata pay (http://www.cpfa.org/chrisprorata.html)

[17] Association of Secondary Teachers Ireland official web site page regarding pro-rata pay (http://www.asti.ie/faq/prorata.htm)

[18] NASUWT web site (http://www.nasuwt.org.uk/Templates/internal.asp?NodeID=68399&ParentNodeID=70003) *Holiday* is used here in the British sense of the American vacation.

[19] Tasmanian Government official web site (http://www.wst.tas.gov.au/resource/wstfaqlsl.htm)

[20] (http://www.wst.tas.gov.au/attach/longservicel.pdf) Tasmanian Government official web site **pdf file**.

[21] Tasmanian Legislation online official web site (http://www.thelaw.tas.gov.au/tocview/index.w3p;cond=;doc_id=95++1976+AT@EN+20070816000000;histon=;prompt=;rec=-1;term=)

[22] InsuranceZA web site (http://www.insurance.za.org/pro-rata-premium.htm)

[23] Online Wheel Calculator (http://www.wheel-calculator.com)

[24] See, *e.g.* (http://www.piedmontcc.edu/Admissions/proratarefundpolicy.asp)

Pro hac vice

Pro hac vice, Latin for “for this occasion” or “for this event,” (literally, “for this turn”[1]) is a legal term usually referring to a lawyer who has not been admitted to practice in a certain jurisdiction but has been allowed to participate in a particular case in that jurisdiction.

The right to appear *pro hac vice* is not guaranteed. Rather, the attorney wanting to practice in a jurisdiction within which he or she is not licensed must specifically request permission from the court to be able to appear as an attorney of record. This is accomplished with a motion to appear *pro hac vice*, in which an attorney who is licensed in the jurisdiction requests that the non-licensed attorney be admitted to practice in a particular case.

In addition to the motion, the non-licensed attorney is typically required to provide the court with a statement from his local bar association indicating that he is a member in good standing and also pay a small fee to the local bar association.

A fictional example of a *pro hac vice* appearance occurs in the film *The Devil's Advocate*, where Kevin Lomax (Keanu Reeves) argues a case for the New York firm he has just joined after moving from Florida. A real-life example was the admission of attorney William L. Allinder of the law firm Shook, Hardy & Bacon (in Kansas City) to work *pro hac vice* in a lawsuit against the tobacco industry filed by Marsha F. and Richard Doolittle in New Jersey in 2002.[2]

External links

- Example on Groklaw [3]
- Definition at Nolo Press's legal glossary [4]

References

[1] Black's Law Dictionary 8th Edition

[2] Leboeuf, Lamb, Green and MacRae, LLP (http://www.judiciary.state.nj.us/mass-tort/tobacco/archives/allinder_prohac_0328.pdf) Legal pleading, March 22, 2002

[3] http://www.groklaw.net/article.php?story=2006092521234190

[4] http://www.nolo.com/definition.cfm/Term/CCE07968-3D28-4411-9D7F5F37B7E51A58/alpha/P/

Pro se

***Pro se* legal representation** refers to the instance of a person representing himself or herself without a lawyer in a court proceeding, whether as a defendant or a plaintiff and whether the matter is civil or criminal. *Pro se* is a Latin phrase meaning "for oneself". This status is sometimes known as *propria persona* (abbreviated to "pro per"). In England and Wales the comparable status is "litigant in person". In the United States, many state court systems and the federal courts are experiencing an increasing proportion of pro se litigants.[1] In the United States federal court system for the year 2007 approximately 27% of actions filed, 92% of prisoner petitions and 10% of non-prisoner petitions were filed by pro se litigants.[2] Defendants in political trials tend to participate in the proceedings more than defendants in non-political cases, as they may have greater ability to depart from courtroom norms to speak to political and moral issues.[3]

History

The right of a party to a legal action to represent his or her own cause has long been recognized in the United States, and even predates the ratification of the Constitution.

The Supreme Court noted that "[i]n the federal courts, the right of self-representation has been protected by statute since the beginnings of our Nation. Section 35 of the Judiciary Act of 1789, 1 Stat. 73, 92, enacted by the First Congress and signed by President Washington one day before the Sixth Amendment was proposed, provided that 'in all the courts of the United States, the parties may plead and manage their own causes personally or by the assistance of counsel.'" *Faretta v. California*, 422 U.S. 806, 813 (1975).

Rules

Most U.S. states have a constitutional provision that either expressly or by interpretation allows individuals to represent their own causes in the courts of that state. In many instances, state constitutional provisions regarding the right to petition the government for redress of grievances have been so interpreted. See List of U.S. State constitutional provisions allowing self-representation in state courts.

The U.S. Judiciary Act, the Code of Conduct for United States Judges, the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence and the Federal Rules of Appellate Procedure address the rights of the self-represented litigant in several places.

Section 1654 of title 28 of the United States Code provides: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."

Laws and organizations charged with regulating judicial conduct may also impact pro se litigants. For example, The State of California Judicial Council has addressed through published materials the need of the Judiciary to act in the interests of fairness to self-represented litigants.[4] The California rules express a preference for resolution of every case on the merits, even if resolution requires excusing inadvertance by a pro se litigant that would otherwise result in a dismissal. The Judicial Council justifies this position based on the idea that "Judges are charged with ascertaining the truth, not just playing referee... A lawsuit is not a game, where the party with the cleverest lawyer prevails regardless of the merits."[5] It suggests "the court should take whatever measures may be reasonable and necessary to insure a fair trial" and says "There is only one reported case in the U.S. finding a judge's specific accommodations have gone too far".

Public concerns

Pro se representation presents unique but not insurmountable challenges for claimants and the legal system. In Louisiana, for instance, the Louisiana Court of Appeals tracks the results of pro se appeals against represented appeals. In 2000, 7% of writs in civil litigation submitted to the court pro se were granted, compared to 46% of writs submitted by counsel. In criminal cases the ratio is closer - 34% of pro se writs were granted, compared with 45% of writs submitted by counsel.[6] According to Erica J. Hashimoto, an assistant professor at the Georgia School of Law,:

> "After conducting an empirical study of pro se felony defendants, I conclude that these defendants are not necessarily either ill-served by the decision to represent themselves or mentally ill….In state court, pro se defendants charged with felonies fared as well as, and arguably significantly better than, their represented counterparts…of the 234 pro se defendants for whom an outcome was provided, just under 50 percent of them were convicted on any charge….for represented state court defendants, by contrast, a total of 75 percent were convicted of some charge…. Only 26 percent of the pro se defendants ended up with felony convictions, while 63 percent of their represented counterparts were convicted of felonies…in federal court…the acquittal rate for pro se defendants is virtually identical to the acquittal rate for represented defendants. " [7]

Self-representation by attorneys

An attorney who represents himself or herself in a matter is still considered a *pro se* litigant. Self-representation by attorneys has frequently been the subject of criticism, disapproval, or satire, with the most famous pronouncement on the issue being Samuel Johnson's aphorism that "the attorney who represents himself in court has a fool for a client."

The Supreme Court has held that where a statute permits attorney's fees to be awarded to the prevailing party, the attorney who prevails in a case brought under a federal statute as a *pro se* litigant is not entitled to an award of attorney's fees.[8] This ruling was based on the Court's determination that such statutes contemplate an attorney-client relationship between the party and the attorney prosecuting or defending the case, and that Congress intends to encourage litigants to seek the advise of a competent and detached third party. As the Court noted, the various Circuit Courts had previously agreed in various rulings "that a *pro se* litigant who is *not* a lawyer is *not* entitled to attorney's fees".[9]

Narrow exceptions to this principle have also been suggested by other courts in the United States. For example, according to one district court a *pro se* attorney may collect attorney's fees when he represents a class (of which he is a member) in a class action lawsuit,[10] or according to another court represents a law firm of which he is a member.[11] In each of those instances, a non-attorney would be barred from conducting the representation altogether. One district court found that this policy does not prevent a *pro se* attorney from recovering fees paid for consultations with outside counsel.[12]

Limits

In some situations, self-represented appearances are not allowed. Generally, an owner can represent a solely owned business or partnership, but only a licensed attorney can represent a corporation. The ability of a party to proceed without an attorney in prosecuting or defending a civil action is largely a matter of state law, and may vary depending on the court and the positions of the parties. A longstanding and widely practiced rule prohibits corporations from being represented by non-attorneys, consistent with the existence of a corporation as a "person" separate and distinct from its officers and employees.[13]

"A nonlawyer may not sign and file a notice of appeal on behalf of a corporation. Requiring a lawyer to represent a corporation in filing the notice does not violate the guarantee that any suitor may prosecute or defend a suit personally. A corporation is not a natural person and does not fall with in the term "any suitor."[14] [15] [16]

Another situation in which appearance through counsel is often required is in a case involving the executor or personal administrator of a probate estate. Unless the executor or administrator is himself an attorney, he is not allowed to represent himself in matters other than the probate.[17]

Few federal court of appeals allow unrepresented litigants to argue, and in all courts the percentage of cases in which argument occurs is higher for counseled cases.[18]

Notable *pro se* litigants

- Edward C. Lawson, an African American civil rights activist, was the *pro se* defendant in *Kolender v. Lawson* (461 U.S. 352, 1983), in which the U.S. Supreme Court ruled that a police officer could not arrest a citizen merely for refusing to present identification.[19] [20] [21] [22]
- Robert Kearns was the inventor of the intermittent windshield wipers. He acted as his own lawyer in parts of his long legal battles for patent infringement against Ford and Chrysler.[23] His legal battles are the subject of the 2008 film *Flash of Genius*.
- Colin Ferguson, a mass murderer, whose trial was notable for a number of unusual developments, including his firing of his defense counsel and insisting on representing himself and questioning his own alleged victims on the stand.
- Clarence Earl Gideon was too poor to afford an attorney and thus proceeded *pro se* in his criminal trial in Florida in 1961. He was found guilty and subsequently appealed. He was appointed counsel when the case reached the U.S. Supreme Court; the Court ruled in *Gideon v. Wainwright* that the right to counsel means that states are required to provide counsel free of charge to indigent criminal defendants and that Florida's failure to appoint such counsel in Gideon's case constituted a violation of that right. On remand, Gideon was represented in the new trial, and was acquitted.
- Brandon Moon spent 17 years in jail for a rape that he did not commit. He was convicted after being picked from a lineup 18 months after the rape in which he was the only blue eyed white man. He was a sophomore in college and a veteran of four years in the air force when he was accused. He was released due to DNA evidence after help from the Innocence Project. He spent his prison years learning about blood tests, eye witness identification and law. Before the Innocence Project became involved, Moon represented himself and repeatedly applied for relief but, according to his lawyer he was "bounced around the courts like a Ping-Pong ball" because "The courts are so hostile to pro se litigants. The instinct is to deny, deny, deny."[24]
- Thomas Van Orden, a lawyer with a suspended license to practice law who was living homeless in Austin, Texas, managed to challenge a religious display on the state capitol grounds, and successfully navigated his case all the way to the Supreme Court. While he was ultimately unsuccessful at getting the display removed, he was extremely successful at litigating the case. See *Van Orden v. Perry.*[25] [26] [27]
- Anthony Pellicano, a Los Angeles-based private investigator known for working with high-profile entertainment industry attorneys, represented himself in federal district court after being indicted on numerous counts of criminal conspiracy and wiretapping charges. He fired his attorneys prior to trial. He was convicted on all but one count. He also faced a second trial along with co-defendant Terry Christiansen. He again represented himself and again was convicted on numerous counts.
- Michael Ray "a former paralegal who is nearing the end of a six-year sentence for real-estate fraud, has no college or law school education. Yet he drafted an appeal for pro-se litigant Keith Lavon Burgess, who is in prison for crack possession. Ray argued that a 20-year mandatory minimum sentence was inappropriate for Burgess because his prior drug conviction was a misdemeanor, not a felony. Against all odds, the U.S. Supreme Court agreed to hear the case, which will be argued by Stanford Law School Professor Jeff Fisher. A successful appeal could reportedly cut Burgess's sentence in half...Ray... conducts his own CLE by reading legal journals and joining legal associations, including the ABA."[28]
- Barbara Schwarz, of Salt Lake City, Utah, has filed a large number of Freedom of Information Act (FOIA) requests. When the responses failed to verify her claims, she responded with litigation, which she has done *pro se*.

According to the *Salt Lake Tribune*, "at least one of Schwarz's lawsuits has been considered by a U.S. District or U.S. Circuit Court of Appeals somewhere in the nation every year since 1993."[29]

- Jim Traficant, a former U.S. Representative from Ohio, represented himself in a Racketeer Influenced and Corrupt Organizations Act case in 1983, and was acquitted of all charges. Traficant would represent himself again in 2002, this time unsuccessfully, and was sentenced to prison for 8 years for taking bribes, filing false tax returns, and racketeering.[30] [31] [32]
- Joe Gamsky, also known as Joe Hunt, successfully represented himself in a kidnapping-murder trial. He had been accused of murdering a businessman in order to use his fortunes to pay off debts Gamsky had accumulated in a Ponzi scheme. The jury hung 8-4 in favor of acquittal. Although he wasn't convicted of that murder, he was previously convicted in the murder of a con artist and is serving life imprisonment without parole.
- Lenny Bruce represented himself in a number of his obscenity trials, including the Chicago Gate of Horn case, *People v. Bruce*.
- Notorious serial murderer and former law student Ted Bundy represented himself during his 1979 murder trial. Bundy was convicted, and ultimately executed, as a result of that case.

Resources

Self-represented litigants may turn to "self-help" assistance. These tend to come from three sources: local courts, which may offer limited self-help assistance [33] ; public interest groups, such as the American Bar Association, which sponsors reform and promotes resources for self-help, and commercial services, which sell pre-made forms allowing self-represented parties to have formally correct documents. For example, SelfHelpSupport.org is an organization with a web site "dedicated to issues related to self-represented litigation". The organization provides no assistance with particular complaints.[34] . "Self-help" legal service providers must take care not to cross the line into giving advice, in order to avoid "unauthorized practice of law," which in the U.S. is the unlawful act of a non lawyer practicing law. *See* [35] .

The American Bar Association (ABA) has also been involved with issues related to self-representation.[36] The ABA has awarded a grant in 2008 to the Chicago-Kent College of Law Center for Access to Justice & Technology for making justice more accessible to the public through the use of the Internet in teaching, legal practice and public access to the law. Their A2J Author Project is a software tool that empowers those from the courts, legal services programs and educational institutions to create guided interviews resulting in document assembly, electronic filing and data collection. Viewers using A2J to go through a guided interview are led down a virtual pathway to the courthouse. As they answer simple questions about their legal issue, the technology then “translates” the answers to create, or assemble, the documents that are needed for filing with the court.[37]

An ABA publication lists "organizations involved in pro se issues" as including (in addition to the ABA itself) the American Judicature Society, the National Center for State Courts, and the State Justice Institute.[36]

States have organizations dedicated to delivering services to pro se litigants. For instance, the Minnesota Bar Association has a "pro se implementation committee".[38]

References

[1] Madelynn Herman (September 25, 2006). "Self-Representation: Pro Se Statistics" (http://www.ncsconline.org/wc/publications/memos/prosestatsmemo.htm). National Center for State Courts. .

[2] Table S-23. Civil Pro Se And Non-Pro Se Filings, by District, During the 12-Month Period Ending September 30, 2007 /http://www.uscourts.gov/judbus2007/tables/S23Sep07.pdf

[3] Barkan, Steven E. (1976-1977), *Political Trials and the Pro Se Defendant in the Adversary System* (http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/socprob24&section=42), **24**, Soc. Probs., pp. 324,

[4] John Greacen, Greacen Associates LLC "Ethical Issues for Judges in Handling Cases with Self-Represented Litigants" http://www.courtinfo.ca.gov/programs/equalaccess/documents/selfrep07/Ethical/May_07_Ethical_Issues.ppt.

[5] *Ibid* (quoting *Gamet v. Blanchard*).

[6] Statistical Overview P. 5. http://www.lasc.org/press_room/annual_reports/reports/2000stats.pdf

[7] "Defending the Right to Self-Representation: An Empirical Look at the Pro Se Felony Defendant by Erica J. Hashimoto, University of Georgia School of Law 2006 http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1000&context=fac_artchop"

[8] *Kay v. Ehrler*, 499 U.S. 432 (1991).

[9] *Kay v. Ehrler*, 499 U.S. 432, 435 (1991), *citing Gonzalez v. Kangas*, 814 F. 2d 1411 (9th Cir. 1987); *Smith v. DeBartoli*, 769 F. 2d 451, 453 (7th Cir. 1985), *cert. denied*, 475 U.S. 1067 (1986); *Turman v. Tuttle*, 711 F. 2d 148 (10th Cir. 1983) (per curiam); *Owens-El v. Robinson*, 694 F. 2d 941 (3d Cir. 1982); *Wright v. Crowell*, 674 F. 2d 521 (6th Cir. 1982) (per curiam); *Cofield v. Atlanta*, 648 F. 2d 986, 987-988 (5th Cir. 1981); *Lovell v. Snow*, 637 F. 2d 170 (1st Cir. 1981); *Davis v. Parratt*, 608 F. 2d 717 (8th Cir. 1979) (per curiam).

[10] *Krislov v. Rednour*, 97 F. Supp. 2d 862, 867 (N.D. Ill. 2000)

[11] *Bond v. Blum*, 317 F.3d 385, (4th Cir. 2003).

[12] *Blazy v. Tenet*, 338 U.S. App. D.C. 300 (D.C. Cir. 1999).

[13] Jonathan R. Macey, *Macey on Corporation Laws* (2000 supplement), §4.02[D] (b), "Appearance *pro se*.

[14] *Jadair Inc. v. United States Fire Insurance Co.* 209 Wis. 2d 187, 561 N.W.2d 718 (Wis. 1997)

[15] Rights of suitors. § 21(2) [As amended April 1977]

[16] Wisconsin Annotated Constitution

[17] 2 Weil & Brown s. 130 (California law)

[18] Case Management Procedures in the Federal Court of Appeals, p. 10, http://www.fjc.gov/public/pdf.nsf/lookup/caseman1.pdf/$file/caseman1.pdf"

[19] **Edward C. Lawson -- official website** (http://edwardlawson.com/)

[20] *Kolender v. Lawson,* 461 U.S. 352 (1983) (http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=461&invol=352)

[21] 1921 Tulsa Race Riot -- CNN (http://www.cnn.com/US/9908/03/tulsa.riots.probe/)

[22] 1921 Tulsa Race Riot -- OSU Library (http://www.library.okstate.edu/hss/chaney/tulsa-race-riots.htm)

[23] Robert Kearns, 77, Inventor of Intermittent Wipers, Dies, Associated Press, New York Times, 2/26/05 http://www.nytimes.com/2005/02/26/obituaries/26kearns.html

[24] Barbara Novovitch, free after 17 years for a rape that he did not commit, New York Times, 12/22/2004

[25] *Supreme Court on a Shoestring* (http://www.washingtonpost.com/wp-dyn/articles/A40461-2005Feb20.html), The Washington Post, February 21, 2005

[26] *From the streets to the Supreme Court* (http://www.godlesshouston.com/news/041018_van_orden.php), The Houston Chronicle Oct. 17, 2004 (article mirrored at www.godlesshouston.com)

[27] U.S. Supreme Court docket for 03-1500 *Van Orden v. Perry* (http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/03-1500.htm)

[28] Law Blog Jailhouse Lawyer of the Day: Michael Ray Wall Street Journal article 2/2/2008

[29] Smith, Christopher. S.L. Woman's Quest Strains Public Records System (http://www.cs.cmu.edu/~dst/Secrets/barbara_schwarz.html), *The Salt Lake Tribune*, May 11, 2003.

[30] Traficant guilty of bribery, racketeering (http://archives.cnn.com/2002/LAW/04/11/traficant.trial/), CNN, April 12, 2002.

[31] http://www.tnr.com/blog/theplank?pid=5782

[32] The Smoking Gun: Archive (http://www.thesmokinggun.com/archive/traficant1.html)

[33] *See, e.g.* Superior Court of California - County of Los Angeles (http://www.lasuperiorcourt.org/) *with various self-help links.*

[34] http://www.selfhelpsupport.org/

[35] (http://www.illinoislawyerfinder.com/publicinfo/unauthorizedpractice.shtml)

[36] Patricia A. Garcia, "Litigants without Lawyers" "Organizations Involved in pro se issues" Resources, American Bar Association, 2002, ISBN 1-59031-061-6, p. 26

[37] http://www.abanet.org/legalservices/delivery/brown.html#kent

[38] http://www2.mnbar.org/committees/pro-se/minutes.htm

Probatio diabolica

Probatio diabolica (Latin: *"devil's proof"*) is a legal requirement to achieve an impossible proof. Where a legal system would appear to require an impossible proof, the remedies are reversing the burden of proof, or giving additional rights to the individual facing the probatio diabolica.

In essence the lack of proof that contradicts the given statement makes the statement true in some sense. This connects with the idea that there is no evidence to prove that the devil exists. But there is also no evidence that says "the devil does not exist" so therefore one cannot rule that the devil doesn't exist.

For example, one party might patent a process for manufacturing an item. Another party might then make the item. The patent holder would normally have to show that the patented process had been improperly used; this is a *probatio diabolica* since on the face of it the patent holder has no information on what process was actually used, and this could render the patent useless. Two possible solutions exist:

- the burden of proof is reversed by presuming that the second manufacturer has improperly used the patented process, unless or until he demonstrates that he has used some other process; or
- the patent holder is given discovery rights, enabling him to get information from the second manufacturer on the process actually used.

Prout patet per recordum

Prout patet per recordum is a Legal Latin phrase, meaning "As appears by the record." It was frequently used in pleadings, generally abbreviated "prout &c.", to indicate that a fact was supported by documentary evidence. Failure to use this phrase correctly could be a fatal defect and so cause a case to fail.[1]

References

[1] *The American jurist and law magazine* (http://books.google.com/books?id=oweoAAAAIAAJ&pg=PA169), **11**, 1834,

Publici juris

Publici juris is a legal Latin term, approximately translating to English as "of public right". An example is water in the sea.

Many times referred to in discussion of property rights in law.

"But the news element - the information respecting current events contained in the literary production - is not the creation of the writer, but is a report of matters that ordinarily are *publici juris*; it is history of the day." International News Service v. Associated Press, 248 U.S. 215, 234 (1918).

Quaere

Quaere is legal Latin, literally meaning "inquire" or "query". In legal drafting it is usually used to indicate that the person expressing the view that precedes the phrase may not adhere to the hypothesis following it. For example:

> "I am of the view that the defendant had constructive knowledge of the acts of the sub-contractor, although *quaere* whether this would still be true had the sub-contractor not included a summary of those acts in the joint proposal that was issued."

The word Quaere has occasionally, as a result of misunderstanding, appeared on maps or in gazetteers. The columnist Miles Kington, writing in *The Independent*, records that a map-maker c. 1578 was compiling a map of Wiltshire. There was a hamlet where he had doubts about the correct name. He therefore wrote on the draft map *Quaere*. This was mistaken by the engraver of the map as being the name of a hamlet or village.[1] The error persisted for well over two centuries; the following brief entry appears in a gazetteer published in 1805:

QUÆRE, (Wilts) near Wilton.[2]

References

[1] *The Independent*, early 2000.

[2] *The Traveller's Guide; or, English Itinerary*, by W.C. Oulton, Esq., published by James Cundee, Ivy-Lane [London], 1805, Vol 2, p 448.

Quantum meruit

Quantum meruit is a Latin phrase meaning "as much as he has deserved". In the context of contract law, it means something along the lines of "reasonable value of services".

In the United States, the elements of quantum meruit are determined by state common law. For example, to state a claim for unjust enrichment in New York, a plaintiff must allege that (1) defendant was enriched; (2) the enrichment was at plaintiff's expense; and (3) the circumstances were such that equity and good conscience require defendants to make restitution.

Situations

Quantum meruit is the measure of damages where an express contract is mutually modified by the implied agreement of the parties, or not completed. While there is often confusion between the concept of quantum meruit and that of "unjust enrichment" of one party at the expense of another, the two concepts are distinct.

The concept of quantum meruit applies to the following situations:

I. When a person hires another to do work for him, and the contract is either not completed or is otherwise rendered un-performable, the person performing may sue for the value of the improvements made or the services rendered to the defendant. The law implies a promise from the employer to the workman that he will pay him for his services, as much as he may deserve or merit.

The measure of value set forth in a contract may be submitted to the court as evidence of the value of the improvements or services, but the court is NOT required to use the contract's terms when calculating a quantum meruit award. (This is because the values set forth in the contract are rebuttable, meaning the one who ultimately may have to pay the award can contest the value of services set in the contract.)

II. When there is an express contract for a stipulated amount and mode of compensation for services, the plaintiff cannot abandon the contract and resort to an action for a quantum meruit on an implied assumpsit. However, if there is a total failure of consideration, the plaintiff has a right to elect to repudiate the contract and may then seek compensation on a quantum meruit basis.

Examples

I. An example used in United States law schools is usually as follows:

> A Man (plaintiff in this hypothetical) talks to a neighbor (defendant) and tells him he's going to build a wall on their property that will give a benefit to both the man and his neighbor; the Man implies that it would be cheaper for both of them if the Man perform the labor instead of hiring a professional. The neighbor agrees that the wall should be built, but no price is negotiated. The man builds the wall, and then asks the neighbor to compensate him for the benefit of the wall that he conferred on the neighbor (usually half the value of the wall). The neighbor refuses. The man is entitled to some compensation based on *quantum meruit*. This is because there was an implied promise between the man and the neighbor, which is derived from contract law, because the man was acting under the assumption that the neighbor would pay for part of his services (see Estoppel). The plaintiff files suit in court on the basis of *quantum meruit*. The plaintiff makes an estimation of value conferred on the defendant, which the defendant has not paid. Plaintiff will likely win because of quantum meruit. The winning of the case will be directed as an assumpsit on a *quantum meruit*. *Day v. Caton*, 119 Mass. 513 (1876).
>
> In Canada, 'quantum meruit' is not based on contract law but rather depends on equitable principles of unjust enrichment. Estoppel allows an implied promise to act as a shield against litigation but never a sword. Therefore an implied promise would not create a cause of action. Instead 'quantum meruit' is based on the need

to prevent the neighbor from unjustly enriching himself by allowing the fence builder to proceed with the work based on an assumption that he would be compensated.

II. This is not the only factual scenario where this will work. Quantum meruit will also work where there is a breached contract.

A contractor is contracted to work on a school. The contractor does some work but then quits (breach of contract). The contractor is entitled to be paid for the services he has already provided for the school on the basis of *quantum meruit* (however the school may be entitled to damages arising out of the need to look for a new contractor).

III. If a plaintiff is prohibited from completing work based on a long term service contract where other contracts have been negotiated, the plaintiff may ask a court to determine a judgment based on the amounts that the defendant benefited. Third parties may also bring actions against the plaintiff.

IV. A Promoter enters into a long term service contract with a Theatre to exclusively present events for a specified period. The promoter books events and contracts with others to perform during the entire period but alleges that the theatre is unsafe. The Promoter withholds payments until the theatre is made safe. The Theatre performs no repairs. Instead the Theatre terminates the entire service contract before the benefit of the events occurs to the plaintiff and refuses to repair the theatre. After the contract is terminated, the theatre operates the events negotiated by the promoter and gains a significant benefit but does not pay the promoter anything. The theatre also cancels some events without cause. A court determines that the promoter is entitled to an assumpsit on a *quantum meruit*.

Quantum meruit cases

- *Boardman v Phipps*
- *Sumpter v Hedges* [1898] 1 QB 673

See also

- Restitution
- Contract

Quare impedit

Quare impedit, in English law, a form of action by which the right of presentation to a benefice is tried.

It is so called from the words of the writ formerly in use, which directed the sheriff to command the person disturbing the possession to permit the plaintiff to present a fit person, or to show cause "why he hinders" the plaintiff in his right. The action was one of the few real actions preserved by the Real Property Limitation Act 1833, and survived up to 1860.

The effect of the Common Law Procedure Act 1860, 26, was to assimilate proceedings in quare impedit as far as possible to those in an ordinary action. It is now usually brought against a bishop to try the legality of his refusal to institute a particular clerk. The bishop must fully state upon the pleadings the grounds on which he refuses. Quare impedit is peculiarly the remedy of the patron; the remedy of the clerk is the proceeding called duplex querela in the ecclesiastical court. The action is not barred till the expiration of sixty years, or of three successive incumbencies adverse to the plaintiff's right, whichever period be the longer (Real Property Limitation Act, 1833, 29).

Where the patron of a benefice is a Roman Catholic, one of the universities presents in his place (1689, i Will. & Mary, sess. i, c. 29). By 13 Anne c. 13 (1714), during the pendency of a quare impedit to which either of the universities is a party in right of the patron being a Roman Catholic, the court has power toadminister an oath for the discovery of any secret trust, and to order the *cestui que* trust to repeat and subscribe a declaration against transubstantiation. In Scotland the effect of a quare impedit is attained by action of declarator. In the United States, owing to the difference of ecclesiastical organization, the action is unknown.

Quasi in rem jurisdiction

Quasi in rem (Latin, *"as if against a thing"*) is a legal term referring to a legal action based on property rights of a person absent from the jurisdiction. In the American legal system the state can assert power over an individual simply based on the fact that this individual has property (bank account, debt, share of stock, land) in the state. Quasi in rem jurisdiction does not have much function in the United States any longer. However, in very specific cases, quasi in rem jurisdiction can still be effective.

A quasi in rem action is commonly used when jurisdiction over the defendant is unobtainable due to his/her absence from the state. Any judgment will affect only the property seized, as *in personam* jurisdiction is unobtainable.[1]

Of note, in a *quasi in rem* case the court may lack personal jurisdiction over the defendant, but it has jurisdiction over the defendant's property. The property could be seized to obtain a claim against the defendant.[1] A judgment based on *quasi in rem* jurisdiction generally affects rights to the property only between the persons involved and does not "bind the entire world" as does a judgment based on "*jurisdiction in rem*".

The claim does not have to be related to the property seized, but the person must have minimum contacts with the forum state in order for jurisdiction to be proper.

On June 24, 1977, the Supreme Court has decided that the requirement that the circumstances giving rise to jurisdiction comply with the notion of "fair play and substantial justice" should apply to the quasi in rem jurisdiction questions. The Supreme Court of the United States significantly diminished the utility of the quasi in rem jurisdiction because if the case meets the minimum contacts, fair play and substantial justice tests, the action can be brought under the in personam jurisdiction. Quasi in rem jurisdiction, however, can still be an effective option to bring the lawsuit to a particular court because quasi in rem jurisdiction allows to overcome limitations of the long arm statute of a particular state.

See also

Quasi in Rem Jurisdiction [2]

References

[1] Yeazell, Stephen (2008). *Civil Procedure* (7th Ed. ed.). Frederick, MD: Aspen Publishers. p. 85. ISBN 9780735569256.
[2] http://law.jrank.org/pages/9604/Quasi-in-Rem-Jurisdiction.html

Qui facit per alium facit per se

Qui facit per alium facit per se is a Latin legal term meaning, "He who acts through another does the act himself." It is a fundamental maxim of agency. *Stroman Motor Co. v Brown*, 116 Okla 36, 243 P 133. A maxim often stated in discussing the liability of employer for the act of employee. 35 Am J1st M & S § 543

According to this maxim, if in the nature of things the master is obliged to perform the duties by employing servants, he is responsible for their act in the same way that he is responsible for his own acts. Anno: 25 ALR2d 67.

Qui tam

In common law, a writ of ***qui tam*** is a writ whereby a private individual who assists a prosecution can receive all or part of any penalty imposed. Its name is an abbreviation of the Latin phrase ***qui tam pro domino rege quam pro se ipso in hac parte sequitur***, meaning "[he] who sues in this matter for the king as [well as] for himself."

The writ fell into disuse in England and Wales following the Common Informers Act 1951 but, as of 2010, remains current in the United States under the False Claims Act, 31 U.S.C. § 3729 [1] *et seq.*, which allows for a private individual, or "whistleblower," with knowledge of past or present fraud committed against the federal government to bring suit on its behalf. This provision allows a private person, known as a "relator," to bring a lawsuit on behalf of the United States, where the private person has information that the named defendant has knowingly submitted or caused the submission of false or fraudulent claims to the United States. The relator need not have been personally harmed by the defendant's conduct; instead, the relator is recognized as receiving legal standing (law) to sue by way of a "partial assignment" of the injury to the government caused by the alleged fraud.[2] The information must not be public knowledge, unless the relator qualifies as an "original source."[3] There are also qui tam provisions in 35 U.S.C. § 292 [4] regarding false marking, 18 U.S.C. § 962 [5] arming vessels against friendly nations, 25 U.S.C. § 201 [6] violating Indian protection laws, and 46a U.S.C. 723 [7] regarding the removal of undersea treasure from the Florida coast to foreign nations.

False Claims Act

The **False Claims Act** (31 U.S.C. § 3729 [1]–3733 [8], also called the "**Lincoln Law**") is an American federal law which allows people who are not affiliated with the government to file actions against federal contractors claiming fraud against the government. The act of filing such actions is informally called "whistleblowing." Persons filing under the Act stand to receive a portion (usually about 15-25 percent) of any recovered damages. The Act provides a legal tool to counteract fraudulent billings turned in to the Federal Government. Claims under the law have been filed by persons with insider knowledge of false claims which have typically involved health care, military, or other government spending programs.

The American Civil War (1861–1865) was marked by fraud on all levels in the Union north and the Confederate south. Some say the False Claims Act came about because of bad mules. During the Civil War, unscrupulous early day defense contractors sold the Union Army decrepit horses and mules in ill health, faulty rifles and ammunition,

and rancid rations and provisions among other unscrupulous actions.[9] The False Claims Act, passed by Congress on March 2, 1863, was an effort by the USA to respond to entrenched fraud where the official Justice Department was reticent to prosecute fraud cases. Importantly, a reward was offered in what is called the "qui tam" provision, which permits citizens to sue on behalf of the government and be paid a percentage of the recovery.

The False Claims Act provides incentive to relators by granting them between 15% and 25% of any award or settlement amount. In addition, the statute provides an award of the relator's attorney's fees, making *qui tam* actions a popular topic for the plaintiff's bar. An individual bringing suit pro se, that is, without the representation of a lawyer, may not bring a qui tam action under the False Claims Act. See, for example, United States ex Rel. Lu v. Ou, 368 F.3d 773 (7th Cir. 2004).

Once a relator brings suit on behalf of the government, the Department of Justice, in conjunction with a U.S. Attorney for the district in which the suit was filed, have the option to intervene in the suit. If the government does intervene, it will notify the company or person being sued that a claim has been filed. *Qui tam* actions are filed under seal, which has to be partially lifted by the court to allow this type of disclosure. The seal prohibits the defendant from disclosing even the mere existence of the case to anyone, including its shareholders, a fact which may cause conflicts with the defendant's obligation under Securities & Exchange Commission or stock exchange regulations that require it to disclose lawsuits that could materially affect stock prices. The government may subsequently, without disclosing the identity of the plaintiff or any of the facts, begin taking discovery from the defendant.

If the government does not decide to participate in a *qui tam* action, the relator may proceed alone without the Department of Justice, though such cases historically have a much lower success rate. Relators who do prevail in such cases will get a higher relator's share, about 25% to 30%. It is conventionally thought that the government chooses legal matters it would prosecute because the government would only want to get involved in what it believes are winning cases.

History

Qui tam actions were first used in 13th century England as a way to enforce the King's laws. They existed in the United States in colonial times, and were embraced by the first U.S. Congress as a way to enforce the laws when the new federal government had virtually no law enforcement officers.[10] The False Claims Act was passed in 1863 during the U.S. Civil War, but was substantially weakened in 1943 during World War II while the government rushed to sign large military procurement contracts. It was strengthened again in 1986 after a period of military expansion at a time when there were many stories of defense contractor price gouging.[10]

The practice fell into disrepute in England in the 19th century by which time it was principally used to enforce laws related to Christian Sunday observance. It was brought to an effective end by the Common Informers Act 1951 but, in 2007, there were proposals to introduce legal provision on the U.S. model back to the United Kingdom.[11]

Whistleblowers

"*Whistleblower*" can mean any person who reveals misconduct by his or her employer or another business or entity. The misconduct may be in the form of breaking the law, committing fraud, or corruption. That type of fraud can be a violation of the False Claims Act, or similar state and local laws. And a whistleblower who exposes fraud on the government can bring a qui tam lawsuit on behalf of the government, and can receive a share of the recovery as his or her reward.

In order for a whistleblower (also known as a "relator" in the context of the FCA) to bring a qui tam action that is based upon publicly-disclosed information, that person must legally qualify as an "original source." See *Rockwell International Corp. v. United States*.

Examples

In September 2009, a former Pfizer Inc. sales representative, John Kopchinski, was awarded $51.5 million for his role as a whistleblower in the investigation of Pfizer's marketing practices of Bextra. Pfizer pled guilty to various civil and criminal charges and paid in total $2.3 billion to the government. The case netted the largest criminal fine ever imposed in the United States for any matter, $1.195 billion,[12] and the largest civil fraud settlement against any pharmaceutical company. [13] Qui tam "relators" are not eligible to receive shares of criminal fines. The $102 million that was distributed between the six whistleblowers was calculated from the fines paid in the civil settlement. Kopchinski's allegations were the basis for the majority Pfizer's assessed civil fine, and explains the size of his share relative to the other whistleblowers.[14] Kopchinski and his attorneys filed the False Claims Act complaint in 2004 and alleged Pfizer systemically violated the federal Anti-Kickback statute, 42 U.S.C. § 1320a-7b(b) and the off-label marketing provision within the Federal Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. §§301-97. [15] The qui tam provisions of the False Claims Act were triggered by the reimbursement for Bextra through Federal and State government programs, including but not limited to Medicare and Medicaid.

See also

- Private attorney general
- *Parens patriae*

Bibliography

- For a history of *qui tam* actions, see "*Vermont Agency of Natural Resources v. United States ex. rel. Stevens* (98-1828) 529 U.S. 765 (2000)" [16]. *Supreme Court collection*. Cornell University Law School. Retrieved 2008-03-13.
- Bad Mules: A Primer on the Federal False Claims Act [17]

External links

- Taxpayers Against Fraud [18]
- Bad Mules: A Primer on the Federal False Claims Act [17]
- Blog covering developments in the False Claims Act [19]
- Department of Justice Presentation on the University of Washington Overbilling Case [20]

References

[1] http://www.law.cornell.edu/uscode/31/3729.html

[2] See Nathan D. Sturycz, *The King and I?: An Examination of the Interest Qui Tam Relators Represent and the Implications for Future False Claims Act Litigation*, 28 St. Louis Pub. L. Rev. 459 (2009), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1537749

[3] *See, e.g. Rockwell International Corp. v. United States*, No. 05-1272, 549 U.S. 457 (2007) Text of *Rockwell International Corp. v. United State* is available from: · Official U.S. Supreme Court slip opinion (http://www.supremecourt.gov/opinions/06pdf/05-1272.pdf)

[4] http://www.law.cornell.edu/uscode/35/292.html

[5] http://www.law.cornell.edu/uscode/18/962.html

[6] http://www.law.cornell.edu/uscode/25/201.html

[7] http://www.law.cornell.edu/uscode/html/uscode46a/usc_sec_46a_00000723----000-.html

[8] http://www.law.cornell.edu/uscode/31/3733.html

[9] Larry D. Lahman, "Bad Mules: A Primer on the Federal False Claims Act", 76 Okla. B. J. 901, 901 (2005) http://www.okbar.org/obj/articles_05/040905lahman.htm

[10] "Why the False Claims Act?" (http://www.taf.org/whytaf.htm). The False Claims Act Legal Center. . Retrieved 2008-03-13.

[11] Walker, P (2007-05-24). "Fraud whistleblowers could get cash rewards" (http://www.guardian.co.uk/uk/2007/may/24/ukcrime.immigrationpolicy). *The Guardian* (London). . Retrieved 2008-03-12.

[12] http://www.usdoj.gov/usao/ma/Press%20Office%20-%20Press%20Release%20Files/Sept2009/PharmaciaPlea.html

[13] http://www.fbi.gov/pressrel/pressrel09/justice_090209.htm

[14] Berkrot, B (2009). "Pfizer whistleblower's ordeal reaps big rewards" (http://finance.yahoo.com/news/Pfizer-whistleblowers-ordeal-rb-1977940162.html?x=0&.v=1). *Reuters*. . Retrieved 2009-08-03.
[15] http://www.phillipsandcohen.com/CM/NewsSettlements/NewsSettlements536.asp
[16] http://www.law.cornell.edu/supct/html/98-1828.ZO.html
[17] http://www.okbar.org/obj/articles_05/040905lahman.htm
[18] http://www.taf.org
[19] http://www.falseclaimscounsel.com/wordpress
[20] http://depts.washington.edu/uwmbrc/supplements/DOJ_Presentation_12_6_03.pdf

Quia Emptores

Quia Emptores (medieval Latin for "because the buyers", the incipit of the document) was a statute passed in 1290 by Edward I of England that prevented tenants from alienating their lands to others by subinfeudation, instead requiring all tenants wishing to alienate their land to do so by substitution. Quia Emptores, along with its companion statute of Quo Warranto, was intended to remedy land ownership disputes and consequent financial difficulties that had resulted from the decline of the traditional feudal system during the High Middle Ages.

Overview

As there had been no survey of land titles since the Domesday Book of William the Conqueror in 1086, outright title to land had become seriously clouded in many cases and was often in dispute. Furthermore, free tenants were able to grant away their land such that the Lords who held outright title of such land did not have any power over the sub-tenant to collect taxes or enforce feudal duties, a practice known as alienation. Quia Emptores mandated that when land was alienated, the grantee was required to assume all tax and feudal obligations of the original tenant, known as *substitution*. By effectively ending the practice of subinfeudation, Quia Emptores hastened the end of feudalism per se in England, which again had already been on the decline for quite some time. Cash rents and outright sales of land increasingly took the place of direct feudal obligations that had been made impractical and outmoded by Quia Emptores. This gave rise to the practice of *livery and maintenance* or bastard feudalism, the retention and control by the nobility of land, money, soldiers and servants via direct salaries, land sales and rent payments. Such in turn was one of the underlying causes of the Wars of the Roses, the English civil wars fought by the House of York and House of Lancaster for control of the English Crown from 1455 to 1485. By the mid-fifteenth century the major nobility, particularly the Houses of York and Lancaster, were able to assemble vast estates, considerable sums of money and large private armies on retainer through post-Quia Emptores land management practices and direct sales of land. The two noble Houses thus grew more powerful than the Crown itself, with the consequent wars between the two Houses for control of the realm. Ultimately the statutes of Quia Emptores and Quo Warranto became the foundation of modern real estate and landlord/tenant relations law. It is currently the law of Ireland.

Background leading to the statute Quia Emptores

The Normans mandated primogeniture inheritance

Prior to the Norman Conquest of England in 1066, Anglo-Saxon land law was based on allodial title. Tribal lands were held in perpetuity by the group as a whole. The Normans changed this system by mandating primogeniture inheritance (the inheritance by the eldest son, at the expense of the other sons). The exact nature of allodialism as it existed in Anglo-Saxon England has been debated, but to no definitive end. On one side, it has been argued in the mark system, that Saxon allodialism was a highly idealistic socialist state. Countering this utopian view was Numa Denis Fustel de Coulanges in his essay "The Origins of Property in Land", and Frederic William Maitland who found it to be inconsistent with extant Anglo-Saxon documents from pre-Norman times.

In English law after the Conquest, the lord remained a grantor after the grant of an estate in fee-simple. There was no land in England without its lord: "Nulle terre sans seigneur" was the feudal maxim. The principal incidents of a seignory were an oath of fealty, a quit or chief rent; a relief of one year's quit rent, and the right of escheat. In return, for these privileges the lord was liable to forfeit his rights if he neglected to protect and defend the tenant or did anything injurious to the feudal relation. After Quia Emptores, every existing seignory must have been created prior to the enactment of the statute.

At the time of the Conquest, William I of England granted fiefs to his lords in the manner of a continental benefice or feudal benefice which assured little beyond a life tenure. These grants were in turn subject to subinfeudation. Immediately after the Conquest, the English charters were careful to avoid saying the donee was to take the estate for life, or whether the heir was to have any rights. At this time, there is abundant evidence that lords refused to regrant on any terms to the deceased tenant's heirs; the deed phrase "to [A] and his heirs and assigns" is the product of efforts by purchasers to preserve such rights on behalf of those who might inherit or purchase the land from them. The practice of demanding a monetary payment for regranting of tenancy to the heirs quickly became the norm. In 1100, the Charter of Liberties of Henry I of England contained the clause:

> "If any of my earls, barons or other tenants in chief die, his heir shall not redeem his land as he did in the time of my brother (i.e. William II of England), but shall take it up with a just and lawful relief. The men of my barons shall take up (*relevabunt*) their lands from their lords with a just and lawful relief."[1]

The purpose of this charter was to establish the hereditary principle that the tenants in chief would have a superior status within the law as opposed to the sub-tenants. These overlords further subinfeudated those under them.

Relief later was set at a rate per fee in the Magna Carta.

The intent of primogeniture inheritance was to keep large land holdings in the hands of a relatively few, trustworthy lords. In reality, the whole feudal structure was a patchwork of smaller land holders. The history of the major landholding lords is fairly well recorded. The nature of the smaller landholders has been difficult to reconstruct. By the time of Bracton, it was settled law that the word "fee" connoted inheritability and the maximum of legal ownership. The word "fee" is associated with the Norman feudal system and is in contradistinction to the Anglo-Saxon allodial system. It became common practice to subinfeudate to the younger sons. There are cases from the time, in which a writ of the court was granted demanding that the eldest, inheriting son be forced to "accept in homage" the younger sons as a way of enforcing their subinfeudation.

The usage of land by tenants (serfs and peasants) was more difficult. Some families stayed on the land for generations. When the nominal head of the family died, it was usually of little consequence to the lord, or the owners of the title to the land. The practice of socage whereby the peasants pledged a payment (either in agricultural goods or money) for the privilege to inhabit and farm the land became the standard practice. After the payment, the peasant was considered "soked", that is, paid in full. It was discovered that agricultural land would be more economically tended if the peasants were assured an inheritance of the land to their descendants. This right to inherit was quickly followed by the right to alienation, i.e. the right to sell the inheritance to an outside party. Disputes arose when a family member wanted to leave inherited land to the Church, or wanted to sell the land to a third party. Questions concerning the rights of the overlord and the other family members were frequently heard in the courts prior to Quia Emptores. In general, it was held that a donor should pay the other parties who had an interest to give them relief. However, the results were haphazard and the rulings of various courts were patchwork. There was little established stare decisis from jurisdiction to jurisdiction.

This difficulty is illustrated in statements made by Ranulf de Glanvill (died 1190), the chief Justiciar of Henry II:

> "Every freeman, therefore, who holds land can give a certain part in marriage with his daughter or any other woman whether he has an heir or not, and whether the heir is willing or not, and even against the opposition and claim of such an heir. Every man, moreover, can give a certain part of his free tenement to whomsoever he will as a reward to his service, or in charity to a religious place, in such wise that if seisin has followed upon the gift it shall remain perpetually to the donee and his heirs if it were granted by hereditary right. But if seisin did not follow upon the gift it cannot be maintained after the donor's death against the will of the heir, for it is to be construed rather than a true promise of a gift. It is moreover generally lawful for a man to give during his lifetime a reasonable part of his land to whomsoever he will according to his fancy, but this does not apply to deathbed gifts, for the donor might then, (if such gifts were allowed) make an improvident distribution of his patrimony as a result of a sudden passion or failing reason, as frequently happens. However, a gift made to anyone in a last will can be sustained if it was made with the consent of the heir and confirmed by him."[2]

It has been commented that this illustrates a desire in Glanvill's time to formalize the practices of the day, in which someone having a tenancy could dispose of his land before death. While several problems were addressed (land given in marriage, land given on a whim, or on a death bed), the rules were still vague, when compared to similar cases in contemporaneous France. In the latter, strict rules had arisen defining exact amounts which could be allotted in situations such as "alienation of one-third, or alienation of one-half" of a patrimony or conquest. Glanvill is imprecise, using terms such as "a reasonable amount" and "a certain part".

The statute Quia Emptores

Quia Emptores was a kind of legislative afterthought meant to rectify confusion in:

- land tenure
- frankalmoign
- subinfeudation
- mesne lords
- petty serjeanty
- substitution
- apportionment
- economic delution

It indirectly affected the practices of:

- distraint (also called: distress or districtio), previously legislated for in the Statute of Marlborough (1267)
- escheat
- wardship
- marriage
- socage

Parliament passed the Statute Quia Emptores in 1290

Statute Quia Emptores is but one of a long list of legislative acts from the reign of Edward I of England which had the purpose of concentrating power in the monarchy. England had a plethora of courts and varying legal traditions. Some direction toward order had been laid down in the Magna Carta, the Provisions of Oxford, and in the scanty legislation of Simon de Montfort, 6th Earl of Leicester. Edward I set about to rationalize and modernize the law. He reigned for thirty-five years. The first period, from 1272-90 consisted of the enactment of Statutes of Westminster (1275) and the Statute of Gloucester (1278), and the incorporation of recently conquered Wales into the realm. These were followed by the Statute Quo Warranto and the Statute of Mortmain (1279). The latter was designed to stop the increasing amount of lands which were ending up in Church ownership. The Second Statute of Westminster (1285) contained the clause De Donis Conditionalibus which shaped the system of entailing estates. The Statute of Winchester was passed in 1285. This was followed by the Statute Quia Emptores (1290), which was only about 500 words in length. It was meant to deal with various unsettled complications. It provided that subtenants could not be allowed to alienate land to other persons while retaining the nominal possession and feudal rights over it. The seller had to relinquish all rights and duties to the new buyer, and retained nothing. This was the end of subinfeudation. The middle lords or mesne lords (who could be common persons) and had granted land for service to those lower on the social scale could no longer exist. The old feudal sequence was: the King granted land to a great lord, who then granted to lesser lords or commoners, who in turn repeated the process, becoming lesser lords (mesne lords) themselves. This was subinfeudation. The effect was to make the transfer of land a completely commercial transaction, and not one of feudalism. There were no provisions placed upon the Crown.

Quia Emptores ended the ancient practice of frankalmoign whereby lands could be donated to a Church organization to be held in perpetuity. Frankalmoign created a tenure whereby the holder (the Church) was exempt from all services, except trinoda necessitas. Quia Emptores allowed no new tenure in frankalmoign, except by the Crown.[3] The issues arising from frankalmoign had been addressed by the Statute of Mortmain. Quia Emptores took Mortmain one step further by banning outright, the formation of new tenures, except by the Crown.

The questions inevitably arise about the Statute Quia Emptores: was it proactive or reactive? And who benefited: King, lords or free tenants? Historians are still divided. But it is logical to conclude that Quia Emptores attempted to formalize practices of exchanging money for land, which had been going on for some centuries. There were other problems in inheritance which had festered since the time of William I. In a proclamation from 1066, William swept away the entire tradition of familial or allodial inheritance by claiming that "every child be his father's heir." The reality was different, and resulted in primogeniture inheritance. The reorganization of the country along the lines of feudalism was both shocking and difficult. Traitors forfeited their land to the Crown. This principle was designed to weaken opposition to the Crown. Frequently, it punished innocent members of the traitor's family. This was not popular. There was a saying from Kent: "Father to the bough, son to the plough (the father hanged for treason, the son continues to work the land)." The rule in Kent was that confiscated lands would be restored to the innocent family members. Seized lands throughout England were often restored to the family, despite what royal decrees may have indicated.[4] It is arguable that the institution of inheritance and subsequent alienation rights by tenants ended feudalism in England. Quia Emptores only formalized that end. In essence, feudalism was turned on its head. The ones with the apparent rights were the tenant class, while the great lords were still beholden to Crown.[5]

The issue of alienation of serjeanty had been settled long before Quia Emptores. In 1198 the itinerant justices were directed to make an inquiry into the nature of the King's serjeanties. This was repeated in 1205 by King John who ordered the seizure of all Lancaster serjeanties, thegnages and dregnages that had been alienated since the time of Henry II of England. These could not be alienated without a royal license. The Charter of 1217 reaffirmed this doctrine. Henry III of England issued an important ordinance in 1256. In it the King asserted that it was an intolerable invasion of royal rights that men should without his special consent, enter by way of purchase or otherwise, the baronies and fees that were holden to him in chief. Anyone who defied the decree was subject to seizure by the sheriff. Later case law indicates jurists remained largely ignorant of this decree, which suggests the Crown was reluctant to enforce it.[6]

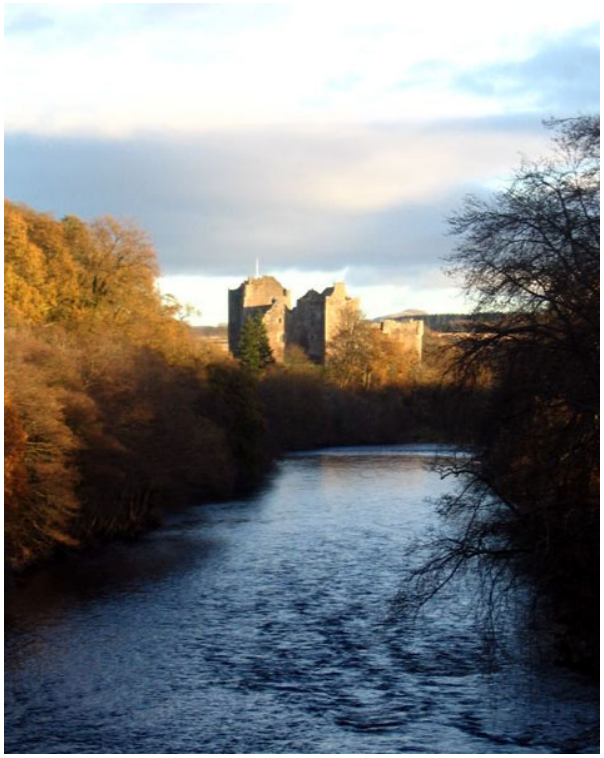
Quia Emptores ended subinfeudation

Quia Emptores addressed the question of outright sales of land rights. It declared that every freeman might sell his tenement or any part of it, but in such a manner that the feoffee should hold the same lord and by the same services, of whom and by which the feoffor held. In case only a part was sold, the services were to be apportioned between the part sold and the part retained in accordance with their quantities.[7]

The Statute was considered a compromise. It allowed a continuance of the practice of selling (alienating) land, tenancy, rights and privileges for money or other value, but by substitution. One tenant could be replaced by many. In this, the great lords were forced to concede to the right of alienation to the tenants. They had been at risk of losing their services by apportionment and economic dilution. This practice had been going on for some time. Quia Emptores merely attempted to rationalize and control these practices. The great lords gained by ending the practice of subinfeudation with its consequent depreciation of escheat, wardship and marriage. History would indicate the great lords were winners as well as the Crown, since land bought from lowly tenants had a tendency to stay within their families, as has been noted supra.

Nothing in Quia Emptores addressed the King's rights. No-one seemed to have imagined that the tenants in chief of the crown were set free to alienate without royal license. On the contrary, at the time the right of alienation by

substitution was being set in Statute, the King's claim to restrain any alienation by his tenants was strengthened. In the opinion of Pollack and Maitland, it is a mistake to conclude that Quia Emptores was enacted in the interest of the great lords. The one person who had all to gain and nothing to lose was the King.[8]



Quia Emptores allowed freemen to sell their rights to tenancy or rights of inheritance in land.

The process of escheat was affected by Quia Emptores. In Glanvill's day, there was an occasional mention of ultimus heres; the land escheats (excadere) to the lord in the absence of a clear tenant heir. If a tenant was outlawed or convicted of a felony the King could exercise the ancient right of wasting the criminal's land for a year and a day. After that, the land returned to the lord. There was a distinction between felony and treason. One guilty of treason forfeited all lands to the King. John and his heirs frequently insisted on seizing terrea Normannorum, the English land of those who preferred to be Frenchmen rather than Englishmen when the victories of Philip Augustus forced a proclamation of allegiance. Frequently, disavowal of a feudal bond was considered a felony. In this, the lords could escheat land from those who refused to be true to their feudal services. On the other hand, there were tenants who were sluggish in performing their duties, while not being outright rebellious against the lord. Remedies in the courts against this sort of thing, even in Bracton's day, were available. But they were considered laborious, and frequently ineffectual in compelling the desired performance. The commonest mechanism would be distraint, also called distress (districtio): the lord would seize some chattel, and hold it until performance was achieved. This practice had been dealt with in the 1267 Statute of Marlborough. Even so, it remained the most common extrajudicial method applied by the lords at the time of Quia Emptores.

Expulsion of tenants from the land for failure to perform was always a difficult idea, and usually necessitated a lengthy court battle. The lord who escheated could not profit from the land, and had to hold it open for the tenant who could fulfill the obligation at a future date. Quia Emptores laid out, with some definition which had previously been lacking in the issue of tenures. In a sense, the old stereotypes were locked in place. Every feoffment made by a new tenant could not be in frankalmoign, since the donee was a layman; it would be reckoned by the laws of socage. Socage grew at the expense of frankalmoign. Subinfeudation was ended. The tenant in chief could not alienate without the license of the King. Petty serjeanty came to be treated as "socage in effect".[9]

United States

Quia Emptores in Colonial America

- Grants of the English Colonies
- De Peyster v. Michael, New York
- Van Renssalaer v. Hayes, New York
- Miller v. Miller, Kansas
- Mandelbaum v. McDonnell, Michigan
- Cuthbert v. Kuhn, Pennsylvania
- New York State Constitution

The English colonies in North America were founded upon royal grants or licenses. Specifically, British colonization of North America was by charter colony or proprietary colony. In this sense, they were founded upon the principles outlined by Quia Emptores. The territories were granted under conditions by which English law controlled private estates of land. The colonies were royal grants. An entire province, or any part of it, could be leased, sold or otherwise disposed of like a private estate. In 1664, the Duke of York sold New Jersey to Berkeley and Carteret. The sale was effected by deeds of lease and release. In 1708, William Penn mortgaged Pennsylvania, and under his will devising the province legal complications arose which necessitated a suit in chancery. Over time, Quia Emptores was suspended in the colonies. Arguably, certain aspects of it may still be in effect in some of the original colony states such as New York, Virginia, Maryland and Pennsylvania. However, like everything else involving Quia Emptores, opinion varies, and some element of confusion reigns. Some U.S. state court decisions have dealt with Quia Emptores. Prominent among these was the 1852 New York case of De Peyster v. Michael.[10] There the court record is useful in describing the nature of English feudalism: "At common law a feoffment in fee did not originally pass an estate in the sense in which the term is now understood. The purchaser took only a usufructary interest, without the power of alienation in prejudice of the lord. In default of heirs, the tenure became extinct and the land reverted to the lord. Under the system of English feudal tenures, all lands in the Kingdom, were supposed to be holden mediately or immediately of the King who was styled the 'lord paramount', or above all. Such tenants as held under the King immediately, when they granted out portions of their lands to inferior persons, also became lords with respect to those inferior persons, since they were still tenants with respect to the King, and thus partaking of a middle nature were called "mesne' or 'middle lords'. So, if the King granted a manor to A and A granted a portion of the land to B, now B was said to hold of A, and A of the King; or in other words, B held his lands immediately of A and mediately of the King. The King was therefore styled 'Lord Paramount'; A was both tenant and lord,or a mesne lord, and B was called 'tenant paravail', or the lowest tenant. Out of the feudal tenures or holdings sprung certain rights and incidents, among those which were fealty and escheat. Both these were incidents of socage tenure. Fealty is the obligation of fidelty with the tenant owed to the lord. Escheat was the reversion of the estate on a grant in fee simple upon a failure of the heirs of the owner. Fealty was annexed to and attendant on the reversion. They were inseparable. These incidents of feudal tenure belonged to the lord of whome the lands were immediately holden, that is to say, to him of whom the owner for the time being purchased. These grants were called subinfeudations."

In this case, the New York court offered the opinion that Quia Emptores had never been effect in the colonies. A different opinion was rendered by the New York court in the 1859 case of Van Rensselaer v. Hays (19 NY 68) where is was written that Quia Emptores had always been in effect in New York and all the colonies. There, the court noted: "In the early vigor of the feudal system, a tenant in fee could not alienate the feud without the consent of the immediate superior; but this extreme rigor was soon afterward relaxed, and it was avoided by the practice of subinfeudation, which consisted in the tenant enfeoffing another to hold of himself by the fealty and such services as might be reserved by the act of feoffment. Thus, a new tenure was created upon every alienation; and thus there arose a series of lords of the same lands, the first called the 'chief lord' holding immediately of the sovereign, the next grade holding of them, and so on, each alienation creating another lord and another tenant. This practice was considered detrimental to the great lords, since it deprived them to a certain extent the fruits of their tenure, such as

escheats, marriages,wardships and the like."[11]

From 28 Am Jur 2nd Estates section 4: "The effect of Statute Quia Emptores is obvious. By declaring that every freeman might sell his lands at his own pleasure, it removed the feudal restraint which prevented the tenant from selling his land without the license of his grantor, who was his feudal lord. Hence by virtue of the Statute, passed in 1290, subinfeudation was abolished and all person except the King's tenants, in capite were left at liberty to alien all or any part of their lands at their own pleasure and discretion. Quia Emptores is by express wording, extended only to the lands held in fee simple. Included in it applications, however are leases in fee and fee farmlands. Property in the U. S., with few exceptions, is allodial. This is by virtue of state constitutional provisions, organic territorial acts incorporated into legal systems of states subsequently organized, statutes and decisions of the courts. They are subject to escheat only in the event of failure of successors in ownership."

In the 1913 case of Miller v. Miller, the Kansas court stated: "Feudal tenures do not and cannot exist. All tenures in Kansas are allodial."[12]

The Supreme Court of Michigan expressed the opinion that whether Statute Quia Emptores ever became effectual in any part of the United States by express or implied adoption or as part of the common law did not have to be ascertained. It was clear that no such statute was ever needed in Michigan or in any of the western states, because no possibility of reverter or escheat in the party converying an estate ever existed. Al all times, escheat could only accrue to the sovereign, which in Michigan, is the state.[13]

The Statute Quia Emptores was stated not to be in effect in the state of Pennsylvania in Cuthbert v. Kuhn [14]

The New York Constitution makes any question of Quia Emptores moot by stating: "all lands within this state are declared allodial, so that, subject only to liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates."[15]

Legacy of Quia Emptores in United States Law

The legacy of Quia Emptores exists in modern United States land law.

Although it is a matter of debate whether Quia Emptores was the effective law within the colonies, the effect of the Statute is still present in United States land laws. Without a doubt, the U.S. Constitution, and various state constitutions and legislative acts have made Quia Emptores moribund in fact. But the language of land law still sounds medieval, and takes its concepts from the time of Edward I and before. The following list of words common in U.S. land law are from Norman England (with their modern meaning in the United States):

- Alienation - "a sale"
- Appurtenant - "belonging to"
- Damnum absque injuria - "injury without wrong"
- Demise - "to lease" or "let" premises
- Enfeoff - "to give land to another"
- Estate - "an interest in land"
- Feoffee - "a party to whom a fee is conveyed"
- Feoffment - "physical delivery of possession of land by feoffeor to the feofee"
- Leasehold - "an estate in land held under a lease"
- Livery of seisin - "delivery of possession"
- Mesne - "intervening"; related to the term "mesne conveyance" meaning an intervening conveyance

- Purchase - "voluntary transfer of property"
- Seisin - "possession of a freehold estate"
- Tenant - "one who holds or occupies the land under some kind of right or title"
- Writ of Fieri Facias - "writ of execution on the property of a judgment debtor"

The terms "fee", "fee tail", "fee tail estate", "fee tail tenant", "fee simple" and the like are essentially the same as they were defined in De Donis Conditionalibus in 1285.

There are four kinds of deeds in common usage:

- warranty deed, which contains covenants for title.
- special warranty deed in which the grantor only covenants to warrant and defend the title.
- deed without covenants in which the grantor purports to convey in fee simple
- quitclaim deed in which the grantor makes no covenants for title but grants all rights, title and interest.

The last two are directly related to Quia Emptores. Other changes came after the Statute of Uses, 1535 and the Statute of Frauds.

See also

- History of English land law

References

- 28 American Jurisprudence 2nd Estates
- 61 American Jurisprudence 2nd Perpetuities and Restraints on Alienation
- Henderson, E. F., *Select Historical Documents of the Middle Ages*, George Bell and Sons, London, 1910 (pp. 149–150)
- Holdsworth, W. S., *A History of English Law*, Little, Brown and Co., Boston, 1927
- Holdsworth, W. S., *Some Makers of English Law, The Tagore Series, 1937-1938*, Cambridge University Press, 1938
- Kirkalfy, A. K. R. *Potter's Historical Introduction to English Law and Its Institutions*, Sweet and Maxwell Ltd. London, 1962
- Plucknett, Theodore, *A Concise History of the Common Law, Fifth Edition*, Little, Brown and Company, Boston, 1956
- Pollock and Maitland, *The History of the English Law, Second Edition*, Cambridge University Press, 1968. Specifically, from Volume 1, pp. 332–335; 337; 354-356; 608-610; Volume 2 pp. 292–294
- Robertson, A. J., *Laws of the Kings of England*, Cambridge University Press, 1925
- Roebuck, Derek, *Background of the Common Law*, Oxford, 1990
- Stoner, James R., *Common Law and Liberal Theory*, University of Kansas Press, Lawrence, Kansas, 1992
- Stubbs, W. H., *Select Charters and the Illustrations of English Constitutional History*, Clarendon Press, 1903
- *The Origins of Property in Land* [16] Numa Denis Fustel de Coulanges (McMaster University)

External links

- Quia Emptores legal history [17]
- Quia Emptores (Yale) [18]
- Official text of the statute [19] as amended and in force today within the United Kingdom, from the UK Statute Law Database

References

[1] Stubbs *Select Charters* and Robertson, *Laws of the Kings of England*
[2] Glanvill, vii, 1, restated in Plucknett p, 526
[3] Pollock and Maitland, vol. 1, p.218-230
[4] Plucknett
[5] Roebuck
[6] Pollock and Maitland vol. 1, pp. 335-336
[7] Pollock and Maitland vol. 1, p. 337
[8] Pollock and Maitland, vol 1, p. 337
[9] Pollock and Maitland vol. 1 p. 355-366
[10] 6,NY 467; quoted in 28 Am. Jur 2nd Estates, §§ 3 and 4
[11] Case text repeated in 28 Am Jur 2nd Estates §§ 3 and 4
[12] Miller v. Miller, 91 Kan 1, 136 P 953
[13] Mandelbaum v. McDonell, 29 Michigan 78
[14] 3 Whart. Pa 357
[15] New York State Constitution Article 1; 12
[16] http://socserv2.mcmaster.ca/~econ/ugcm/3ll3/fustel/Property.pdf
[17] http://www.willamette.edu/~blong/LegalHistory/QuiaEmptores.html
[18] http://www.yale.edu/lawweb/avalon/medieval/land.htm
[19] http://www.statutelaw.gov.uk/content.aspx?activeTextDocId=1517474

Quia timet

Quia Timet Injunction is an injunction to restrain wrongful acts which are threatened or imminent but have not yet been commenced. *Fletcher v. Bealey* (1884) [28 Ch.D. 688 at p.698] stated the necessary conditions for equity courts to properly grant an injunction in such cases: proof of imminent danger; proof that the threatened injury will be practically irreparable; and proof that whenever the injurious circumstances ensue, it will be impossible to protect plaintiff's interests, if relief is denied.

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" Quia Timet (qui'a ti'met) Lat. because he fears.
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Quicquid plantatur solo, solo cedit

Quicquid plantatur solo, solo cedit (Latin, "whatever is affixed to the soil belongs to the soil") is a Legal Latin principle related to fixtures. The legal principle means that something that is or becomes affixed to the land becomes part of the land; therefore, title to the fixture is a part of and passes with title to the land.

Quid pro quo

Quid pro quo (From the Latin meaning "something for something")[1] indicates a more-or-less equal exchange or substitution of goods or services. English speakers often use the term to mean "a favor for a favor" and the phrases with almost identical meaning include: "what for what," "give and take," "tit for tat", "this for that", and "you scratch my back, and I'll scratch yours".

Legal usage

In legal usage, *quid pro quo* indicates that an item or a service has been traded in return for something of value, usually when the propriety or equity of the transaction is in question. For example, under the common law (except in Scotland), a binding contract must involve consideration: that is, the exchange of something of value for something else of economic value. If the exchange appears excessively one sided, courts in some jurisdictions may question whether a *quid pro quo* did actually exist and the contract may be void by law.[2]

Similarly, political donors are legally entitled to support candidates that hold positions with which the donors agree, or which will benefit the donors. Such conduct becomes bribery only when there is an identifiable exchange between the contribution and official acts, previous or subsequent, and the term *quid pro quo* denotes such an exchange. The term may also be used to describe blackmail, where a person offers to refrain from some harmful conduct in return for valuable consideration.

Quid pro quo harassment occurs when employment or academic decisions or expectations (hiring, promotions, salary increases, shift or work assignments, performance standards, grades, access to recommendations, assistance with school work, etc.) are based on an employee or student's submission to or rejection of sexual advances, requests for sexual favors, or other behavior of a sexual nature. These cases involve tangible actions that adversely affect either the conditions of work or academic progress.

Other meanings

Quid pro quo may less commonly refer to something (originally a medicine) given or used in place of another.

Quid pro quo may sometimes be used to define a misunderstanding or blunder made by the substituting of one thing for another, particularly in the context of the transcribing of a text.[3] In this alternate context, the phrase *qui pro quo* is more correct(see below).

Quid pro quo may sometimes be described as the idiom,"You scratch my back and I'll scratch yours". In legislative contexts, it may take the form of vote trading. It may also describe the reverse situation, for example when a donor expects something in return later.

Quid Pro Quo was an Internet server package for Classic MacOS.

The word *Quid* is a British slang term for a unit/units of the currency Pound Sterling (e.g., Twenty Pounds/ Twenty Quid) and is believed to come from the phrase *Quid pro quo*, referring to currency as a means of exchange.

Related phrases

The phrase ***qui pro quo***, or *quiproquo* (from medieval Latin: literally *qui* instead of *quo*) is common in languages such as Italian, Portuguese, Spanish and French, where it means a misunderstanding.[4]

In those languages, the phrase corresponding to the usage of *quid pro quo* in English is *do ut des* (Latin for "I give so that you may give").

See also

- List of Latin phrases
- An eye for an eye
- Offset agreement
- Pay to Play

References

[1] Merriam-Webster, the American Heritage Dictionary of the English Language (Fourth Edition), and the New Dictionary of Cultural Literacy (Third Edition) (http://www.bartleby.com/59/) all so define the Latin expression.

[2] One such example is "section 2-302 of the [[Uniform Commercial Code (http://www.law.cornell.edu/ucc/2/article2.htm#s2-302)]"]. .

[3] "Blunder made by using or putting one thing for another (now rare)" – *Concise Oxford Dictionary, 4th edition, 1950.*

[4] *Qui pro quo* used to refer to a copying mistake made by a scribe, *qui* being the nominative case and *quo* the ablative case of the same personal pronoun. Further information may be found in the AWADmail Issue 49 (http://www.wordsmith.org/awad/awadmail49.html).

Quo warranto

Quo warranto (Medieval Latin for "by what warrant?") is a prerogative writ requiring the person to whom it is directed to show what authority he has for exercising some right or power (or "franchise") he claims to hold.

History

Quo warranto had its origins in an attempt by King Edward I of England to investigate and recover royal lands, rights, and franchises in England,[1] in particular those lost during the reign of his father, King Henry III of England.[2] [3] From 1278 to 1294, Edward dispatched justices throughout the Kingdom of England to inquire “by what warrant” English lords held their lands and exercised their jurisdictions (often the right to hold a court and collect its profits). Initially, the justices demanded written proof in the form of charters, but resistance and the unrecorded nature of many grants forced Edward to accept those rights peacefully exercised since 1189.[1] [4] Later, quo warranto functioned as a court order (or "writ") to show proof of authority; for example, demanding that someone acting as the sheriff prove that the king had actually appointed him to that office (literally, "By whose warrant are you the sheriff?").

Quo warranto today

In the United States today, quo warranto usually arises in a civil case as a plaintiff's claim (and thus a "cause of action" instead of a writ) that some governmental or corporate official was not validly elected to that office or is wrongfully exercising powers beyond (or *ultra vires*) those authorized by statute or by the corporation's charter.

In some jurisdictions which have enacted judicial review statutes, such as Queensland (Australia), the prerogative writ of quo warranto has been abolished.[5]

See also

- Quia emptores

Bibliography

- Clanchy, M. T. (1993). *From Memory to Written Record: England 1066-1307* (Second Edition ed.). Malden, MA: Blackwell Publishing. ISBN 978-0-631-16857-7.
- Michael Prestwich, *Edward I* (London: Methuen, 1988, updated edition Yale University Press, 1997 ISBN 0-300-07209-0)
- Michael Prestwich, *The Three Edwards: War and State in England 1272-1377* (London: Weidenfeld & Nicolson, 1980, reprinted Routledge 1996) ISBN 0-415-05133-9
- Donald W. Sutherland, *Quo Warranto Proceedings in the Reign of Edward I, 1278-1294* (Oxford; Clarendon Press, 1963)

External links

- Missouri Bar Extraordinary Remedies [6]
- "Quo Warranto". *Encyclopædia Britannica* (11th ed.). 1911.

References

[1] Clanchy *From Memory to Written Record* p. 3

[2] Harris, Nicholas; Charles Purton Cooper (1831). *Public Records*. p. 74.

[3] Carpenter, David A. (1996). *The reign of Henry III*. p. 88. ISBN 9781852851378.

[4] Clanchy *From Memory to Written Record* p. 152

[5] Sn 42 Abolition of quo warranto (http://www.austlii.edu.au/au/legis/qld/consol_act/jra1991158/s42.html), *Judicial Review Act 1991*, Queensland Consolidated Acts

[6] http://www.mobar.org/4df86bfb-bd0f-496f-975b-6d30db2e274e.aspx#Quo_Warranto

R.

R. is an abbreviation of the Latin word *Rex* (King) or *Regina* (Queen) and is used as notation in British criminal prosecutions to mean *"the Crown"* or *"the State"*, which is represented by the current monarch.

It is often seen written as *"R. v Defendant"* which would be read as *"the Crown against the Defendant"*.

In jurisdictions that are republics, there is no Monarch and no one person embodies the state, so the prosecuting party is not any individual but rather either the State in and of itself, or (in some locations) the state *on the behalf of* the people it governs. An example of the former would be federal criminal cases in the United States (such as, for instance, the murder of persons in a building owned or operated by the United States government), which being prosecuted by the United States federal government would be termed *United States v Defendant*. On the other hand, most U.S. states, when prosecuting an offense, typically couch their case in terms of representing the people of the state, so if John Doe robbed a bank in Detroit, the case would be referred to as *the People of the State of Michigan v John Doe*.

Ratio decidendi

Ratio decidendi (Latin plural *rationes decidendi*) is a Latin phrase meaning "the reason" or "the rationale for the decision." The *ratio decidendi* is "[t]he point in a case which determines the judgment"[1] or "the principle which the case establishes."[2]

In other words, *ratio decidendi* - legal rule derived from, and consistent with, those parts of legal reasoning within a judgement on which the outcome of the case depends.

It is a legal phrase which refers to the legal, moral, political, and social principles used by a court to compose the rationale of a particular judgment. Unlike *obiter dicta*, the *ratio decidendi* is, as a general rule, binding on courts of lower and later jurisdiction—through the doctrine of *stare decisis*. Certain courts are able to overrule decisions of a court of co-ordinate jurisdiction—however out of interests of judicial comity they generally try to follow co-ordinate rationes.

The process of determining the *ratio decidendi* is a correctly thought analysis of what the court actually decided – essentially, based on the legal points about which the parties in the case actually fought. All other statements about the law in the text of a court opinion – all pronouncements that do not form a part of the court's rulings on the issues actually decided in that particular case (whether they are correct statements of law or not) -- are *obiter dicta*, and are not rules for which that particular case stands.

Synopsis

The *ratio decidendi* is one of the most powerful tools available to a lawyer. With a proper understanding of the *ratio* of a precedent, the advocate can in effect force a lower court to come to a decision which that court may otherwise be unwilling to make, considering the facts of the case.

The search for the ratio of a case is a process of elucidation; one searches the judgment for the abstract principles of law which have led to the decision and which have been applied to the facts before the court. As an example, the *ratio* in *Donoghue v. Stevenson* would be that a person owes a duty of care to those who he can reasonably foresee will be affected by his actions.

All decisions are, in the common law system, decisions on the law as applied to the facts of the case. Academic or theoretical points of law are not usually determined. Occasionally, a court is faced with an issue of such overwhelming public importance that the court will pronounce upon it without deciding it. Such a pronouncement will not amount to a binding precedent, but is instead called an *obiter dictum*.

Ratio decidendi also involves the **holding** of a particular case, thereby allowing future cases to build upon such cases by citing precedent. However, not all holdings are given equal merit; factors that can strengthen or weaken the strength of the holding include:

- Rank of the court (Supreme Court versus an appellate court).
- Number of issues decided in the case (multiple issues may result in so called, **multi-legged holdings**)
- Authority or respect of the judge(s)
- Number of concurring and dissenting judges
- New applicable statutes
- Similarity of the environment as opposed to the age of the holding.

The ability to isolate the abstract principle of law in the vehemently pragmatic application of that abstraction to the facts of a case is one of the most highly prized legal skills in the common law system. The lawyer is searching for the principles which underlined and underlay the court's decision.

Challenges

The difficulty in the search for the ratio becomes acute when, as is often the case in the decisions of the Court of Appeal or the House of Lords, more than one judgment is promulgated. A dissenting judgment on the point is not binding, and cannot be the ratio. However, one will sometimes find decisions in which, for example, five judges are sitting the House of Lords, all of whom purport to agree with one another but in each of whose opinions one is able to discern subtly different ratios. An example is the case of *Kay v. Lambeth LBC*, on which a panel of seven of their Lordships sat, and from whose opinions emerged a number of competing ratios, some made express by their Lordships and others implicit in the decision.

Another problem may arise in older cases where the *ratio* and *obiter* are not explicitly separated, as they are today. In such a case, it may be difficult to locate the *ratio*, and on occasion, the courts have been unable to do so.

Such interpretative ambiguity is inevitable in any word-bound system. Codification of the law, such as has occurred in many systems based on Roman law, may assist to some extent in clarification of principle, but is considered by some common lawyers anathema to the robust, pragmatic and fact-bound system of English law.

See also

- Dictum

External links

- Radio Decidendi and Common Cause v. Union of India [3]

References

[1] See Black's Law Dictionary, page 1135 (5th ed. 1979).
[2] See Barron's Law Dictionary, page 385 (2d ed. 1984).
[3] http://www.ebc-india.com/lawyer/articles/87v4a5.htm

Reformatio in peius

Reformatio in peius (from Latin *reformatio*, 'change' - actually, 'improvement', and *peius*, 'worse') is a Latin phrase used in law meaning that a decision from a court of appeal is amended to a worse one.

The case law of the Boards of Appeal of the European Patent Office (EPO) does not allow a decision at appeal to put a sole appellant in a worse position. Hence in relation to appeals, the term "prohibition of *reformatio in peius*" basically means that a person should not be placed in a worse position as a result of filing an appeal. Thus, in general, EPO Boards of Appeal are prevented from going beyond the request of a sole appellant to put it in a worse position that it was before it appealed.[1] The central case detailing this principle is G 4/93 consolidated with G 9/92.

Still under the case law of the boards of appeal of the EPO, the doctrine of *reformatio in peius* does not however apply separately to each point or issue decided, or to the reasoning leading to the impugned decision.[2]

See also

- *Restitutio in integrum*

References

[1] Legal Research Service for the Boards of Appeal, European Patent Office, Case Law of the Boards of Appeal (Fifth edition 2006) (http://www.epo.org/patents/appeals/case-law.html), "D.6.1. Binding effect of requests - no reformatio in peius", pp. 601-604.

[2] "*According to the established case law of the boards of appeal, the doctrine of reformatio in peius does not apply separately to each point or issue decided, or to the reasoning leading to the impugned decision (see T 149/02 of 25 July 2003, point 3.2.1).*" in EPO Board of Appeal decision T 0384/08 of 26 June 2009 (http://legal.european-patent-office.org/dg3/biblio/t080384eu1.htm), Reasons 2.

Regulæ Juris

Regulæ Juris, also spelled as **Regulae -** and **- Iuris** (Latin for "Rules of Law") is a generic term for general rules or principles serving chiefly for the interpretation of laws.

Canonical use

In a specific sense, however, regulæ juris are certain fundamental laws in the form of axioms found in the "Corpus Juris", eleven inserted by Gregory IX at the end of the fifth Book of Decretals, eighty-eight by Boniface VIII in the last title of Liber Sextus Decretalium.

These rules are an exposition of several laws on the same subject, conclusions or deductions, rather than principles of law drawn from constitutions or decisions, and consequently reserved to the last title of the two books mentioned, in imitation of Justinian in the "Digest" (L, l, tit. 17).

While these rules are of great importance, it must be stated that few general statements are without exception. Some of the axioms are applicable in all matters, others are confined to judicial trials, benefices, etc. As examples the following are taken from the Liber Sextus: No one can be held to the impossible (6); Time does not heal what was invalid from the beginning (18); What is not allowed to the defendant, is denied to the plaintiff (32); What one is not permitted to do in his own name, he may not do through another (47).

References

- | (1913). "Regulæ Juris" [1]. *Catholic Encyclopedia*. New York: Robert Appleton Company.

This article incorporates text from the entry ***Regulæ Juris*** *in* Catholic Encyclopedia *of 1913, a publication now in the public domain.*

References

[1] http://www.newadvent.org/cathen/12722b.htm

Res gestae

This article is for the legal term 'Res Gestae'. For the article on the record of the accomplishments of the first Roman emperor, Augustus, see the article for Res Gestae Divi Augusti.

Res gestae (Latin "things done") is a term found in substantive and procedural American jurisprudence and English law.

Res Gestae in Rules of Evidence

Under the Federal Rules of Evidence, *res gestae* is a term used to describe an exception to the rule against hearsay evidence. *Res gestae* is based on the belief that, because certain statements are made naturally, spontaneously, and without deliberation during the course of an event, they leave little room for misunderstanding/misinterpretation upon hearing by someone else (i.e., by the witness, who will later repeat the statement to the court) and thus the courts believe that such statements carry a high degree of credibility. Statements that can be admitted into evidence as *res gestae* fall into three headings:

1. Words or phrases that either form part of, or explain, a physical act,
2. Exclamations that are so spontaneous as to belie concoction, and
3. Statements that are evidence of someone's state of mind.

(In some jurisdictions the *res gestae* exception has also been used to admit police sketches.)[1]

The following scenario is an example of types one and two:

Imagine a young woman (the witness) standing on the side of a main road. She sees some commotion across the street. On the opposite side of the road to her she sees an old man and hears him shout 'The bank is being robbed!' as a young man runs out of a building and away down the street. The old man is never found (and so cannot appear in court to repeat what he said), but the woman repeats what she heard him say. Such a statement would be considered trustworthy for the purpose of admission as evidence because the statement was made concurrently with the event and there is little chance that the witness repeating the hearsay could have misunderstood its meaning or the speaker's intentions.

Under the Federal Rules of Evidence, *res gestae* may also be used to demonstrate that certain character evidence, otherwise excludable under the provisions of Rule 404, is permissible, as the events in question are part of the "ongoing narrative," or sequence of events that are necessary to define the action at hand.

Res Gestae in Criminal Law

In certain felony murder statutes, "*res gestae*" is a term defining the overall start-to-end sequence of the underlying felony. Generally, a felony's Res Gestae is considered terminated when the suspect has achieved a position of relative safety from law enforcement.

English Law

For a technical explanation of Res gestae under English law See: WikiCrimeLine Res gestae [2]

Other Uses

Res gestae is also used to refer to those facts or things done which form the basis or gravamen for a legal action.

References

[1] Commonwealth v. Dugan, 381 A.2d 967 (Pa. Super. 1977)
[2] http://www.wikicrimeline.co.uk/index.php?title=Res_gestae

Res ipsa loquitur

In the common law of negligence, the doctrine of ***res ipsa loquitur*** states that the elements of duty of care and breach can be sometimes inferred from the very nature of the accident, even without direct evidence of how any defendant behaved. Although modern formulations differ by jurisdiction, the common law originally stated that the accident must satisfy the following conditions:

1. ... it *ordinarily would not occur* without someone's negligence;
2. ... it *in this instance probably did not occur* without someone's negligence;
3. ... it *was caused* by an instrumentality that was under the exclusive control of the defendant; and
4. ... it *was not caused* in any way by the plaintiff (i.e., no contributory negligence).

Upon a proof of *res ipsa loquitur*, the plaintiff need only establish the remaining two elements of negligence -- namely, that the plaintiff suffered damages, of which the accident was the legal cause.

History

Latin phrase

The term comes from Latin and is literally translated "the thing itself speaks", but the sense is well conveyed in the more common translation, "the thing speaks for itself."[1] The Latin sentence is found in Cicero's speech *Pro Milone*.[2]

Leading case

The legal doctrine was first formulated by Baron Pollock in the English 1863 case *Byrne v Boadle*.[3]

The elements

Exclusive control

In some cases a closed group of people may be held in breach of a duty of care under the rule of *Res Ipsa Loquitur*. In Ybarra v. Spangard,[4] a patient undergoing surgery experienced back complications as a result of the surgery, but

it could not be determined exactly which member of the surgical team had breached his or her duty, and so it was held that they had all breached, because it was certain that at least one of them was the only person who was in exclusive control of the instrumentality of harm.

Because it can be difficult to prove "exclusive control", this element has largely given way in modern cases to a less rigid formulation: that the evidence eliminates, to a sufficient degree, other responsible causes (including the conduct of the plaintiff and third parties). For example, in New York State, the defendant's exclusivity of control must be such that the likelihood of injury was, more likely than not, the result of the defendant's negligence. The likelihood of other possibilities do not need to be eliminated altogether but they must be so reduced that the greater probability lies with the defendant.

Plaintiff did not contribute

In jurisdictions that employ this less rigid formulation of exclusive control, this element subsumes the element that the plaintiff did not contribute to his injury.

Also it is notable that contributory negligence is, in modern case law, compared to the injury caused by the other. For example, if the negligence of the other is 95% of the cause of the plaintiff's injury, and the plaintiff is 5% responsible, then the plaintiff's slight fault cannot negate the negligence of the other. This new type of split liability is commonly called *comparative negligence*. As a fictitious example:

- John Doe is injured when an elevator he has entered plunges several floors and stops abruptly.
- Jane's Corporation built, and is responsible for maintaining, the elevator.
- Doe sues Jane, and during the proceedings, Jane claims that Doe's complaint should be dismissed because he has never proved, or for that matter even offered, a theory as to why the elevator functioned incorrectly. Therefore, argues Jane, there is no evidence that they were at fault.
- The court holds that Doe does not have to prove anything beyond the fall itself.
  - The elevator evidently malfunctioned (it was not intended to fall nor is that a proper function of a correctly functioning elevator)
  - Jane was responsible for the elevator in every respect
  - So Jane's Corporation is responsible for the fall.
- The thing speaks for itself: no further explanation is needed to establish the *prima facie* case.

Typical in medical malpractice

Res ipsa loquitur often arises in the "scalpel left behind" variety of case. For example, a person goes to a doctor with abdominal pains after having his appendix removed. X-rays show the patient has a metal object the size and shape of a scalpel in his abdomen. It requires no further explanation to show the surgeon who removed the appendix was negligent, as there is no legitimate reason for a doctor to leave a scalpel in a body at the end of an appendectomy.

Contrast to *Prima facie*

Res ipsa loquitur is often confused with *prima facie* ("at first sight"), the common law doctrine that a party must show some minimum amount of evidence before a trial is worthwhile.

The difference between the two is that *prima facie* is a term meaning there is enough evidence for there to be a case to answer. *Res ipsa loquitur* means that **because** the facts are so obvious, a party need explain no more. For example:

> "There is a *prima facie* case that the defendant is liable. They controlled the pump. The pump was left on and flooded the plaintiff's house. The plaintiff was away and had left the house in the control of the defendant. *Res ipsa loquitur*."

This may be termed an "open and shut case", meaning that the trial is very brief and almost a formality.

Examples by jurisdictions

Canada

In Canada the doctrine of *res ipsa loquitur* has been largely overturned by the Supreme Court. In case of *Fontaine v. British Columbia (Official Administrator)* [5] the Court rejected the use of *res ipsa loquitur* and instead proposed the rule that once the plaintiff has proven that the harm was under exclusive control of the defendant and that they were not contributorally negligent a tactical burden is placed on the defendant in which the judge has the discretion to infer negligence unless the defendant can produce evidence to the contrary.

England and Wales

In English tort law, the effect of *res ipsa loquitur* is a strong inference in favour of the claimant that negligence has taken place. It does not however fully reverse the burden of proof (*Ng Chun Pui v. Li Chuen Tat* 1988).[6]

The requirement of control is important in English law. This requirement was not satisfied in *Easson v. LNE Ry* [1944] 2 KB 421, where a small child fell off a train several miles after it had left the station. It was considered that the door of the train was not sufficiently under control of the railway company after the train started moving and could have been opened by somebody for whom the company was not responsible. This case was distinguished from the earlier *Gee v. Metropolitan Ry*[7] where the plaintiff fell from the train immediately after it left the station, when the door through which he fell could still be considered to be fully controlled by the railway company.

The requirement that the exact cause of the accident must be unknown is illustrated by the case of *Barkway v. South Wales Transport*.[8] In this case a bus veered across the road and it was known that the accident was caused by a flat tire. In this case, the plaintiff could not be assisted by *res ipsa loquitur* and had to go on to prove that the flat tire was caused by the transport company's negligence.

Hong Kong

Hong Kong is one of the common law jurisdictions that uses the doctrine of *res ipsa loquitur*.

Some lawyers prefer to avoid the expression *res ipsa loquitur* (for example, Hobhouse LJ in *Radcliff v. Plymouth*).[9] But other lawyers (and judges too) still find the expression a convenient one (for example, see Bokhary PJ, a permanent judge of the Hong Kong Court of Final Appeal, in *Sanfield Building Contractors Ltd v. Li Kai Cheong*).[10]

The expression *res ipsa loquitur* is not a doctrine but a “mode of inferential reasoning” and applies only to accidents of unknown cause[10] [11])

Res ipsa loquitur comes into play where an accident of unknown cause is one that would not normally happen without negligence on the part of the defendant in control of the object or activity which injured the plaintiff or damaged his property. In such a situation the court is able to infer negligence on the defendant's part unless he offers an acceptable explanation consistent with his having taken reasonable care.[10]

Scotland

The doctrine exists in the Scots law of *delict*. The leading case is that of *Scott v London & Catherine Dock Co*.[12] This case laid down 3 requirements for the doctrine to apply:

1. There must be reasonable evidence of negligence
2. The circumstances must be under the direct control of the defender or his servants
3. The accident must be of such a type that would not occur without negligence.

Recent examples in Scotland are *McDyer v Celtic Football Club*[13] and *McQueen v The Glasgow Garden Festival 1988 Ltd*[14] .

South Africa

In South Africa (Roman Dutch Law) there is no doctrine of *res ipsa loquitur*, although the phrase is used regularly to mean the "facts speak for themselves." *Res ipsa loquitur* does not shift any burden of proof or onus from one party to the other. The phrase is merely a handy phrase used by lawyers.

United States

Most American courts recognize *res ipsa loquitur*. The Restatement (Second) of Torts, § 328D describes a two step process for establishing *res ipsa loquitur*. The first step is whether the accident is the kind that would usually be caused by negligence, and the second is whether or not the defendant had exclusive control over the instrumentality that caused the accident. If found, *res ipsa loquitur* creates an inference of negligence, although in most cases it does not necessarily result in a directed verdict. The Restatement (Third) of Torts, § 17, adopts a similar test, although it eschews the 'exclusive control' element.

The doctrine was not initially welcome in medical malpractice cases. In *Gray v. Wright*,[15] a seven-inch hemostat was left in Mrs. Gray during gall bladder surgery in June, 1947, and despite her chronic complaints about stomach pain over the years, the device was not found until an X-ray in March, 1953, when it was removed. Her $12,000 award was reversed by the Supreme Court of West Virginia because she was outside the statutes of limitation when she filed and could not prove that the doctor concealed knowledge of his error. This "guilty knowledge" requirement would disappear over the years, and the "discovery rule" by which statutes of limitation run from the date of discovery of the wrongdoing rather than the date of the occurrence has become the rule in most states, allowing *res ipsa loquitur* to take its rightful place.

Forty years later, leaving a medical device in a patient was medical malpractice, provable without expert testimony, in almost every jurisdiction.[16] Virginia has limited the rule. "In Virginia the doctrine, if not entirely abolished, has been limited and restricted to a very material extent." It may be utilized only when the circumstances of the incident, without further proof, are such that, in the ordinary course of events, the incident could not have happened except on the theory of negligence..."[17]

A contention of *res ipsa loquitur* commonly is made in cases of commercial airplane accidents. It was part of the commentary in a train collision in California in 2008: "If two trains are in the same place at the same time, someone was negligent."

In some states, the doctrine of *res ipsa loquitur* is also used as a method of proving the intent or *mens rea* element of the inchoate crime of attempt. Under the Model Penal Code, "the behavior in question is thought to corroborate the defendant's criminal purpose,"[18] for example:

> Possession of materials to be employed in the commission of the crime, which are specifically designed for such unlawful use or which serve no lawful purpose of the actor under the circumstances
>
> —Model Penal Code[18]

External links

- *res ipsa loquitur* [19] — definition from The Free Dictionary

References

[1] Translating "res ipsa loquitur" (http://books.google.com/books?id=vhY8AAAAIAAJ&pg=PA571&dq="the+thing+itself+speaks"+"the+thing+speaks+for+itself"&as_brr=3&ei=s_eBS7ScBYi0zQSkgP2oCw&cd=2#v=onepage&q="the thing itself speaks" "the thing speaks for itself"&f=false)

[2] Cic. Pro Milone 53 (http://www.perseus.tufts.edu/hopper/text?doc=Cic.+Mil.+53&fromdoc=Perseus:text:1999.02.0011)

[3] *Byrne v. Boadle Court of Exchequer, 2 H. & C. 722, 159 Eng. Rep. 299* (http://www.safetyphoto.co.uk/subsite/case abcd/byrne_v_boadle.htm), 1863, , retrieved 2009-03-16

[4] 93 Cal.App2d 43 (1949)

[5] [1998] 1 S.C.R. 424

[6] *Ng Chun Pui v. Li Chuen Tat*, RTR, 1988

[7] *Gee v. Metropolitan Ry*, 1873

[8] *Barkway v. South Wales Transport*, 1 All ER, 1950

[9] *Ratcliffe v. Plymouth & Torbay Health Authority*, 1998

[10] *Sanfield Building Contractors Ltd v. Li Kai Cheong*, 2003

[11] Schellenberg v. Tunnel Holdings Pty Ltd, 2000

[12] =*Scott v. London & Catherine Dock Co 3 H&C 596*, 1865

[13] *McDyer v. Celtic Football Club*, SC, 2000

[14] *McQueen v The Glasgow Garden Festival 1988 Ltd*, SLT

[15] *Gray v. Wright 142 W. Va. 490, 96 S.E. 2d 671*, 1957

[16] See *Fieux v. Cardiovascular & Thoracic Clinic, P.C.,* 159 Or. App. 637, 641, 978 P.2d 429, 433 (1999); *Steinkamp v. Caremark,* 3 S.W.3d 191, 198-99 (Tex. Civ. App. 1999); *Baumgardner v. Yusuf*, 144 Cal. App. 4th 1381, 1392, 51 Cal. Rptr. 3d 1381, 1392 (2006); *Fox v. Green*, 161 N.C. App. 460, 465, 588 S.E. 2d 899, 904 (2003).

[17] *Lewis v. Carpenter Co.*, 252 Va. 296, 477 S.E.2d 492 (1996). See Virginia Legal Doctrines (http://www.virginia1774.org/LegalDoctrines.html#Ipsa).

[18] Frank Schmalleger, *Criminal Law Today: An Introduction with Capstone Cases," p. 115, N. 29, citing Model Penal Code, § 5.01 (2).*

[19] http://legal-dictionary.thefreedictionary.com/Byrne+v.+Boadle

Res judicata

Res judicata or ***res iudicata*** (RJ) is the Latin term for "a matter [already] judged", and may refer to two things: in both civil law and common law legal systems, a case in which there has been a final judgment and is no longer subject to appeal.[1] ; and the term is also used to refer to the legal doctrine meant to bar (or preclude) continued litigation of such cases between the same parties, which is different between the two legal systems. In this latter usage, the term is synonymous with "preclusion".

In the case of RJ, the matter cannot be raised again, either in the same court or in a different court. A court will use RJ to deny reconsideration of a matter.[2]

The legal concept of RJ arose as a method of preventing injustice to the parties of a case supposedly finished, but perhaps mostly to avoid unnecessary waste of resources in the court system. *Res judicata* does not merely prevent future judgments from contradicting earlier ones, but also prevents litigants from multiplying judgments, so a prevailing plaintiff could not recover damages from the defendant twice for the same injury.

Application of res judicata in common law

The principle of RJ may be used either by a judge or a defendant.

Once a final judgment has been handed down in a lawsuit, subsequent judges who are confronted with a suit that is identical to or substantially the same as the earlier one will apply the *res judicata* doctrine to preserve the effect of the first judgment.

A defendant in a lawsuit may use RJ as defense. The general rule is that a plaintiff who prosecuted an action against a defendant and obtained a valid final judgment is not able to initiate another action vs. the same defendant where:

- the claim is based on the same transaction that was at issue in the first action;
- the plaintiff seeks a different remedy, or further remedy, than what was obtained in the first action;
- the claim is of such nature as could have been joined in the first action.[3]

Once a bankruptcy plan is confirmed in court action, the plan is binding on all parties involved. Any question regarding the plan which could have been raised may be barred by RJ.[4]

The Seventh Amendment to the United States Constitution provides that no fact having been tried by a jury shall be otherwise re-examinable in any court of the United States or of any state than according to the rules of law.

For RJ to be binding, several factors must be met:

- identity in the thing at suit;
- identity of the cause at suit;
- identity of the parties to the action;
- identity in the designation of the parties involved;
- whether the judgment was final;
- whether the parties were given full and fair opportunity to be heard on the issue.

Regarding *designation of the parties involved*, a person may be involved in an action while filling a given office (e.g. as the agent of another), and may subsequently initiate the same action in a differing capacity (e.g. as his own agent). In that case RJ would not be available as a defense unless the defendant could show that the differing designations were not legitimate and sufficient.

Scope

Res judicata includes two related concepts: claim preclusion and issue preclusion (also called collateral estoppel or issue estoppel), though sometimes *res judicata* is used more narrowly to mean only claim preclusion.

Claim preclusion bars a suit from being brought again on an event which was the subject of a previous legal cause of action that has already been finally decided between the parties or those in privity with a party.

Issue preclusion bars the relitigation of issues of fact or law that have already been necessarily determined by a judge or jury as part of an earlier case.

It is often difficult to determine which, if either, of these concepts apply to later lawsuits that are seemingly related, because many causes of action can apply to the same factual situation and *vice versa*. The scope of an earlier judgment is probably the most difficult question that judges must resolve in applying *res judicata*. Sometimes merely part of the action will be affected. For example, a single claim may be struck from a complaint, or a single factual issue may be removed from reconsideration in the new trial.

Rationale

Res judicata is intended to strike a balance between competing interests. On one hand, it assures an efficient judicial system [5]

A US Supreme Court Justice explained the need for this legal precept as follows:

> Federal courts have traditionally adhered to the related doctrines of *res judicata* (claim preclusion) and *collateral estoppel* (issue preclusion). Under RJ, a final judgment on the merits of an action precludes the parties . . . from re-litigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude re-litigation of the issue in a suit on a different cause of action involving a party to the first cause. As this court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and by preventing inconsistent decisions, encourage reliance on a judication.[6]

Exceptions to application

Res judicata does not restrict the appeals process, which is considered a linear extension of the same lawsuit as the suit travels up (and back down) the appellate court ladder. Appeals are considered the appropriate manner by which to challenge a judgment rather than trying to start a new trial. Once the appeals process is exhausted or waived, *res judicata* will apply even to a judgment that is contrary to law.

There are limited exceptions to *res judicata* that allow a party to attack the validity of the original judgment, even outside of appeals. These exceptions—usually called collateral attacks—are typically based on procedural or jurisdictional issues, based not on the wisdom of the earlier court's decision but its authority or on the competence of the earlier court to issue that decision. A collateral attack is more likely to be available (and to succeed) in judicial systems with multiple jurisdictions, such as under federal governments, or when a domestic court is asked to enforce or recognize the judgment of a foreign court.

In addition, in matters involving due process, cases that appear to be *res judicata* may be re-litigated. An example would be the establishment of a right to counsel. People who have had liberty taken away (i.e., imprisoned) may be allowed to be re-tried with a counselor as a matter of fairness.

RJ may not apply in cases involving the *England reservation*. If a litigant files suit in federal court, and that court stays proceedings to allow a state court to consider the questions of state law, the litigant may inform the state court that he reserves any federal-law issues in the action for federal court. If he makes such a reservation, RJ would not bar him from returning the case to federal court at conclusion of action in state court.[7]

RJ may be avoided if claimant was not afforded a full and fair opportunity to litigate the issue decided by a state court. He could file suit in a federal court to challenge the adequacy of the state's procedures. In that case the federal suit would be against the state and not against the defendant in the first suit.[8]

RJ may not apply if consent (or tacit agreement) is justification for splitting a claim. If plaintiff splits a claim in the course of a suit for special or justifiable reasons for doing so, a judgment in that action may not have the usual consequence of extinguishing the entire claim.

Failure to apply

When a subsequent court fails to apply *res judicata* and renders a contradictory verdict on the same claim or issue, if a third court is faced with the same case, it will likely apply a "last in time" rule, giving effect only to the later judgment, even though the result came out differently the second time. This situation is not unheard of, as it is typically the responsibility of the parties to the suit to bring the earlier case to the judge's attention, and the judge must decide how broadly to apply it, or whether to recognize it in the first place. *See Americana Fabrics, Inc. v. L & L Textiles, Inc*., 754 F.2d 1524, 1529-30 (9th Cir. 1985).

Civil law

The doctrine of *res iudicata* in nations that have a civil law legal system is much narrower in scope than in common law nations.

In order for a second suit to be dismissed on a motion of *res iudicata* in a civilian jurisdiction, the trial must be identical to the first trial in the following manner: (1) identical parties, (2) identical theories of recovery, and (3) identical demands in both trials. In other words, the issue preclusion or collateral estoppel found in the common law doctrine of *res iudicata* is not present in the civilian doctrine. In addition if all else is equal between the two cases, minus the relief sought, there will be no dismissal based on *res iudicata* in a civil law jurisdiction.

While most civilian jurisdictions have slightly broadened the doctrine through multiple exceptions to these three requirements, there is no consensus on which exceptions ought to be allowed.

Note: Louisiana (USA), a civil law jurisdiction, has in the last twenty years begun to follow the common law doctrine of *res iudicata*.

International law

Arguably, *res judicata* is a general principle of international law under Article 38 (1)(c) of the International Court of Justice Statute. "The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: ... c. the general principles of law recognized by civilized nations".[9] [10]

Similar provisions are also found in the International Covenants on Civil and Political Rights, and Article 4 of Protocol 7 of the European Convention on Human Rights. However, in the two said conventions, the application of res judicata is restricted to criminal proceedings only. In the European Convention, reopening of a concluded criminal proceedings is possible if -

(a) it is in accordance with the law and penal procedure of the State concerned; (b) there is evidence of new or newly discovered facts, or (c) if there has been a fundamental defect in the previous proceedings,

which could affect the outcome of the case.

See also

- Collateral estoppel
- Direct estoppel
- Estoppel
- Precedent

References

[1] http://www.wordnet.princeton.edu/perl/webwn
[2] http://www.brandonlclark.com/glossary.html?letter=R, definition of RJ
[3] http://www.lectlaw.com/def2/q036.htm
[4] 11 U.S.C. sec. 1141(a)
[5] Civil Procedure Outline (http://lawschool.mikeshecket.com/civpro/civilprocedureoutline.htm)
[6] Allen v. McCurry, 449 U.S. at 94
[7] *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964)
[8] http://www.lectlaw.com/def2/q036.htm
[9] Statute of the International Court of Justice: Chapter II Article 38.1.c (http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0#CHAPTER_II)
[10] "Beck's Law Dictionary": A Compendium of International Law Terms and Phrases (http://people.virginia.edu/~rjb3v/latin.html) on the website of the University of Virginia

Respondeat superior

"**Respondeat superior**" (Latin: "let the master answer") is a legal doctrine which states that, in many circumstances, an employer is responsible for the actions of employees performed within the course of their employment.[1] This rule is also called the "Master-Servant Rule". It is recognized in both common law and civil law jurisdictions.[2] (It is also sometimes written as *respondeant superiores*, the plural form.)

In a broader scope, respondeat superior is based upon the concept of vicarious liability.

In common law

When applied to physical torts an employer/employee relationship must be established and the act must be committed within the scope of employment (i.e. substantially within time and geographical limits, job description and at least with partial intent to further employer's business).

Historically, this doctrine was applied in master/servant or employer/employee relationships. If the employee or servant committed a civil wrong against a third party, the master or employer could be liable for the acts of their servant or employee when those acts were committed within the scope of the relationship. The third party could proceed against both the servant/employee and master/employer. The action against the servant/employee would be based upon the direct responsibility of the servant/employee for his conduct. The action against the master/employer is based upon the theory of vicarious liability, by which one party can be held liable for the acts of another.

Employer/employee relationships are the most common area wherein respondeat superior is applied, but often the doctrine is used in the agency relationship. In this, the principal becomes liable for the actions of the agent, even if the principal did not directly commit the act. There are three considerations generally:

1. Was the act committed within the time and space limits of the agency?
2. Was the offense incidental to, or of the same general nature as, the responsibilities the agent is authorized to perform?
3. Was the agent motivated to any degree to benefit the principal by committing the act?

The degree to which these are answered in the affirmative will dictate the degree to which the doctrine can be applied.

Common law distinguishes between civil and criminal forms of respondeat superior.

In International Law

At issue in the Nuremberg war crimes tribunal following the Allied occupation of Nazi Germany after World War II was a question concerning principles closely related to respondeat superior, which came to be known by the term command responsibility. The Nuremberg trials established that persons cannot use the defense that they were only following the orders of their superiors, if that order violates international norms but especially that superiors that ordered, or "should have known," of such violations yet failed to intervene are also criminally liable.

See also

- Frolic and detour
- Superior Orders
- Vicarious liability

External links

- Harvard Law Study Material on Tort (includes Respondeat Superior) [3]

References

[1] http://www.fldfs.com/wc/history.html
[2] http://links.jstor.org/sici?sici=0023-9186(195524)20%3A1%3C72%3ATLIGSL%3E2.0.CO%3B2-V
[3] http://cyber.law.harvard.edu/torts3y/readings/CB-R-01.htm

Restitutio in integrum

Restitutio in integrum is a Latin maxim which means restoration to original condition. It is one of the primary guiding principles behind the awarding of damages in common law negligence claims. The general rule, as the principle implies, is that the amount of compensation awarded should put the successful plaintiff in the position he or she would have been had the tortious action not been committed. Thus the plaintiff should clearly be awarded damages for **direct expenses** such as medical bills and property repairs and the loss of **future earnings** attributable to the injury (which often involves difficult speculation about the future career and promotion prospects).

Although monetary compensation cannot be directly equated with physical deprivation it is generally accepted that compensation should also be awarded for **loss of amenities**, reflecting the decrease in expected standard of living due to any injury suffered and **pain and suffering**. Damages awards in these categories are justified by the restitutio principle as monetary compensation provides the most practicable way of redressing the deprivation caused by physical injury.

Patent law

The expression *restitutio in integrum* is also used in patent law, namely in the European Patent Convention (EPC), and refers to a means of redress available to an applicant or patentee who has failed to meet a time limit in spite of exercising "all due care required by the circumstances" (Article 122 [1] EPC). If the request for *restitutio in integrum* is accepted, the applicant or patentee is re-established in its rights, as if the time limit had been duly met.

According to decision G 1/86 of the Enlarged Board of Appeal of the European Patent Office, other parties such as opponents are not barred from the *restitutio in integrum* by principle. For instance, if an opponent fails to file the statement of grounds for appeal in spite of all due care, after having duly filed the notice of appeal, *restitutio* remedies will be available to him or her.

Cases

- *Emile Erlanger v The New Sombrero Phosphate Company* (1877-78) L.R. 3 App. Cas. 1218
- *Livingstone v Rawyards Coal Co* (1880) 5 App Cas 25,39, per Lord Blackburn, compensation should be "that sum of money which will put the party who has been injured in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation."

See also

- *Reformatio in peius*

External links

- Article 122 [1] EPC
- G 1/86 of the Enlarged Board of Appeal of the European Patent Office [2]

References

[1] http://www.epo.org/patents/law/legal-texts/html/epc/2000/e/ar122.html
[2] http://legal.european-patent-office.org/dg3/biblio/g860001ep1.htm

Sciens

In law, ***sciens***, the Latin word for "knowlingly", describes a state of mind. It refers to knowledge of a fact, usually of a specific risk. It is usually pleaded by way of defence. For example where a claimant suffers a personal injury, the respondent to the claim may aver that the claimant was aware of the risk when they undertook their course of conduct. Clauses in contracts which require participants in dangerous sports to acknowledge certain risks in the sport are usually drafted to set-up a potential *sciens* defence.

Extent of the Defence

In most countries, the defence is a limited one, and is ordinarily only effective (if at all) where the claimant, despite being *sciens* still undertakes the risk. The common law says that "*volenti non fit injuria*" ("free will does not make an injury"). In such instances, the claimant is said to be *volens* (voluntarily assuming the risk), and merely being *sciens* alone is normally insufficient. For example, if the claimant had to exit a grocery store, and there was a sign warning of a wet floor by the exit, it is not usually a defence to say that the claimant knew of the risk of the wet floor, if the claimant had no other way to leave the store, and thus had to walk across the slippery surface in any event.

Scire facias

In English law, a writ of ***scire facias*** (from the Latin meaning "to know the causes") was a writ founded upon some judicial record directing the sheriff to make the record known (*scire facias*) to a specified party, and requiring that defendant to show cause why the party bringing the writ should not be able to cite that record in his own interest, or why, in the case of letters patent and grants, the record should not be annulled and vacated. In the United States, the writ has been abolished under federal law but may still be available in some state legal systems.

History

The Writ of *Scire Facias* was created in 1285 during the 13th year of the reign of Edward I by the English Parliament in the Second Statute of Westminster. 1 Statutes of England, p.109. Robert Burnell (?-1292) was Lord Chancellor. The Writ of *Quo Warranto* was created during this same period. The Writ of *Scire Facias* "is in nature a bill in Chancery" which meant that it would be issued solely by a Court of Equity. M. Bacon, Abridgement of the Law, Vol. 8, *Scire Facias*, at 620 (rev.ed. 1852); W. Blackstone, Commentaries, Vol.III, at *260 ("When the Crown hath unadvisedly granted any thing by letters patent, which ought not to be granted, or where the patentee hath done an act that amounts to a forfeiture of the grant, the remedy to repeal the patent is by writ of *scire facias* in chancery").

Procedure

Proceedings ***in scire facias*** were regarded as a form of action, and the defendant could plead his defense as in an action.[1] They were analogous to *quo warranto* proceedings.[2]

In 1684, the royal charter of the Massachusetts Bay Colony was rescinded by a writ of ***scire facias*** for the Colony's interference with the royal prerogative in founding Harvard College and other matters.[2] [3]

By the beginning of the twentieth century, the writ was of little practical importance. Its principal uses were to compel the appearance of corporations aggregate in revenue suits, and to enforce judgments against shareholders in companies regulated by the Companies Clauses Act 1845, or similar private acts, and against garnishees in proceedings in foreign attachment in the Lord Mayor's Court.[1] [4] It was not used in Scottish law.[1]

Proceedings by ***scire facias*** to repeal letters patent for inventions were abolished by the Patents, Designs and Trademarks Act 1883, and a petition to the court substituted.[1]

The writ was abolished on 1 January 1948 by the Crown Proceedings Act 1947.[5]

U.S. significance

Some American legal scholars have suggested that impeachment may not be the sole method to remove a federal judge from office, pointing to ***scire facias*** as an alternative.[6] The actual writ of *scire facias* has been abolished in the federal court system by Rule 81(b) of the Federal Rules of Civil Procedure, but the rule still allows for granting relief formerly available through *scire facias* by prosecuting a civil action.

Under the law of many states, Arkansas, Georgia, New Hampshire, Tennessee, and Texas for example, an action in scire facias may be used to revive a dormant judgment if brought in a timely fashion. An action on debt, reciting that the dormant judgment remains unpaid, may be used for the same purpose. The defendant of the scire facias writ would generally need to prove that the debt was paid in order for the court to invalidate the writ. See O.C.G.A. § 9-12-61; Texas Civil Practice & Remedies Code § 31.006.

See also

- Reexamination

References

[1] [Anon.] (1911) " Scire facias (http://www.1911encyclopedia.org/Scire_Facias)", *Encyclopaedia Britannica*

[2] Baker, J. H. (2002). *An Introduction to English Legal History* (4th ed.). London: Butterworths. p. *p.*145. ISBN 0-406-93053-8.

[3] Adams, J. T. (1921). *The Founding of New England* (http://en.wikisource.org/wiki/The_Founding_of_New_England/XV). Boston: Atlantic Monthly Press. p. Ch.15 "Loss of the Massachusetts Charter". .

[4] Brandon, W. (1861). *A Treatise upon the Customary Law of Foreign Attachment: And the Practice of the Mayor's Court of the City of London* (http://books.google.co.uk/books?hl=en&id=c400AAAAIAAJ&dq=foreign+attachment+brandon&printsec=frontcover&source=web&ots=KTUU8iJ2cC&sig=t19XRCXk7f88kfdw0FZY4ZO4xvU). London: Butterworths. pp. *pp*73–103. . (Google Books)

[5] Crown Proceedings Act 1947 (http://www.opsi.gov.uk/acts/acts1947/pdf/ukpga_19470044_en.pdf), s.23/ Sch.1(3)

[6] Saikrishna Prakash & Steven D. Smith (2006). "How to remove a Federal Judge" (http://yalelawjournal.org/116/1/72_saikrishna_prakash_steven_d_smith.html). *Yale Law Journal* **116**: 72. .

Se defendendo

Se defendendo is a Latin legal term meaning, "in defending himself"/"in self-defense". For instance, **homicidium se defendendo** means "the killing of a human being in self-defense."

Seriatim

Seriatim, Latin for "in series," is a legal term typically used to indicate that a court is addressing multiple issues in a certain order, such as the order that the issues were originally presented to the court.

A **seriatim opinion** describes an opinion delivered by a court with multiple judges, in which each judge reads his or her own opinion rather than a single judge writing an opinion on behalf of the entire court. This is a practice generally used when a case does not have a majority opinion.

Most frequently used in modern times (when used at all) pleadings as a shorthand for "one by one in sequence". For example, in English civil cases, defence statements generally used to conclude with the phrase "save as expressly admitted herein, each allegation of the plaintiffs is denied as if set out in full and traversed herein *seriatim*." This formulation is now discouraged under the English Civil Procedure Rules, especially rule 16.5 (3)-(5)[1].

Also sometimes seen in older deeds and contracts as a more traditional way of incorporating terms of reference. For example "the railway by-laws shall apply to the contract as if set out herein *seriatim*."

Use of the word (and other Latin phrases) has become less frequent in legal discourse as a result of, among other factors, efforts by groups such as the Plain Language Movement to promote the use of "plain English" in legal discourse.

References

[1] http://www.justice.gov.uk/civil/procrules_fin/contents/parts/part16.htm#IDAVRI5B

Sine qua non

Sine qua non (pronounced as anglicized English pronunciation: /ˌsaɪni kweɪ ˈnɒn/ or more Latinate English pronunciation: /ˌsɪneɪ kwɑː ˈnoʊn/)[1] or ***conditio sine qua non*** (plural *sine quibus non*) was originally a Latin legal term for "(a condition) without which it could not be" or "but for..." or "without which (there is) nothing." It refers to an indispensable and essential action, condition, or ingredient.

As a Latin term, it occurs in the work of Boethius, and originated in Aristotelian expressions.[1] In recent times it has passed from a merely legal usage to a more general usage in many languages, including English, German, French, Italian, Spanish, etc. In Classical Latin the correct form uses the word *condicio*, but nowadays the phrase is sometimes found to be used with *conditio*, which has a different meaning in Latin ("foundation"). The phrase is also used in economics, philosophy and medicine.

An example of the term's usage was annotated in H.W. Brand's biography of Andrew Jackson. The book included a toast given by Jackson on the occasion of his receiving an honorary doctorate from Harvard University. The President responded to his listeners, "*E pluribus unum*, my friends. *Sine qua non.*" A recent example comes from Javier Solana who said that the arrest of Radovan Karadžić was *sine qua non* for Serbia joining the European Union and "it has been a very important step to move closer to Europe."

It also appears in the commentary on Article 59 of the Fourth Geneva Convention on the protection of civilians during a time of war. In this case the *sine qua non* refers to the assurance that relief aid will go to the civilian population and not be diverted towards "the benefit of the Occupying Power."[2]

See also

- Raison d'être
- Example in Principle and Practise of Podiatric Medicine: "The history and physical examination are the sine qua non for establishing a proper diagnosis." - A reference to the essential nature of a proper history and physical examination in establishing a proper diagnosis in the foot.

References

[1] " sine qua non (http://oed.com/cgi/findword?query_type=word&find=Find+word&queryword=sine+qua+non)". *Oxford English Dictionary*. Oxford University Press. 2nd ed. 1989.

[2] International Humanitarian Law - Fourth 1949 Geneva Convention (http://www.icrc.org/ihl.nsf/COM/380-600066?OpenDocument)

Situs (law)

In law, the **situs** *(pronounced "sī'təs")* (Latin for position or site) of property is where the property is treated as being located for legal purposes. This may be important when determining which laws apply to the property, since the *situs* of an object determines the *lex situs*, that is, the law applicable in the jurisdiction where the object is located, which may differ from the *lex fori*, the law applicable in the jurisdiction where a legal action is brought. For example, real estate in England is subject to English law, real estate in Scotland is subject to Scottish law, and real estate in France is subject to French law.

It can be essential to determine the *situs* of an object, and the *lex situs*, because there are substantial differences between the laws in different jurisdictions governing, for example: whether property has been transferred effectively; what taxes apply (such as inheritance tax, estate tax, wealth tax, income tax and capital gains tax); and whether rules of intestacy or forced heirship apply.

The rules for determining *situs* vary between jurisdictions and can depend on the context. The English common law rules, which apply in most common law jurisdictions, are in outline as follows:

- the *situs* of real estate (land) is where the land is located
- the *situs* of bearer instruments and chattels (tangible moveable property) is where the instrument or chattel is located from time to time
- the *situs* of registered instruments is where the register is held
- the *situs* of shares is where the share register is held (in the case of registered shares) or where the bearer share certificate is located (in the case of bearer shares).
- the *situs* of debts is where the debtor resides (since that is generally where legal action can be taken to enforce the debt)
- the *situs* of intangibles property, including intellectual property such as copyright, trademarks and patents but also goodwill, is where the property is registered, or, if not registered, where the rights to the property can be enforced
- within territorial waters, the *situs* of a ship is where it is actually located; on the high seas, a ship is treated as situated at its port of registry

References

- *Halsbury's Laws*, Conflict of Laws, para. pp. 385-391

External links

1. Situs for UK tax law purposes [1]

See also

- Lex situs

References

[1] http://www.foreigndomiciliaries.co.uk/index.php/Main_Page

Son assault demesne

Son assault demesne, or "his own first assault," is a form of a plea to justify an assault and battery, by which the defendant asserts that the plaintiff committed an assault upon him, and the defendant merely defended himself. When the plea is supported by evidence, it is a sufficient justification, unless the retaliation by the defendant were excessive,[1] and bore no proportion to the necessity, or to the provocation received.[2] Character evidence that the plaintiff was noted for quarrelsomeness is generally admissible where an answer of son assault demesne is filed.[3]

References

This article incorporates text from A LAW DICTIONARY, adapted to the Constitution and laws of the United States of America, and of the several states of the American union : with references to the civil and other systems of foreign law, Volume 2*, by John Bouvier, a publication from 1883 now in the public domain in the United States.*

[1] Lyman, Robert W. (October 1925 to June 1926), *Exemplary Damages* (http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/dlr30&section=25), **30**, Dick. L. Rev., pp. 191,

[2] 1 East, P. C. 406; 1 Chit. Pr. 595.

[3] McCarthy, Giles J. (1947-1948), *Evidence: Character Evidence in a Civil Trial* (http://heinonlinebackup.com/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/kentlj36&section=40), **36**, Ky. L.J., pp. 307,

Stare decisis

Stare decisis (Latin: [ˈstaːre deːˈt͡sɪiːsiːs], Anglicisation: [ˈsteɹɪ dɪˈsaɪsɪs]) is the legal principle by which judges are obliged to respect the precedents established by prior decisions. The words originate from the Latin phrase *Stare decisis et non quieta movere*: stand by decisions and do not disturb the undisturbed.[1] In a legal context, this is understood to mean that courts should generally abide by precedents and not disturb settled matters.[1]

In the United States, which uses a common law system in its state courts and to a lesser extent in its federal courts, the Ninth Circuit Court of Appeals has stated:

> Stare decisis is the policy of the court to stand by precedent; the term is but an abbreviation of stare decisis et quieta non movere — "to stand by and adhere to decisions and not disturb what is settled." Consider the word "decisis." The word means, literally and legally, the decision. Nor is the doctrine stare dictis; it is not "to stand by or keep to what was said." Nor is the doctrine stare rationibus decidendi — "to keep to the rationes decidendi of past cases." Rather, under the doctrine of stare decisis a case is important only for what it decides — for the "what," not for the "why," and not for the "how." Insofar as precedent is concerned, stare decisis is important only for the decision, for the detailed legal consequence following a detailed set of facts.[2]

In other words, stare decisis applies to the holding of a case, rather than to obiter dicta ("things said by the way"). As the United States Supreme Court has put it: "dicta may be followed if sufficiently persuasive but are not binding."[3]

The doctrine that holdings have binding precedential value is not valid within most civil law jurisdictions as it is argued that this principle interferes with the right of judges to interpret law and the right of the legislature to make law. Most such systems, however, recognize the concept of *jurisprudence constante*, which argues that even though judges are independent, they should judge in a predictable and non-chaotic manner. Therefore, judges' right to interpret law does not preclude the adoption of a small number of selected binding case laws.

Principle

The principle of stare decisis can be divided into two components. The first is the rule that a decision made by a superior court is binding precedent (also known as mandatory authority) which an inferior court cannot change. The second is the principle that a court should not overturn its own precedents unless there is a strong reason to do so and should be guided by principles from lateral and inferior courts. The second principle, regarding persuasive precedent, is an advisory one which courts can and do ignore occasionally.[4]

Verticality

Generally, a common law court system has trial courts, intermediate appellate courts and a supreme court. The inferior courts conduct almost all trial proceedings. The inferior courts are bound to obey precedents established by the appellate court for their jurisdiction, and all supreme court precedent.

The Supreme Court of California's explanation of this principle is that

> [u]nder the doctrine of *stare decisis*, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of *stare decisis* makes no sense. The decisions of this court are binding upon and must be followed by all the state courts of California. Decisions of every division of the District Courts of Appeal are binding upon all the justice and municipal courts and upon all the superior courts of this state, and this is so whether or not the superior court is acting as a trial or appellate court. Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court.
> __[5]

Appellate courts are only bound to obey supreme court decisions.

The application of the doctrine of stare decisis from a superior court to an inferior court is sometimes called *vertical stare decisis*.

However, in federal systems the division between federal and local law may result in complex interactions. For example, state courts in the United States are not considered inferior to federal courts but rather constitute a parallel court system. While state courts must follow decisions of the United States Supreme Court on issues of federal law, federal courts must follow decisions of the courts of each state on issues of that state's law. If there is no decision on point from the highest court of a state, the federal courts must attempt to predict how the state courts would resolve the issue, by looking at decisions from state appellate courts at all levels. Decisions of the lower federal courts (i.e. the federal circuit courts and district courts) are not binding on any state courts, meaning that interpretations of certain federal statutes can and occasionally have diverged depending upon whether the forum is state or federal. In practice, however, judges in one system will almost always choose to follow relevant case law in the other system to prevent divergent results and to minimize forum shopping.

Horizontality

The idea that a judge is bound by (or at least should respect) decisions of earlier judges of similar or coordinate level is called horizontal stare decisis.

In the United States federal court system, the intermediate appellate courts are divided into "circuits". Each panel of judges on the court of appeals for a circuit is bound to obey the prior appellate decisions of the same circuit. Precedents of a United States court of appeals may be overruled only by the court *en banc,* that is, a session of all the active appellate judges of the circuit, or by the United States Supreme Court.

When a court binds itself, this application of the doctrine of precedent is sometimes called *horizontal stare decisis*. The State of New York has a similar appellate structure as it is divided into four appellate departments supervised by the final New York State Court of Appeals. Decisions of one appellate department are not binding upon another, and in some cases the departments differ considerably on interpretations of law.

Last resort and strict stare decisis

The British House of Lords, as the court of last appeal outside Scotland before the creation of the UK Supreme Court, was not strictly bound to always follow its own decisions until the case *London Street Tramways v London County Council [1898] AC 375*. After this case, once the Lords had given a ruling on a point of law, the matter was closed unless and until Parliament made a change by statute. This is the most strict form of the doctrine of stare decisis (one not applied, previously, in common law jurisdictions, where there was somewhat greater flexibility for a court of last resort to review its own precedents).

This situation changed, however, after the issuance of the Practice Statement of 1966. It enabled the House of Lords to adapt English law to meet changing social conditions. In *R v G & R* 2003, the House of Lords overruled its decision in *Caldwell* 1981, which had allowed the Lords to establish mens rea ("guilty mind") by measuring a defendant's conduct against that of a "reasonable person," regardless of the defendant's actual state of mind.

However, the Practice Statement has been seldom applied by the House of Lords, usually only as a last resort. As of 2005, the House of Lords has rejected its past decisions no more than 20 times. They are reluctant to use it because they fear to introduce uncertainty into the law. In particular, the Practice Statement stated that the Lords would be especially reluctant to overrule themselves in criminal cases because of the importance of certainty of that law. The first case involving criminal law to be overruled with the Practice Statement was *Anderton v Ryan* (1985), which was overruled by *R v Shivpuri* (1986), two decades after the Practice Statement. Remarkably, the precedent overruled had been made only a year before, but it had been criticised by several academic lawyers. As a result, Lord Bridge stated he was "undeterred by the consideration that the decision in *Anderton v Ryan* was so recent. The Practice Statement is an effective abandonment of our pretention to infallibility. If a serious error embodied in a decision of this House has distorted the law, the sooner it is corrected the better."[6] Still, the House of Lords has remained reluctant to overrule itself in some cases; in *R v Kansal* (2002), the majority of House members adopted the opinion that *R v Lambert* had been wrongly decided, but declined to depart from their earlier decision.

Application

U.S. legal system

In the United States Supreme Court, the principle of stare decisis is most flexible in constitutional cases:

> Stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right. ... But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions. ... This is strikingly true of cases under the due process clause.
>
> —*Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 406–407, 410 (1932)[7] (Brandeis, J., dissenting).

For example, in the years 1946–1992, the U.S. Supreme Court reversed itself in about 130 cases.[8] The U.S. Supreme Court has further explained as follows:

> [W]hen convinced of former error, this Court has never felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment, and not upon legislative action, this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions.
>
> —*Smith v. Allwright*, 321 U.S. 649, 665 (1944).[9]

English legal system

The doctrine of binding precedent or stare decisis is basic to the English legal system, and to the legal systems that derived from it such as those of Australia, Canada, Hong Kong, Pakistan, Singapore and New Zealand. A precedent is a statement made of the law by a Judge in deciding a case. The doctrine states that within the hierarchy of the English courts a decision by a superior court will be binding on inferior courts. This means that when judges try cases they must check to see if similar cases have been tried by a court previously. If there was a precedent set by an equal or superior court, then a judge should obey that precedent. If there is a precedent set by an inferior court, a judge does not have to follow it, but may consider it. The House of Lords (now the Supreme Court) however does not have to obey its own precedents.

Only the statements of law are binding. This is known as the reason for the decision or ratio decidendi. All other reasons are "by the way" or obiter dictum. See Rondel v. Worsley [1969] 1 AC 191. A precedent does not bind a court if it finds there was a lack of care in the original “Per Incuriam”. For example, if a statutory provision or precedent had not been brought to the previous court's attention before its decision, the precedent would not be binding. Also, if a court finds a material difference between cases then it can choose not to be bound by the precedent. Persuasive precedents are those that have been set by courts lower in the hierarchy. They may be persuasive, but are not binding. Most importantly, precedents can be overruled by a subsequent decision by a superior court or by an Act of Parliament.

Interpretation

Judges in the UK use three primary rules for interpreting the law. The normal aids that a judge has include access to all previous cases in which a precedent has been set, and a good English dictionary.

Under the literal rule, the judge should do what the actual legislation states rather than trying to do what the judge thinks that it means. The judge should use the plain everyday ordinary meaning of the words, even if this produces an unjust or undesirable outcome. A good example of problems with this method is *R v Maginnis* (1987) in which several judges found several different dictionary meanings of the word "supply". Another example might be *Fisher v Bell*, where it was held that a shopkeeper who placed an illegal item in a shop window with a price tag did not make an offer to sell it, because of the specific meaning of "offer for sale" in contract law. As a result of this case, Parliament amended the statute concerned to end this discrepancy.

The golden rule is used when use of the literal rule would obviously create an absurd result. The court must find genuine difficulties before it declines to use the literal rule. There are two ways in which the Golden Rule can be applied: the narrow method, and the broad method. Under the narrow method, when there are apparently two contradictory meanings to a word used in a legislative provision or it is ambiguous, the least absurd is to be used. For example, in *Adler v George* (1964), the defendant was found guilty under the Official Secrets Act of 1920. The court chose not to accept the wording literally. Under the broad method, the court may reinterpret the law at will when it is clear that there is only one way to read the statute. This occurred in *Re Sigsworth* (1935) where a man who murdered his mother was forbidden from inheriting her estate, despite a statute to the contrary.

The mischief rule is the most flexible of the interpretation methods. Stemming from *Heydon's Case* (1584), it allows the court to enforce what the statute is intended to remedy rather than what the words actually say. For example, in *Corkery v Carpenter* (1950), a man was found guilty of being drunk in charge of a carriage, although in fact he only had a bicycle.

In the United States, the courts have stated consistently that the text of the statute is read as it is written, using the ordinary meaning of the words of the statute.

- "[I]n interpreting a statute a court should always turn to one cardinal canon before all others. ... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 112 S. Ct. 1146, 1149 (1992). Indeed, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.' "

- "A fundamental rule of statutory construction requires that every part of a statute be presumed to have some effect, and not be treated as meaningless unless absolutely necessary." *Raven Coal Corp. v. Absher*, 153 Va. 332, 149 S.E. 541 (1929).
- "In assessing statutory language, unless words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage." *Muller v. BP Exploration (Alaska) Inc.*, 923 P.2d 783, 787–88 (Alaska 1996);

Practical application

Although inferior courts are bound in theory by superior court precedent, in practice judges may sometimes attempt to evade precedents by distinguishing them on spurious grounds. The appeal of a decision that does not obey precedent might not occur, however, as the expense of an appeal may prevent the losing party from doing so. Thus the inferior court decision may remain in effect even though it does not obey the superior court decision, as the only way a decision can enter the appeal process is by application of one of the parties bound by it.

Judicial resistance

Occasionally, the application of prior case law results in court decisions in which the judge explicitly states personal disagreement with the judgment he or she has rendered, but that he or she is required to do so by binding precedent. That is, the issue being judged was already decided by a higher court.[10] Note that inferior courts cannot evade binding precedent of superior courts, but a court can depart from its own prior decisions.[11]

Structural considerations

In the United States, *stare decisis* can interact in counterintuitive ways with the federal and state court systems. On an issue of federal law, a state court is not bound by an interpretation of federal law at the district or circuit level, but is bound by an interpretation by the United States Supreme Court. On an interpretation of state law, whether common law or statutory law, the federal courts are bound by the interpretation of a state court of last resort, and are required normally to defer to the precedents of intermediate state courts as well.

Courts may choose to obey precedents of international jurisdictions, but this is not an application of the doctrine of *stare decisis*, because foreign decisions are not binding. Rather, a foreign decision that is obeyed on the basis of the soundness of its reasoning will be called *persuasive authority* — indicating that its effect is limited to the persuasiveness of the reasons it provides.

Civil law systems

Stare decisis is not usually a doctrine used in civil law systems, because it violates the principle that only the legislature may make law. However, the civil law system does have jurisprudence constante, which is similar to Stare decisis and dictates that the Court's decision condone a cohesive and predictable result. In theory, inferior courts are generally not bound to precedents established by superior courts. In practice, the need for predictability means that inferior courts generally defer to precedents by superior courts. In a sense, the most superior courts in civil law jurisdictions, such as the *Cour de cassation* and the *Conseil d'État* in France are recognized as being bodies of a quasi-legislative nature.

The doctrine of jurisprudence constante also influences how court decisions are structured. In general, court decisions of common law jurisdictions are extremely wordy and go into great detail as to the how the decision was reached. This occurs to justify a court decision on the basis of previous case law as well as to make it easier to use the decision as a precedent for future cases.

By contrast, court decisions in some civil law jurisdictions (most prominently France) tend to be extremely brief, mentioning only the relevant legislation and not going into great detail about how a decision was reached. This is the

result of the theoretical view that the court is only interpreting the view of the legislature and that detailed exposition is unnecessary. Because of this, much more of the exposition of the law is done by academic jurists which provide the explanations that in common law nations would be provided by the judges themselves.

In other civil law jurisdictions, such as the German-speaking countries, court opinions tend to be much longer than in France, and courts will frequently cite previous cases and academic writing. However, some courts (such as German courts) have less emphasis on the particular facts of the case than common law courts, but have more emphasis on the discussion of various doctrinal arguments and on finding what the correct interpretation of the law is.

Originalism

Originalism — the doctrine that holds that the meaning of a written text must be applied — is in tension with *stare decisis*, but is not necessarily opposed irrevocably. As noted above, "*Stare decisis* is not usually a doctrine used in civil law systems, because it violates the principle that only the legislature may make law"; Justice Antonin Scalia argues in *A Matter of Interpretation* that America is a civil law nation, not a common law nation. By principle, originalists are generally unwilling to defer to precedent when precedent seems to come into conflict with the Constitution. However, there is still room within an originalist paradigm for *stare decisis*; whenever the plain meaning of the text has alternative constructions, past precedent is generally considered a valid guide, with the qualifier being that it cannot change what the text actually says.

Some originalists may be even more extreme. In his confirmation hearings, Justice Clarence Thomas answered a question from Senator Strom Thurmond, qualifying his willingness to change precedent in this way:

> I think overruling a case or reconsidering a case is a very serious matter. Certainly, you would have to be of the view that a case is incorrectly decided, but I think even that is not adequate. There are some cases that you may not agree with that should not be overruled. Stare decisis provides continuity to our system, it provides predictability, and in our process of case-by-case decision-making, I think it is a very important and critical concept. A judge that wants to reconsider a case and certainly one who wants to overrule a case has the burden of demonstrating that not only is the case incorrect, but that it would be appropriate, in view of stare decisis, to make that additional step of overruling that case.
> —[12]

Possibly he has changed his mind, or there are a very large body of cases which merit "the additional step" of ignoring the doctrine; according to Scalia, "Clarence Thomas doesn't believe in stare decisis, period. If a constitutional line of authority is wrong, he would say, let's get it right."[13]

Professor Caleb Nelson [14], a former clerk for Justice Thomas and law professor at the University of Virginia, has elaborated on the role of *stare decisis* in originalist jurisprudence:

> American courts of last resort recognize a rebuttable presumption against overruling their own past decisions. In earlier eras, people often suggested that this presumption did not apply if the past decision, in the view of the court's current members, was demonstrably erroneous. But when the Supreme Court makes similar noises today, it is roundly criticized. At least within the academy, conventional wisdom now maintains that a purported demonstration of error is not enough to justify overruling a past decision. ...[T]he conventional wisdom is wrong to suggest that any coherent doctrine of stare decisis must include a presumption against overruling precedents that the current court deems demonstrably erroneous. The doctrine of stare decisis would indeed be no doctrine at all if courts were free to overrule a past decision simply because they would have reached a different decision as an original matter. But when a court says that a past decision is demonstrably erroneous, it is saying not only that it would have reached a different decision as an original matter, but also that the prior court went beyond the range of indeterminacy created by the relevant source of law. ... Americans from the Founding on believed that court decisions could help "liquidate" or settle the meaning of ambiguous provisions of written law. Later courts generally were supposed to abide by such

> "liquidations." ... To the extent that the underlying legal provision was determinate, however, courts were not thought to be similarly bound by precedents that misinterpreted it. ... Of the Court's current members, Justices Scalia and Thomas seem to have the most faith in the determinacy of the legal texts that come before the Court. It should come as no surprise that they also seem the most willing to overrule the Court's past decisions. ... Prominent journalists and other commentators suggest that there is some contradiction between these Justices' mantra of "judicial restraint" and any systematic re-examination of precedents. But if one believes in the determinacy of the underlying legal texts, one need not define "judicial restraint" solely in terms of fidelity to precedent; one can also speak of fidelity to the texts themselves.
> —[15]

In the United States, the judicial oath [16] prescribes fidelity to the Constitution, rather than to the U.S. Reports; when the two are demonstrably in conflict, the former may prevail over the latter.

Super stare decisis

During 1976, Richard Posner and William Landes invented the term "super-precedent," in an article they wrote about testing theories of precedent by counting citations.[17] Posner and Landes used this term to describe the influential effect of a decision cited.

While Posner and Landes' idea did not become popular, the term "super-precedent" has subsequently become synonymous with a different idea: the difficulty of overturning a decision.[18] During 1992, Rutgers professor Earl Maltz criticized the Supreme Court's decision in *Planned Parenthood v. Casey* for endorsing the idea that if one side can control the Court on an issue of major national importance (as in *Roe v. Wade*), then that side can protect its position from being reversed "by a kind of super-stare decisis."[19] The controversial idea that some decisions are virtually immune from being overturned, regardless of whether they were decided correctly in the first place, is the idea to which the term "super stare decisis" now usually refers.

The concept of super-stare decisis (or “super-precedent”) was mentioned during the interrogations of Chief Justice John Roberts and Justice Samuel Alito before the Senate Judiciary Committee. Prior to the commencement of the Roberts hearings, the chair of that committee, Senator Arlen Specter of Pennsylvania, wrote an op/ed in the *New York Times* referring to *Roe* as a "super-precedent." He revisited this concept during the hearings, but neither Roberts nor Alito endorsed the term or the concept.[20]

Lastly, super-stare decisis may be considered as one extreme of a range of precedential power.[21]

Pros and cons

There is much discussion about the virtue or irrationality of using case law in the context of stare decisis. Supporters of the system, such as minimalists, argue that obeying precedent makes decisions "predictable." For example, a business person can be reasonably assured of predicting a decision where the facts of his or her case are sufficiently similar to a case decided previously. However, critics argue that stare decisis is an application of the argument from authority logical fallacy and can result in the preservation and propagation of cases decided wrongly. Another argument often used against the system is that it is undemocratic as it allows unelected judges to make law. A counter-argument (in favor of the concept of stare decisis) is that if the legislature wishes to alter the case law (other than constitutional interpretations) by statute, the legislature is empowered to do so. Critics sometimes accuse particular judges of applying the doctrine selectively, invoking it to support precedents which the judge supported anyway, but ignoring it in order to change precedents with which the judge disagreed.

Regarding constitutional interpretations, there is concern that over-reliance on the doctrine of stare decisis can be subversive.[22] An erroneous precedent may at first be only slightly inconsistent with the Constitution, and then this error in interpretation can be propagated and increased by further precedents until a result is obtained that is greatly different from the original understanding of the Constitution. *Stare decisis* is not mandated by the Constitution, and

if it causes unconstitutional results then the historical evidence of original understanding can be re-examined. In this opinion, predictable fidelity to the Constitution is more important than fidelity to unconstitutional precedents. See also the living tree doctrine.

Glossary

Term	Definition
Obiter dictum	an opinion voiced by a judge on a point of law not directly bearing on the case in question and, therefore, not binding.
Per incuriam	refers to a judgment of a court which has been decided without reference to a statutory provision or earlier judgment which would have been relevant.
Precedent	a statement made of the law by a judge in deciding a case. There are two types, binding and persuasive. Binding precedent is one made by higher courts of law that a judge is obliged to follow. A persuasive precedent are examples brought in from inferior courts or from equal level court of another district and may used for consideration, but superior courts or any courts of another district are not constrained to obey.
Ratio decidendi	The reason for a decision. It is a legal phrase which refers to the legal, moral, political, and social principles used by a court to compose the rationale of a particular judgment. Unlike obiter dicta, the principles of judgment for ratio decidendi are potentially binding precedent, through the principle of stare decisis.

References

[1] Adeleye, Gabriel et al. *World Dictionary of Foreign Expressions: a Resource for Readers and Writers* (http://books.google.com/books?id=a4ddQNrt8e8C&pg=PA371&dq="stare+decisis+et+non+quieta+movere"&hl=en&ei=HEwATMeuHYH58Aa1zYDCDQ&sa=X&oi=book_result&ct=result&resnum=1&ved=0CCgQ6AEwAA#v=onepage&q="stare decisis et non quieta movere"&f=false), page 371 (1999).

[2] *United States Internal Revenue Serv. v. Osborne (In re Osborne)*, 76 F.3d 306, 96-1 U.S. Tax Cas. (CCH) paragr. 50,185 (9th Cir. 1996).

[3] Central *Green Co. v. United States* (http://laws.findlaw.com/us/000/99-859.html), 531 U.S. 425 (2001), quoting *Humphrey's Executor v. United States*, 295 U. S. 602, 627 (1935).

[4] Kmiec, Keenan. The Origin and Current Meanings of "Judicial Activism", *California Law Review* (2004):

> Some instances of disregarding precedent are almost universally considered inappropriate. For example, in a rare showing of unity in a Supreme Court opinion discussing judicial activism, Justice Stevens wrote that a circuit court "engaged in an indefensible brand of judicial activism" when it "refused to follow" a "controlling precedent" of the Supreme Court. The rule that lower courts should abide by controlling precedent, sometimes called "***vertical precedent***," can safely be called settled law. It appears to be equally well accepted that the act of disregarding vertical precedent qualifies as one kind of judicial activism. "***Horizontal precedent***," the doctrine requiring a court "to follow its own prior decisions in similar cases," is a more complicated and debatable matter....[A]cademics argue that it is sometimes proper to disregard horizontal precedent. Professor Gary Lawson, for example, has argued that stare decisis itself may be unconstitutional if it requires the Court to adhere to an erroneous reading of the Constitution. "If the Constitution says X and a prior judicial decision says Y, a court has not merely the power, but the obligation, to prefer the Constitution." In the same vein, Professors Ahkil Amar and Vikram Amar have stated, "Our general view is that the Rehnquist Court's articulated theory of stare decisis tends to improperly elevate judicial doctrine over the Constitution itself." It does so, they argue, "by requiring excessive deference to past decisions that themselves may have been misinterpretations of the law of the land.
>
> For Lawson, Akhil Amar, and Vikram Amar, dismissing erroneous horizontal precedent would not be judicial activism; instead, it would be appropriate constitutional decisionmaking.
>
> —Walton Myers

[5] *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal. 2d 450 (http://online.ceb.com/calcases/C2/57C2d450.htm) (1962).

[6] Martin, Jacqueline (2005). *The English Legal System* (4th ed.), p. 25. London: Hodder Arnold. ISBN 0-340-89991-3.

[7] http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=285&invol=393
[8] Congressional Research Service, Supreme Court Decisions Overruled by Subsequent Decision (http://www.gpoaccess.gov/constitution/html/scourt.html) (1992).
[9] http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=search&court=US&case=/us/321/649.html
[10] See, e.g., the concurring opinion of Chief Judge Walker in *National Abortion Federation v. Gonzalez* (http://www.nrlc.org/abortion/pba/2ndCircuitPBArulingdissent.pdf), United States Court of Appeals for the Second Circuit (January 31, 2006).
[11] See, e.g., *Hilton vs. Carolina Pub. Rys. Comm'n.* (http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=502&invol=197), 502 U.S. 197, 202, 112 S. Ct. 560, 565 (1991)("we will not depart from the doctrine of stare decisis without some compelling justification").
[12] Thomas, Clarence (1991). *[U.S.] Senate Confirmation Hearings.* qtd. by Jan Crawford Greenburg on PBS (http://www.pbs.org/newshour/forum/june03/scotus_forum2.html) (June 2003) Accessed 8 January 2007 UTC.
[13] Ringel, Jonathan (2004). *The Bombshell in the Clarence Thomas Biography* (http://www.law.com/jsp/article.jsp?id=1090180289132). Fulton County Daily Report (http://www.dailyreportonline.com/). .
[14] http://www.law.virginia.edu/lawweb/Faculty.nsf/FHPbI/C4888338932C96E5852566EF00728D67?OpenDocument&ExpandSection=1
[15] Nelson, Caleb (2001). *Stare Decisis and Demonstrably Erroneous Precedents* (http://www.secretjustice.org/pdf_files/law_review/nelson.pdf). Virginia Law Review, 84 Va L. Rev. 1, 2001. .
[16] http://caselaw.lp.findlaw.com/data/constitution/article06/
[17] Landes, William & Posner, Richard. “Legal Precedent: A Theoretical and Empirical Analysis”, 19 *Journal of Law and Economics* 249, 251 (1976).
[18] Hayward, Allison. The Per Curiam Opinion of Steel: Buckley v. Valeo as Superprecedent? (http://www.cato.org/pubs/scr/2006/hayward.pdf), *Cato Supreme Court Review* 195, 202, (2005-2006).
[19] Maltz, Earl. "Abortion, Precedent, and the Constitution: A Comment on Planned Parenthood of Southeastern Pennsylvania v. Casey", 68 *Notre Dame L. Rev.* 11 (1992), quoted by Rosen, Jeffrey. So, Do You Believe in 'Superprecedent'? (http://www.nytimes.com/2005/10/30/weekinreview/30rosen.html?ei=5090&en=aaedb14066699300&ex=1288324800&partner=rssuserland&emc=rss&pagewanted=print), *NY Times* (2005-10-30).
[20] Benac, Nancy url=http://www.breitbart.com/article.php?id=D8CJENHO1&show_article=1 (2005-09-13). "Roberts Repeatedly Dodges Roe v. Wade". Associated Press.
[21] Sinclair, Michael. "Precedent, Super-Precedent" (http://www.law.gmu.edu/gmulawreview/issues/14-2/documents/SINCLAIR.pdf), *George Mason Law Review* (14 Geo. Mason L. Rev. 363) (2007).
[22] How *stare decisis* Subverts the Law (http://www.constitution.org/col/0610staredrift.htm), Jon Roland, 2000

Sua sponte

In law, the term ***sua sponte*** (Latin "on its own will or motion.") means to act spontaneously without prompting from another party. The term is usually applied to actions by a judge taken without a prior motion or request from the parties. The plural form *nostra sponte* is sometimes used when the action is taken by a multi-member court, such as an appellate court, rather than a single judge. While usually applied to actions of the court, the term reasonably may be applied to actions by government agencies and individuals acting in official capacity.

One situation in which a party might encourage a judge to move *sua sponte* occurs when that party is preserving a special appearance (usually to challenge jurisdiction), and therefore cannot make motions on its own behalf without making a general appearance. Common reasons for an action taken *sua sponte* are when the judge determines that the court does not have subject-matter jurisdiction or that the case should be moved to another judge because of a conflict of interest, even if all parties disagree.

Notable cases

- *Carlisle v. United States* 517 U.S. 416 (1996) - The Supreme Court of the United States ruled that a district court could not move *sua sponte* to grant a judgment of acquittal (notwithstanding the verdict) to remedy the late filing of the equivalent motion.[1]
- *Trest v. Cain* 522 U.S. 87 (1997), 94 F.3d 1005 - The United States Court of Appeals for the Fifth Circuit moved *sua sponte* to reject a *habeas corpus* claim because of procedural defeat, citing an obligation to do so. The Supreme Court ruled that this was not obligatory, but declined to rule whether it was permitted.[2]

Other uses

- The 75th Ranger Regiment (United States Army Rangers) uses *Sua Sponte* as their regimental motto, referring to the Rangers' ability to accomplish tasks with little to no prompting.
- The Fenn School in Concord, Massachusetts uses *Sua Sponte* as its school motto usually seen written in a furled banner beneath an engraving of the famous Daniel Chester French Concord Minuteman statue.

See also

- Motu proprio

References

[1] http://supct.law.cornell.edu/supct/html/94-9247.ZS.html
[2] http://supct.law.cornell.edu/supct/html/96-7901.ZO.html

Sub silentio

Sub silentio is legal latin meaning "under silence." It is often used as a reference to something that is implied but not expressly stated."

Sub judice

In law, ***sub judice***, Latin for "under judgment," means that a particular case or matter is currently under trial or being considered by a judge or court. The term may be used synonymously with "the present case" or "the case at bar" by some lawyers.

In England and Wales, Ireland,[1] New Zealand, Australia, India, Pakistan, and Canada it is generally considered inappropriate to comment publicly on cases *sub judice*, which can be an offence in itself, leading to contempt of court proceedings. This is particularly true in criminal cases, where publicly discussing cases *sub judice* may constitute interference with due process.

In the United States, there are First Amendment concerns about stifling the right of free speech which prevent such tight restrictions on comments *sub judice*. However, State Rules of Professional Conduct governing attorneys often place restrictions on the out-of-court statements an attorney may make regarding an ongoing case. Furthermore, there are still protections for criminal defendants, and those convicted in an atmosphere of a circus have had their convictions overturned for a fairer trial.

References

[1] RTÉ fined after breaking sub judice rule (http://www.rte.ie/news/2009/1112/rte.html)

In English law, the term was correctly used to describe material which would prejudice court proceedings by publication before 1981. *Sub judice* is now irrelevant to journalists because of the introduction of the Contempt of Court Act 1981. Under Section 2 of the Act, a substantial risk of serious prejudice can only be created by a media report when proceedings are active.

Proceedings become active when there's an arrest, oral charge,issue of a warrant or a summons.

Subpoena

A **subpoena** (pronounced /səbˈpiːnə/ or English pronunciation: /səˈpiːnə/) is a writ issued by a government agency, most often a court, that has authority to compel testimony by a witness or production of evidence under a penalty for failure.

There are two common types of subpoena:

1. *subpoena ad testificandum* orders a person to testify before the ordering authority or face punishment.
2. *subpoena duces tecum* orders a person to bring physical evidence before the ordering authority or face punishment.

Etymology

The term is from the Middle English *suppena* and the Latin phrase *sub poena* meaning "under penalty".[1] The term may also be spelled "subpena",[2] particularly in the United States.

The subpoena has its source in English common law and it is now used almost with universal application throughout the English common law world. However, for Civil proceedings in England and Wales, the term has been replaced by **witness summons**, as part of reforms to replace Latin terms with English terms which are easier to understand.

John Waltham, Bishop of Salisbury, is said to have created the writ of subpoena in the reign of Richard II.[3]

Subpoena process

Subpoenas are usually issued by the clerk of the court (see below) in the name of the judge presiding over the case. Additionally, court rules may permit lawyers to issue subpoenas themselves in their capacity as officers of the court. Typically subpoenas are issued "in blank" and it is the responsibility of the lawyer representing the plaintiff or defendant on whose behalf the testimony is to be given to serve the subpoena on the witness.

The subpoena will usually be on the letterhead of the court where the case is filed, naming the parties to the case, and being addressed by name to the person whose testimony is being sought. It will contain the language "You are hereby commanded to report in person to the clerk of this court" or similar, describing the specific location, scheduled date and time of the appearance. Some issuing jurisdictions include an admonishment advising the subject of the criminal penalty for failure to comply with a subpoena, and reminding him or her not to leave the court facilities until excused by a competent authority. In some situations the person is paid.

Some states (as is the case in Florida) require the subpoenaing party to first file a Notice of Intent to Serve Subpoena, or a Notice of Production from Non-Party 10 days prior to issuing the subpoena, so that the other party may have ample time to file any objections.

Additional Readings

- "The Press and Subpoenas: An Overview," by Marlena Telvick and Amy Rubin, PBS Frontline, February 20, 2007.[4]

References

[1] Webster's New Collegiate Dictionary, p. 1160 (8th ed. 1976).

[2] See, e.g., 18 U.S.C. § 1429 (http://www.law.cornell.edu/uscode/18/1429.html); 18 U.S.C. § 3333(c)(1) (http://www.law.cornell.edu/uscode/18/3333.html#c_1); 18 U.S.C. § 1968(c) (http://www.law.cornell.edu/uscode/18/1968.html#c); and 28 U.S.C. § 1365 (http://www.law.cornell.edu/uscode/28/1365.html).

[3] LectLaw.com (http://www.lectlaw.com/def2/s083.htm), url retrieved 2008-06-26.

[4] PBS.org (http://www.pbs.org/wgbh/pages/frontline/newswar/part1/subpoenas.html)

Subpoena ad testificandum

A **subpoena ad testificandum** is a court summons to appear and give oral testimony for use at a hearing or trial. The subpoena developed as a creative writ, the "writ subpoena", from the Court of Chancery. Writs of many kinds formed the essential parts of litigation. The primary function of a writ in the 13th and 14th centuries was to convey the king's commands to his officers and servants. It was irrelevant what the nature of those commands might be. The Register of Writs shows a large variety of writs to be administrative in nature, as opposed to judicial. These former writs acquired the name prerogative writs in the 17th and 18th centuries. Prerogative writs that have survived into modern law are the writ of mandamus and writ of certiorari. The medieval writ of prohibition played an important part in the conflict between the church and state in England. The writ was also used in the courts of admiralty and local courts. It has survived in relative obscurity in United States law. The writ subpoena began to be attached to a wide variety of writs in the 1300s. These were an invention of the Court of Equity, which were a part of Chancery. Thus, "subpoena" was a product of the Ecclesiastical Courts in England. The commonest writ from this era was the *Praecipe quod reddat* (You are commanded to return [some misappropriated good or land]). To these were often added the phrase: *sub poena*.

History of trial by jury and the writ subpoena

The development of the writ subpoena is closely associated with the invention of due process, which slowly replaced trial by ordeal. The institution of the jury trial necessitated the hearing of evidence. This, in turn led to the need for a reliable method of compelling witnesses to appear and give testimony. The writ subpoena became the standard method of compelling witnesses. Following the Fourth Lateran Council in 1215, and based on a Latin interpretation of natural moral law, all forms of trial by ordeal or trial by battle were outlawed in Church courts. Of greater significance to English law was the fact that the clergy were banned from blessing trial by ordeal in the civil and common law courts. This had the effect of bringing the practice of trial by ordeal to an abrupt halt in England. Trial by battle, which later evolved into a method of settling scores by dueling, was less affected. These had never had, nor did they require, the blessing of the Church. They were never a part of Latin or Roman law, but had been prevalent in the underlying Celtic and Saxon cultures. Trial by ordeal had always been viewed with skepticism and condescension by Latin lawyers and intelligentsia. Trial by battle, for the sake of honor had a long and proud tradition in Rome, and remained prominent in Roman lands. It had been banned by the Church courts on the Continent. Those who wanted to duel simply ignored the ban.

Prior to the Fourth Lateran Council, trial by ordeal was the norm.

Following the Fourth Lateran Council, the civil and common law courts quickly moved to ban these practices, as well. Implementation proved to be more difficult. What to replace trial by ordeal and trial by combat with? The novel choice was trial by jury. In many places this change was seen as radical, and was met with great doubts about its effectiveness. There was reluctance to accept juries on a large scale by many of the English courts, and the public at large. People were used to a system where decisions were made by the outcome of a duel, or from some ordeal.

The jury system had made a sporadic appearance in England from time to time, including, but not limited to Danelaw and the Saxons. Even so, juries had never been predominant. They remained a local and obscure phenomena. It was generally believed that God's will was revealed in the outcome of the battle or ordeal. The fact that the judge would view the result of the ordeal and declare "God's decision" had little bearing on the validity of the procedure. The jury was something else. It didn't represent God, but rather twelve or more individuals who like as not, would fail come up with the solution God would want. The tough cases which had no resolution, (just as today), could easily be mocked by the public, if the decision by the jury was inconclusive, or not in agreement with all the facts, or emotions of the populace. Trial by ordeal or battle avoided these problems. The result in difficult cases was almost always clear cut. Judges didn't have to make tough decisions.

1215 was also the year of the Magna Carta. Among other things, it limited the Courts of Eyre. These were circuit riding courts of the King which were roundly feared and hated. They had a reputation for being imperious and angry. There was thought to be little mercy in the Courts of Eyre. Magna Carta limited the Courts of Eyre from visiting the same location to once every seven years.

Trial by battle and dueling proved to be a most recalcitrant problem for the Church. It was not until recent times that it was more or less banned, mainly by rule of law.

The Fourth Lateran Council was overseen by Pope Innocent III, who along with Pope Adrian IV represented the absolute zenith of Papal Power in the Middle Ages.

The promulgation of the jury system required the taking of testimony from witnesses. This led to growing use of writs compelling attendance at trials, using the clause "sub poena".[1] [2] [3] [4] [5] [6]

Procedure on bills in Eyre and bills in Chancery

Pope Innocent III was indirectly responsible for the use of subpoena when trial by ordeal was outlawed in the Fourth Lateran Council

The question inevitably arises: Did the writ subpoena develop in the Court of Eyre, or in the Court of Chancery? There were writs of a somewhat similar nature to be found in both courts. Bills (writs of complaints) were the method by which a litigant could make his story known in the courts of the 13th and 14th century England. Because novel fact patterns frequently emerged, there was a tendency to become creative in the writing of bills of complaint and writs. Against this novelty, was a strong reaction, wanting to keep the number of writs to a minimum. An example is seen from the time of Edward II of England: in 1310–1311 John Soke, a litigant appeared in person before the Common Bench, exclaiming in great frustration, "For God's sake, can I have a writ to attaint this fraud?" Judge Stanton replied, "Make your bill and you shall have what the court can allow."[7] This illustrates the great flexibility of the writing of writs to conform to the changing fact situations as they varied from case to case. At that time, a plaintiff who sued by bill was not liable to fail for defects in the form of a bill, provided the bill told an intelligible and consistent story.

As a matter of procedure, the judge would question the plaintiff in order to bring out the cause of the complaint. Once this was accomplished, the subsequent proceeding under the bill would be carried out as if there was a legitimate writ. By the 15th century, the bill would typically pray that a subpoena should be issued to secure the appearance and examination of the defendant. At the bottom of the bill were the names of the pledges to prosecute. There were similar to the bills issued by the Court of Eyre. Those subpoenas issued in Chancery at the time of Henry VI of England were required to have a pledge attached. Statute at that time prohibited the issue of a writ of subpoena until the plaintiff had found sureties to satisfy the defendant's damages if he did not prevail in his case. When the

defendant appeared, both the plaintiff and his witnesses, and the defendant and any witnesses which he might produce, were examined by the Chancellor. Production of documents could be demanded via subpoena duces tecum. It has been suggested that the writ subpoena was very similar to the bill of Eyre. However, in the opinions of Professor Adams, Sir Frederick Pollock, 3rd Baronet and Professor Powicke, it is erroneous to conclude that the writ subpoena came from the Bill of Eyre. It came from Chancery.

The source of the word writ, or writ subpoena has been ambiguous. The Statute of Westminster II (1285) under the section *in consimili casu* (in similar case), attempted to limit the number of writs that could be issued.[8] [9] [10] [11]

Development prior to the writ subpoena

After the quick abolition of trial by ordeal, the novel approach was to call a jury to consider the case. Some situations were not difficult. As an example, from 1221 there is the case of Thomas de la Hethe. He had been presented by the grand jury with an indictment accusing him of being an associate of a notorious felon named Howe Golightly. Thomas refused to put himself on the country (accept a jury trial). Notwithstanding this refusal, the court declined to permit him any sort of trial by ordeal, but realizing the gravity of the situation they empanelled an impressive jury of twenty-four knights. These found Thomas guilty, and therefore he was hanged. At this time, even a villain who refused jury trial might have a panel of twenty-four knights.[1]

Such a large and distinguished trial by jury consisting of twenty-four knights shows the court's apprehension at depriving a man of his right to a trial by ordeal. Another example comes from the same year, 1221. An indictment indicated that the carcass of a stolen cow was discovered in William's shed. William did not express a claim to any particular sort of trial. He did state that the cow had been placed there by his lord, so that the latter could get his land as an escheat for felony. The serjeant who arrested William stated that the lord's wife had arranged for his arrest. In such a case, the court simply asked the indictors for more information. They related the whole story; William was acquitted by the court and the lord was committed to gaol (jail).[1]

In this case, the court quickly detected the plot and merely needed confirmation.[1] But what of cases where the facts were not clear, or the decision was difficult? It was these that provided the gravest difficulties with jury trials following the abolition of trial by ordeal. Upon the calling of a general Court of Eyre, it was easy to assemble a thousand or more jurors, who could be questioned, and pronounce a prisoner guilty or not. If the proceedings were instigated upon the delivery and indictment from a gaol (jail), before a non-professional judge, most prisoners were coerced to put themselves upon the mercy of a jury trial, and forego their ancient right to trial by ordeal. If they refused a jury trial, there was no option but to keep them in prison until they changed their mind.

John Fortescue gives a picture of jury trials which is congruent with the modern form.

Under these circumstances, the jury became a new form of ordeal. The judges, in difficult cases ceased to be inquisitors, and simply came to accept the verdict of the jury. The accused was pronounced either "guilty" or "not guilty". This result soon came to be accepted with as little doubt, as much as the result of the hot iron or cold water was accepted a generation earlier. At first, there was no compulsion to deem the actions of a jury with any more rationality than that of the ordeal. The ordeal had shown God's judgment in the matter. The verdict of the jury, while not necessarily congruent with God's will, nonetheless, was inscrutable. Over the course of a generation or so after 1215, the jury system began to be rationalized and regarded as a judicial body.

Bracton (circa 1250) seemed to be fairly complacent with the jury as an institution. Other contemporaneous writers were markedly dissatisfied with the jury. The "Mirror of Justice"[12] contains a violent attack on the jury system from

1290. In those parts of France where the jury system took root at the same time, there were tremendous protests against it, as being oppressive.[13]

From the time of Edward I of England onward, the function of the jury was slowly being judicially defined. Questions of law were being separated from questions of fact. Arguments centered around questions like: Is a jury conclusion of 11 to 1 enough to convict for a crime?

In 1468, Sir John Fortescue gives a picture of jury trials which is congruent with the modern form. The jury had come to be regarded as twelve men who could be of open mind. Witnesses were examined under oath. Parties or their counsel were presenting facts and evidence to the jury. A century later, Sir Thomas Smith gives a vivid account of the jury trial with examination, cross-examination, all in front of the judge and jury.[13]

The problem of maintenance and other corruptions of the jury system

Shortly after the institution of the jury system, with its attendant seeking of evidence, based on testimony given by witnesses, the problem of maintenance developed. Maintenance was the practice of witnesses coming forward to provide testimony at trial, without being asked to do so. These were frequently well meaning friends or family members who wanted to participate, or help sway the verdict of the trial. The Statute of Westminster I (1275) had fifty-one chapters. One of these dealt with the issue of maintenance.[14]

There are numerous references indicating that there had developed a class of professional testifiers, quite apart from lawyers and advocates, who could be purchased to testify in jury trials. There was an effort to end this practice by providing punishment to whole categories of professional testifiers, such as serjeant-pleaders.[15] [16] [17]

Early juries might consist of twenty four knights. Later maintenance and corruption became problematic.

Sir John Fortescue was of the opinion that anyone who came forward to volunteer to give testimony in a case should be tried for maintenance, since he should have waited to be issued a writ of subpoena.[18]

Sir Thomas Smith commented that the jury system in the time of Elizabeth could not exist without the ability to compel testimony using the writ subpoena.[18] [19] At this time, maintenance was viewed as the primary evil of the legal system. Political songs of the day evoked the problem: "At Westminster halle (Legis sunt valde scientes); Nevertheless for hem alle (Ibi vincuntur jura potentes...); His owne cause many a man (Nunc judicial et moderatur); Law helpeth noght than (Ergo lex evacuatur)."[20]

The strictness with which the courts interpreted the laws against maintenance was an expression of the censure of the common law. But the censure, overall, proved to be ineffectual. By the Fifteenth Century, the law had become corrupted, and was only another weapon, along with physical violence, for the unscrupulous to achieve their ends. In 1450, Cade proclaimed: "The law serveth of nowght ellys in thes days, but for to do wrong, for nothying is sped almost but false maters by colour of the law for mede, drede and favor."[21] Perjury was not a crime in those days. Maintenance, along with champerty, appearing armed before a justice of the law, giving of liveries, forgery of deeds, and other corrupting influences were banned under Edward III of England.

An example of the corruption is seen in the 1445 case of Janycoght de Gales who had been committed to prison until he paid the sum of 388 pounds which was owed to Robert Shirbourne, a draper of London. Janycoght procured a testifier in maintenance, George Grenelawe who accused him of larceny. The idea was that Janycoght would be convicted of larceny, sentenced to Fleet prison, then released because of obligations owed to him by the keepers of

that prison. In this manner, he would escape the debt of Shirbourne. It was discovered that Grenelaw had fabricated the complaint.[22]

The abuses were rampant. Increasing strictness against corruption of all kinds at jury trials made many reluctant to testify. The writ subpoena became a necessary answer to this problem.

Two competing court systems in Medieval England

Court of Equity grew out of the Court of Chancery, which were controlled by the Church. There was a concern in these institutions that law be congruent with natural moral law. The great concern was equitable justice or "equity". This was not always seen in the common law courts, which were more pragmatic, and were concerned mainly with land law and inheritance.

Trial by battle was a practice which proved difficult to control by rule of law.

Until the Late Middle Ages it was not apparent to contemporaries that there would be, or could be, two different and competing legal systems in England, one of them common law and the other equity. They were, however, aware of the conflicting courts. There was a conflict of jurisdiction. There were numerous complaints that various authorities had exceeded their power. Equity grew in its desire to deal with the *de facto* failings of the common law courts, and did not concern itself with doctrinal differences. Often, a suitor who was dissatisfied with the result in a common law court would refile the case in Equity or Chancery. These latter courts saw their role as being "equalizers": socially, legally, economically. In this position, and encouraged by Roman law traditions, they were always creative in producing new writs which could not be found in the common law courts. It was in this spirit that Justice Berrewyk in 1302, ordered an infant to be brought before the court with a writ subpoena: "under pain of (forefeit) of 100 pounds". But there is evidence that "threat of penalty" had been attached to writs used by the government to induce behavior as early as 1232. By 1350, the writ certis de causis (the "writ for certain causes"), began having the clause subpoena routinely attached. The writ quibusdam certis de causis is at least as old at 1346, and had subpoena attached. The great objection which common lawyers made to writs in this form was their failure to mention the cause of the summons. It became the custom in the common law courts that the person would not be compelled to appear without having notice of the reasons for appearing. Early subpoenas carried no notice of the reason for the summons. Objections in Parliament became loud and frequent. On the one hand, Chancery believed that wrongdoer might engage in maintenance to prepare the verdict before appearing in court. On the other side, common law courts found it difficult to amend the presented writ, and many cases were lost for want of the correct writ at the beginning of the case.[23]

Attempts to limit the writ subpoena

The rolls of the medieval English parliaments contain numerous petitions and acts directed against the Council and Chancery. The spirit of the Magna Carta, as well as some specific language within it, was the promise that justice in England to all citizens and their property would be in the common law courts, and nowhere else. In 1331, these proclamations were again re-enacted. In 1351, they were again recited. The King had to promise that the Council would not proceed without indictment of common law process on an original writ. It was ignored. In 1363, the command to Chancery was repeated by legislature. There was a proclamation that there be no original writs. These pronouncements were ineffective and ignored. More legislation followed in 1389 and 1394. In 1415, the writ

subpoena was denounced by name, as a subtlety invented by John Waltham. Another legislative act in 1421 called the subpoena not in accordance with due process. By this time, the Council and Chancery were firmly established. Further legislation only encouraged these institutions.[24]

Subpoena as generally defined in the United States

In order for the power of the court to compel the appearance and testimony of a witness in United States Federal Courts, or in various state courts, the person who is sought must be served with a subpoena.[25]

The obligation of the individual to attend the court as a witness is enforced by a process of the court, particular process being the subpoena ad testificandum, commonly called the subpoena in the United States. This writ, or form, commands the witness, under penalty, to appear at a trial to give testimony. Thus, the subpoena is the mechanism for compelling the attendance of a witness.[26] [27] [28]

The court did not err in refusing to order production of a defense alibi witness, where the defense contended that the witness was under subpoena but no evidence was introduced to show that the witness was under subpoena, *and* no evidence was introduced to show the witness was ever served with a subpoena to testify.[29]

Various states have a statutory provision to define the execution and regulation of subpoenas. Louisiana is typical. There the court made this statement: "A statute provides that the court shall issue subpoenas for the compulsory attendance of witnesses at hearings or trials when requested to do so by the state or the defendant."[30]

Subpoena ensures the right to confront witnesses in a court of law.

One accused of a crime has a constitutional right to have compulsory process to procure the attendance of witnesses in his favor.[31]

The subpoena is a process in the name of the court or a judge, carrying with it a command dignified by the sanction of the law.[32]

A subpoena has been called a mandate lawfully issued under the seal of the court by a clerk thereof.[33]

In general, the norm is to have the clerk of the court issue the subpoena for an upcoming trial in that same court.[34]

Under the Uniform Rules of Criminal Procedure, a clerk or, someone acting in the part of the clerk of the court, under a magistrate shall issue a subpoena to a party requesting it, who shall fill in the blanks before it is served.[35]

Requisites of form in the United States

In the United States, the form of a subpoena may be prescribed by statute of the state, or by the rule of the local court.[36]

A subpoena requires the person therein named to appear and attend before a court or magistrate at the time and place, to testify as a witness.[36]

Under the Uniform Rules of Criminal Procedure, the subpoena must state the name of the court and the title, if any, of the proceeding. It must command each person to whom it is directed to attend and give testimony. The time and place must be specified.[35]

The rules governing civil and criminal procedure in federal court provide for the subpoena of witnesses, and specify the form and requisites thereof.[37] [38]

Appearance of writ; prisoners and other detainees; Uniform Rendition of Prisoners as Witnesses

In the American system there is a fundamental right to be heard in due process of law. This is defined in the Fourteenth Amendment of the United States Constitution. A necessary requisite of due process of law is the opportunity to be heard, in a manner which is meaningful, in front of a forum which has an open mind, and is willing to listen to evidence. Adequate notice and an opportunity to confront adverse witnesses must be afforded.

As a general rule, independent of statutory considerations, the writ of *habeas corpus ad testificandum* under American law may be resorted to for the purpose of removing a person confined in a jail or prison to enable him to testify as a witness. The issuance of such a writ lies within in the sound discretion of the court, or the judicial officer having the power to compel the attendance of witnesses. Relevance and materiality are of consideration in such matters. The constitutional right of an accused to compulsory process for obtaining witnesses does not necessarily extend to compelling the attendance of person in prison. This right is not violated by a statute which makes the right to the production of a witness confined in prison upon the discretion of the court.[39]

The Uniform Rendition of Prisoners as Witnesses in Criminal Proceedings Act provides by way of reciprocity between state for the summoning of a prisoner in one state to appear and testify as a witness in another. This is accomplished by way of a court order which specifies terms and conditions, and a determination and certification that the witness is material to a pending criminal proceeding. The Uniform Act defines a "witness" as a person who is confined in a penal institution in any state and whose testimony is desired in another state in any criminal proceeding or other investigation by a grand jury or in any criminal action before a court of law.

Compulsion to appear under statute

A number of states have adopted the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings to enable courts, through voluntary co-operation, to secure the attendance of witnesses from other states. The co-operative states must have adopted the same legislation in order to enter into reciprocal agreements for the attendance of witnesses. The law also applies to grand jury investigations.[40]

Federal Rule 4

The issuance of process, including a summons, is regulated by local statutory provisions and rules of the court. These should be consulted. The usual procedure calls for the issuance of a summons by the clerk of the court upon filing a complaint or petition. The Federal Rules of Civil Procedure provides that upon filing of a complaint the clerk of the court must forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff's attorney who is responsible for the prompt service of the summons and a copy of the complaint. (FRCP 4) The Federal Rule is not concerned with the amenability of the suit, the proper venue of the case, or the court's jurisdiction. The rule provides the means of invoking the *in personam* jurisdiction of the court in civil actions and will control if other relevant statutes or rules make no special provisions for service of process in other relevant statutes and rules. The nature of Rule 4 is procedural rather than substantive in nature.[41]

Criminal process as ruse

In general, service of a process upon a non-resident will be set aside where the criminal proceedings are instituted against him in bad faith, or as a ruse or pretext for getting him into the jurisdiction in order to serve him with civil process.[42] [43]

Immunity from subpoena service in civil cases

As a general rule, a witness who is in attendance at a trial in a state other than that of his residence is immune or privileged from the service of civil process (delivery of a subpoena in a civil case, but not a criminal case) while in such a state. Usually, immunity is granted to a witness who voluntarily appears to testify for the benefit of another, but it has also been held that the grant of immunity is not affected by the fact that the witness appearance was pursuant to a court order. The immunity is not affected by the witness' domination of a corporate defendant already in action, or the witness' potential liability as a co-defendant. A witness who appears in court as part of his official duties is immune from service of civil process, and it is irrelevant that his appearance was not under subpoena.[44] [45]

Contrary to the general rule, there has been opinion that non-resident witnesses are not exempt from civil process. Many courts encourage witnesses to come forward voluntarily and give testimony.[46] [47]

Immunity is based on the theory that the Court must be unimpeded in its goals, and fear of service could lead to witnesses not appearing, for fear of being served in another pending civil case.[48]

There are two general rules followed:

1. The "sole purpose rule" where the rule cannot be invoked unless the only reason the party is in the jurisdiction is to attend the court's business.
2. The "controlling reason doctrine", which is more liberal, and allows a person testifying more latitude. So called "long arm statutes" have tended to mitigate immunity to some extent.[48] [49] [50]

Various "long arm statutes" have changed the landscape of civil service across state lines. For instance, immunity from civil service to non-resident witnesses no longer applies in California after *Silverman v. Superior Court*.

Subpoena power defined in the Federal Administrative Procedure Act

Following the United States Supreme Court ruling in *Morgan v. United States*, federal administrative law was ripe for significant reform. Administrative law had grown significantly during the Franklin Delano Roosevelt administration and the implementation of the numerous agencies promulgated under the New Deal. The decision in Morgan precipitated change in the federal system which had been deemed inadequate for the previous thirty five years. In 1941 the United States Attorney General's Committee presented its final report on federal administrative procedure. The report resulted in the Federal Administrative Procedure Act of 1946 (APA). A parallel report entitled the *Benjamin Report* was issued concerning administrative adjudication in the state of New York in 1942. The Federal Administrative Procedure Act of 1946 required hearings to have the qualities defined in §§ 553 and 554: For hearings involved in the taking of evidence, there shall preside:

1. The agency
2. One or more members of the body which comprises the agency; and
3. One or more hearing examiners appointed under section 3105.

Subject to published rules of the agency and within its power, employees presiding at hearings may -

1. Administer oaths and affirmations;
2. Issue **subpoenas** authorized by law;
3. Rule on offers of proof and receive relevant evidence;
4. Take depositions or have depositions taken when the ends of justice would be served;

5. Regulate the course of the hearing;
6. Hold conferences for the settlement or simplification of the issues by consent of the parties;
7. Dispose of procedural requests or similar matters;
8. Make or recommend decisions in accordance with section 557 of the title;
9. Create a transcript of the testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for the decision in accordance with § 557 of the title. Upon payment of lawfully prescribed costs, the transcript shall be made available to the parties involved. When the agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled on timely request to an opportunity to show contrary. In the years following the enactment of the Administrative Act, hearing officers have had their titles and positions changed to Administrative Law Judge. This was done by Civil Service Commission and not by an act of Congress.[51] [52] This change is arguably important to lend credence to the authority to issue subpoenas for administrative procedures.

From the Federal Administrative Procedure Act, 5 U.S.C. § 555 (b): "A person compelled to appear in person before an agency or representative thereof is entitled to be accompanied, represented, and advised by counsel or, if permitted by the agency, by other qualified representative. A party is entitled to appear in person or by, or with counsel in an agency hearing."

In *Madera v. Board of Education*, 1967, the United States Supreme Court ruled that administrative hearings which complied with the requirements of due process must allow counsel. In *Powell v. Alabama*, 1938, the Supreme Court ruled that in criminal proceedings, the accused must be provided counsel at public expense, if the defendant cannot afford one. It is not required that representation in administrative hearings be paid for by public funds. Some hearings require that counsel cannot participate, as in arguing the case, but may only advise the client.

When the APA applies, the agency due process hearing must be presided over by the agency head (or one or more of the commissioners or board members, if it is a multiheaded agency) or an administrative law judge. The APA states that is provision requiring hearings by agency heads of administrative law judges, "does not supersede the conduct of specified classes or proceedings... by or before boards or other employees specially provided for by or designed under statute." The most prominent use of this clause is the Immigration and Naturalization Service.

In general, one called to be a witness by subpoena issued under APA guidelines is entitled to have representation by an attorney. This is not uniform, however. The Supreme Court has held that there is no constitutional right to counsel in noncriminal investigatory proceedings.[53] Even the blanket right to counsel given by APA may not apply to all agencies. The Internal Revenue Service and the Securities and Exchange Commission have sought to restrict the right of person called as witnesses in investigatory proceedings to engage lawyers who appear as counsel for someone else in the hearing. The courts have been ambivalent in their reaction to such attempts to restrict the choice of counsel. One case holds that person required to testify in a tax investigation are not entitled to counsel connected with or retained by the taxpayer whose liability is under investigation.[54]

Important Supreme Court cases

Pennoyer v. Neff

The issue in this case involved a court ordered liquidation of a piece of land which had been purchased by Neff. Neff was not a resident of the state in which the land was located. In ordering a sale of the land to fulfill a judgment, the court had failed to issue proper notice to Neff, who resided in another state. The service had not been *in personam*. The Supreme Court ruled that the sale of the land was illegal because the service of the notice or subpoena had not been proper. There is no personal jurisdiction over a defendant unless the defendant is served with a **subpoena** while physically within the state where the court issuing the subpoena is located and has jurisdiction. The court could have avoided the issue by first creating a prejudgment writ of attachment to freeze the asset represented by the land in question *quasi in rem* or *in rem*, meaning *a thing*. Subpoenas mailed across state lines for matters of litigation *quasi*

in rem or *in rem* were allowed by the Supreme Court in Pennoyer.

Grannis v. Ordean

In the case of *Grannis v. Ordean*, 234 U.S. 385 (1914), the Supreme Court considered the problem of a misspelled name on a properly executed and delivered subpoena across state lines. A question of adequacy of service by publication and mailing of a summons in a partition suit, conforming with the local law with respect to constructive service of nonresidents, naming the party defendant and addressee, "Albert Guilfuss, assignee" and "Albert B. Guilfuss", satisfied the requirement of the due process clause of the United States Constitution Fourteenth Amendment, conferring jurisdiction, notwithstanding the misnomer, to render judgment binding upon "Albert B. Geilfuss, assignee" with respect to a lien upon, or interest in, the land, he having not appeared.

The Minnesota Supreme Court ruled that the misspelling of the name Guilfuss violated due process. Invoking the doctrine of *idem sonans* (Latin for "same sound"), they concluded that Guilfuss would be pronounced differently than Geilfuss. The United States Supreme Court overturned the ruling of the Minnesota Court, finding the doctrine of *idem sonans* wanting. The proper remedy for a misspelled name was for Geilfuss to appear in person and request relief, or plead misnomer in abatement. This was proper common law relief. The fact that the incident occurred across state lines was irrelevant.

The service had also been proper since the land in question had been in the nature of an action *in rem*.

International Shoe v. Washington

In this case, the Supreme Court was asked to determine how much contact a multi-state corporation must have to a given state in order to be sued in that state. International Shoe was a corporation registered in Delaware, and using its principal place of business in Missouri. It had 11–13 salesmen in the state of Washington who sold its products there. International Shoe failed to pay a tax imposed by the State of Washington. Washington sued, and notified International Shoe by way of serving notice upon one of its salesmen in Washington State. It also notified International Shoe via certified letter at its headquarters in Missouri. International Shoe disputed the State of Washington's jurisdiction over it as a "corporate person". The issue was: What level of connection must exist between a non-resident corporation and a state in order for that corporation to be sued within that state? The majority opinion was rendered by Chief Justice Harlan Fiske Stone, who held that the Fourteenth Amendment requires that a defendant cannot be brought before a court of a particular state unless that person has "minimum contacts... such that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" The jurisdiction was appropriate in this case because International Shoe Co. engaged in substantial activities in the state of Washington, enjoyed the benefits and protections of the state of Washington through the ability to sell there, and had access to Washington's courts to resolve its disputes. Service of notice was appropriate in this case.

Goldberg v. Kelly

In the case of *Goldberg v. Kelly*, 397 U.S. 254 (1970) decided March 23, 1970, the Supreme Court considered the issue of New York City residents receiving financial aid under Aid to Families with Dependent Children or the New York State general Home Relief Program who had brought suit challenging the adequacy of procedures for notice and hearing in connection with the termination of such aid. The three judges in the U. S. District Court for Southern New York entered judgment in favor of the plaintiffs. The defendant appealed. The United States Supreme Court ruled that procedural due process requires that a predetermination evidentiary hearing be held when public assistance payments were to be discontinued. The procedures followed by New York were constitutionally inadequate in that they failed to permit recipients to appear personally with or without counsel before the official who finally decided the continued eligibility and failing to permit recipient to present evidence to that official orally or to confront or cross examine adverse witnesses. Welfare benefits are a matter of statutory entitlement for persons qualified to receive them and their termination involves state action that adjudicates important rights, and procedural due process

to termination of welfare benefits.

Related links

- Administrative Law Judge
- Administrative Procedure Act
- Civil Service Commission
- Bracton
- champerty
- continuance
- Court of Chancery
- Court of Equity
- Danelaw
- due process
- Ecclesiastical Courts
- Edward I of England
- Edward II of England
- escheat
- Federal Rules of Civil Procedure
- felony
- Fourth Lateran Council
- Fourteenth Amendment of the United States Constitution
- Franklin Delano Roosevelt
- Goldberg v. Kelly
- grand jury
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- Henry VI of England
- Henry Charles Lea
- Immigration and Naturalization Service
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- List of Latin phrases
- Long arm jurisdiction
- John Waltham
- Magna Carta
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- Pope Adrian IV
- Pope Innocent III
- Powell v. Alabama
- Prejudgment writ of attachment
- quasi in rem
- Security and Exchange Commission
- Saxons
- Sir Frederick Pollock, 3rd Baronet
- Sir John Fortescue
- Sir Thomas Smith
- Statute of Westminster II
- subpoena

- subpoena duces tecum
- summons
- trial by battle
- trial by ordeal
- Writ of Mandamus
- Writ of Certiorari
- United States Federal Courts

References

Sources

- Adams, Columbia Law Review, xvi, 98 [in re: Bill in Eyre and Bill in Chancery]
- Covington, R., et al. "Cases and Materials on Legal Methods", 1969 pp. 374 3t seq for Administrative Law
- Ganshof, F. L. "Droit urbain en Flandre", Revue d'Histoire, xix. 388
- Grelewski, S. "la Reaction contre les ordalies en France", Paris, Imprimerie Nationale, 1898
- H. C. Lea, "Superstition and Force", Philadelphia, 1866
- Plucknett, T., "A Concise History of the Common Law, Fifth Edition", Little, Brown and Co. 1956
- Plucknett, T. Columbia Law Review, xxxi, at 792, ff. (Bill in Eyre and Bill in Chancery)
- Pollock and Powicke English History Review, xxx. 332 [in re: Bill in Erye and Bill in Chancery]
- Requisite forms of federal subpoena: Federal Rules of Civil Procedure, Rule 45 (a) as directed in 28 Federal Procedure, L Ed. Process at 65:147, 65 at 148; Federal Rules of Criminal Procedure, Rule 17 (a), as discussed in 8 Federal Procedure, L Ed, Criminal Procedure at 22: 245 et seq)
- Schwartz, B. et al. "Administrative Law", Aspen Law and Business, 2006
- Vacandard, E., "L'Eglise et les ordalies" (in "Etudes de crititique et d'histoire religieuse"), 1905
- Uniform Rules of Criminal Procedure 731 (a)
- Uniform Rule of Criminal Procedure Rule 731 (a) [Relating to requisite form of a subpoena]
- 39 Fed. Reg. 16787 – "Notice of Change of Title the examiners would be known as Administrative Law Judges; based on Title 5, Chapter 1 Civil Service Commission, Part 930; Subpart B - Federal Register (8-17-72)

American Jurisprudence

- 21 Am Jur 2nd "Criminal Law" section 717 on compulsion to appear under statute.
- 21 Am Jur 2nd "Criminal Law", section 718
- 62 B Am Jur 2nd "Process" section 44-65 (on Federal Rule 4)
- 81 Am Jur 2nd "Witnesses" section 5 (prisoner subpoena to another trial)

American Law Reports

- 93 ALR 1285
- 130 ALR 323 (defining subpoena)
- 162 ALR 272
- 20 ALR 2nd 163, sections 14–16
- 35 ALR 2nd 1353, section 3
- 84 ALR 2nd 421 section 3 [h]; section 2–6
- 98 ALR 2nd 551, section 6
- 61 ALR 3rd 1288

Case Law Citation

- Application of Remy Sportswear, Inc. 16 misc 2nd 407, 183 NYS 2nd 125
- Burger King v. Rudzewicz, 471 US 462, 1985
- Fisher v. Marubeni Cotton Corp. (CA 8 Mo) 526 F 2nd 1338, 21 FR Serv 2nd 1148

- Grannis v. Ordean 34 SCR 779, 1914
- Green v. Otenasek, 267 Md. 9, 296. A 2nd 597
- Goldberg v. Kelly 90 SCR 1011, 1970
- Hollidge v. Crumpler, 63 App DC 330, 72 F 2nd 381
- In re Groban 352 US 330 (1957)
- In re: Thaw (CA 3, Pa), 166 F 71 (prisoner subpoena to another trial)
- International Shoe v. Washington, 326 US 310 (1945)
- Livingston v. Wyatt, 186 NY 383, 79 NE 330
- Madera v. Board of Education (186 F. 2nd 778 [2nd Circuit 1967], cert den 390 US 1028 [1968])
- Merens v. McMahon, 334 Mo. 175, 66 SW 2nd 127, 93 ALR 1285
- Morgan v. US, 58 SCR 773, 82 L Ed. 1129 (1930)
- Pennoyer v. Neff 95 US 714
- People ex rel: Livingston v. Wyatt, 186 NY 383, 79 NE 330
- Powell v. Alabama 287 US 45 (1932)
- Re Smith's Will, 175 Misc 688, 24 NYS 2nd 704
- Rimar v. McCowan (ED Mich) 374 F Supp. 1179
- Shapiro & Son Curtain Corp. v. Glass (CA 2 NY) 348 F 2nd 460, cert den 383 US 942, 15 L Ed 2nd 351, 86 C Ct. 397
- Silverman v. Superior Court (2nd Dist) 203 Cal App 3rd 145, 249 Cal Reporter 724
- Southern Pacific Railroad v. Superior Court of Los Angeles County, 15 Cal 2nd 206, 100 P 2nd 302
- State v. Hogan, (La), 372, So 2nd 1211, appeal after remand (La) 404 So 2nd 488
- Staton v. State, Ind, 428 NE 2nd 1203
- Torras v. Stradley 103 F Supp. 737, 739 9ND Ga) 1952
- US v. Blanton SD Fla 534 F Supp 295 Media L R 1106

External links

- The Subpoena Power: Pennoyer's Last Vestige [55] Wasserman, R. 74 Minn L. Rev. 37 (1989) [An excellent discussion of subpoena, and the important cases Pennoyer v. Neff and International Shoe v. Washington, among other topics of interest.]

References

[1] Plucknett
[2] Pound and Plucknett "Reading" English Historical Review
[3] H. C. Lea "Superstition and Force"
[4] S. Grelewski "La Reaction contre les ordalies en France"
[5] E Vacandard, "L'Eglise et les ordalies"
[6] F. L. Ganshof, "Droit urbain en Flandre"
[7] Year Book 4 Edward II, S.S. 21
[8] Adams, Columbia Law Review
[9] Powicke, English History Review
[10] Plucknett p. 164
[11] Plucknett, Columbia Law Review
[12] "Mirror of Justice" (Selden Society)
[13] Plucknett, p.130-1
[14] Holdsworth, vol 1, p. 313
[15] Holdsworth; vol. 2, p. 313
[16] Plac. Abbrev. 295b, 28 Edward I
[17] St. 3 c. ii, cp.3, Edward I c. 29
[18] Plucknett, p. 130
[19] Elizabeth I c. 9 1563

[20] "Political Songs", 1388; reprinted in Holdsworth, vol. 2, p. 416
[21] Holdsworth vol. 2 p. 416
[22] Holdsworth vol. 2, p. 459
[23] Plucknett, pp. 683-4
[24] Plucknett, p. 187-188, p. 684
[25] U. S. v. Blanton, 534 F. Supp. 295 (S.D. Fla. 1982)
[26] Green v. Otenasek, 267 Md. 9, 15 (1972)
[27] 61 A.L.R.3d 1288
[28] Re Smith's Will. NYS 2nd)
[29] *Staton v. State*, Indiana
[30] *State v. Hogan*, Louisiana
[31] 21 Am Jur 2d "Criminal Law", § 718
[32] So defined in Application of Remy Sportswear, Inc. NYS 2nd
[33] *Fisher v. Marubeni Cotton Corp.*, 526 F.2d 1338 (8th Cir. 1975)
[34] *Southern Pacific Railroad v. Superior Court of Los Angeles County, California*
[35] Uniform Rules of Criminal Procedure Rule 731 (a)
[36] *People ex rel: Livingston v. Wyatt*, 186 N.Y. 383, 79 N.E. 330 (1906)
[37] Federal Rules of Civil Procedure, Rule 45 [a] as directed in 28 Federal Procedure, L Ed. Process at 65:147, 65 at 148
[38] Federal Rules of Criminal Procedure, Rule (17) [a], as discussed in 8 Federal Procedure, L Ed, Criminal Procedure at 22: 245 *et seq.*
[39] *In re Thaw*, Pennsylvania; 81 Am Jur 2d "Witnesses" § 5
[40] 21 Am Jur 2d "Criminal Law" § 717
[41] 62 Am. Jur. 2d "Process" §§ 44-65
[42] 98 A.L.R.2d 551, § 6
[43] 20 A.L.R.2d 163, §§ 14-16
[44] *Rimar v. McCowan*, 374 F. Supp. 1179 (E.D. Mich. 1974): FBI agent attending court in another state. Immunity rules apply to appearance in front of a grand jury.
[45] *Dwelle v. Allen*, 193 F. 546 (S.D.N.Y. 1912)
[46] *Merton v. McMahon*, Missouri
[47] Older case law is reviewed in 93 A.L.R. 1285 (1933)
[48] 35 A.L.R.2d 1353, § 3 (1954)
[49] 84 A.L.R.2d 421, § 3[h]; §§ 2-6
[50] Older case law in 162 A.L.R. 272
[51] Covington, "Legal Methods"
[52] Federal Regulation 39 Fed. Reg. 16787
[53] *In re Groban*, US Supreme Court, 1957
[54] *Torras v. Stradley* Georgia
[55] http://www.law.pitt.edu/wasserman/law6b.htm

Subpoena duces tecum

In the United States legal system, a **subpoena *duces tecum*** (Latin for "bring with you under penalty of punishment") is specific form of a subpoena (summons, literally "under punishment") issued by a court ordering the parties named to appear and produce tangible evidence (documents or otherwise) for use at a hearing or trial.

It is similar to subpoena *ad testificandum* (writ of summons to testify orally) but it includes clauses to bring in hand books, papers, etc. for the court.

The terms used vary between jurisdictions. The words "subpoena duces tecum" appear to be used exclusively by various jurisdictions within the United States. In jurisdictions in the United States that have reduced the use of foreign words and phrases in court terminology, this type of subpoena is also called a "subpoena for production of evidence."

In England and Wales, a subpoena has been known as a "Witness Summons" since the Civil Procedure Rules 1998.

In most jurisdictions, a subpoena usually has to be served personally.

Order for production of documents pursuant to a deposition

In the United States, a notice to a party deponent (a person called to testify in a deposition) may be accompanied by a request for production of documents and other tangible things during the taking of a deposition. The notice to produce (literally: "bring these documents with you to the deposition") is served prior to the deposition. This follows the Federal Rules of Civil Procedure [1] . The method of using a subpoena duces tecum is generally valid only to compel a witness to produce documents and other things at the time of the deposition. If a deponent is a non-party to the action (not involved directly in the litigation, but wanted for testimony), production of documents can be compelled only through a proper subpoena duces tecum. Depending on the nature of the documents, and their volume, some may be obtained directly, and before deposition under FRCP 34. In cases where a large number of documents are potentially relevant to the hearing, the court may order them to be produced prior to the deposition. This forms a part of legal discovery and allows parties involved time to review them prior to the deposition or other hearing.

Federal Cases and some states follow Federal Rule 27 (a) (3) of the Federal Rules of Civil Procedure concerning the production of documents in pre-trial discovery, including those pertaining to depositions. These can include the subpoena duces tecum to produce documents, or in some cases to undergo a physical or mental examination. In the Ninth Circuit, interpreting Rule 27 literally, it has been held that a party can simply produce the documents only, and in certain cases, avoid an oral deposition when presented with subpoena duces tecum. [2]

Continuance because of failure to produce documents

A continuance (a rescheduling of a court hearing at a later date) of a civil action may be granted due to the absence of documents or papers. The party failing to produce the documents requested by a subpoena duces tecum must show good reason why there was a failure to do so. Acceptable explanations have included loss or destruction of papers, or an agreement to use copies. The party seeking the continuance must show that the absence of the documents is not because of the negligence of their own, or of the attorney of record. [3]

Similarly, a continuance may be granted in a criminal case if there is good reason documents pertinent to the case could not be produced at the time of trial. For example, a continuance should be granted for failure to produce a transcript of testimony given at a previous trial. In general, it is reversible error to proceed with a criminal trial in the absence of a previous trial transcript, when such contains pertinent information that should have been considered in the new trial. In these cases, a continuance is the usual remedy. The trial judge or magistrate is the one who issues the continuance. [4]

Jencks Act cases

In the 1957 case Jencks v. United States[5] the United States Supreme Court ruled that a defendant must have access to government witnesses who testify against him in a criminal trial, and must also have access to any documents pertaining to that testimony. This includes papers, documents, written statements and the like. This led to passage of the Jencks Act, 18 USC, Part II, Chapter 223, § 3500, which allows for subpoena duces tecum of relevant government documents, but only after a government agent or employee has testified at trial. There can be no pre-trial discovery. The subpoena is allowed by the trial judge. The government has the right to deny access to the documents. This may be due to the sensitive nature of the documents, or because they are classified.

In such an instance the accused is permitted to pray unto the Court for remedy or sanction against his accuser or plaintiff, for his inability to be able to confront the papers and/or effects (i.e., material items, physical exhibits, technical analyses, lab reports, etc.) that assert or support the accusation(s) against him. The Court, in law and equity is required to answer such a prayer. If the accused's prayer is not answered in a manner that favorably restores the balance between the accused and the Government in criminal cases, or between the defendant and the plaintiff in civil cases, it is grounds for an appeal if a mistrial is not granted. The United States Supreme Court dealt with this issue in federal civil cases in United States v. Reynolds.

If the remedy is granted there is a mistrial and dismissal of criminal charges. [6] [7] An accused criminal has no right to subpoena the work product of the prosecution in a criminal case. [8]

Writ of mandamus

The writ of mandamus is appropriate to compel surrender of documents in the possession of attorneys or other persons that have been illegally obtained under the abuse of a writ of attachment. [9] Mandamus can vacate an order to produce books and papers. [10] However, mandamus is not the proper remedy to quash a motion to compel a district attorney to relinquish books and records to his successor office holder. [11]

In a 1893 case, the United States Attorney in Alabama refused to vacate his office, refusing to surrender books, papers and other materials in the position of that office to the newly appointed U.S. Attorney. The federal court in Alabama issued a writ directing the previous attorney to relinquish the documents. He, in turn, sought relief from the Supreme Court, which denied his application, saying it would not interfere with the properly conducted internal matters of a court. In the case In re: Parson, the United States Supreme Court wrote: "If the orders be regarded merely as directions in the administration of judicial affairs in respect of the immediate possession of property or custody of prisoners, we cannot be properly called to, by reason of anything appearing on these records, in the exercise of appellate jurisdiction in this manner, to direct them to be set aside. And if the proceedings should be treated as involving a final determination as on issues joined to the right to such possession and custody, there was no complaint of want of notice or of hearing, and the summary made adopted did not in itself affect the jurisdiction of the Circuit Court upon the ground that it had exceeded its powers." [12]

Mandamus is the remedy where a lower court has clearly failed to issue compulsion to produce documents, or to allow the petitioner access to such documents as may be in the possession of the court or the parties to the action. Mandamus can be used to compel a court to enforce an order to answer interrogatories (questions submitted by the court or one of the parties to be answered under oath and pain of perjury). [13] [14] [15]

Mandamus is the proper remedy to compel the quashal of a subpoena duces tecum for the production before a grand jury of attorney-client privilege. [16] [17] Presumably, this would apply to attorney work product, although there is no case law on the matter. [18]

Commitment of witness; contempt of court

A witness who has refused to obey a lawful order to produce books, documents and papers may be properly incarcerated for contempt of court. A writ of habeas corpus will not apply, unless it can be shown the witness could not have legally had possession of such documents. In such a situation the writ of habeas corpus will properly apply, and is the remedy for such improper action. [19] [20]

At common law, and under various statutes pertaining to a given jurisdiction, a right to action for damages, or for a statutory penalty or forfeiture, exists against a witness who, without sufficient excuse, fails or refuses to give oral testimony or to produce documents or other specified items in obedience to the command of a properly issued and served subpoena. [21]

There are certain conditions precedent, or defenses, to a recovery of damages for a person's failure to testify, or to provide documents pertinent to a hearing or trial. There must be a breach of testimonial duty, after having been properly served with a legitimately executed subpoena. There must be a demonstration of actual damages incurred from the absence of testimony. Most courts have rejected the arguments for seeking damages in this kind of case. Giving false testimony in a judicial proceeding even though the allegation is made that the person giving the testimony knew it to be false, does not give rise, either at common law or by statute, to a civil action for damages, resulting from such testimony. The situation is probably different if intentionally false documents are submitted under a subpoena duces tecum. [22] [23]

Attorney-client privilege; Doctor-patient privilege; other privileges

Attorney-client privilege is generally recognized by the courts. Communications between lawyer and client are generally immune from subpoena. In other words, a lawyer cannot be compelled to testify in a trial unless the lawyer becomes, or appears to become, a party to the litigation. A similar situation exists with "work product", meaning written documents or computer records generated in preparation for a trial or hearing. This includes information such as potential questions that may be asked of witnesses, lists of possible witnesses, memoranda, notes, trial strategies, written briefs, or documents that may, or may not end up being used in the course of litigation. Usually, none of this can be the subject of a subpoena duces tecum. If a communication between lawyer and client is made in the presence of the third party, the privilege is not recognized to exist. [24] [25] [26] [27] [28] [29]

The federal courts will apply the common law rule of attorney-client privilege unless there is an intervening state law applying to the central issues of the matter. In those cases, the federal court uses the effective state law. [30] [31]

Physician-patient privilege is usually statutorily defined, and can vary from state to state. The usual rule is that medical records are immune from subpoena if the plaintiff has not alleged physical or mental injuries or damages. Once the plaintiff alleges physical or mental injuries proximately flowing from a potentially tortious act by the defendant, or in some other disability hearing, medical records can be subject to subpoena duces tecum. While witnesses may try to resist legal discovery by asking the judge to protect them from questioning or inspection of documents, the policy of the courts is in favor of full disclosure. It is the intent of the rules of procedure that pre-trial discovery take place without any intervention of a judge. So-called "fishing expeditions" (a massive and aimless call for all documents related to the litigation) are permissible under Federal Rule of Civil Procedure 26 (b) (1). This rule is repeated in many state's rules of procedure: "Parties may obtain discovery regarding any matter, not privileged, which is relevant...if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." The looseness of the definition of relevant evidence is generally construed to mean "liberal" production. The physician who is the party to an action does not own the records of patients he has treated. They are not privileged if the patient has waived confidentiality. Physicians must produce medical records under subpoena duces tecum. [32]

Peer review records, and other hospital documents of quality control committee meetings are generally not subject to subpoena duces tecum, since these have statutory immunity. The theory is that the frankness of peer review would be

chilled if these records could be routinely compelled. [33] [34]

Several United States Federal Circuit Courts have recognized a limited reporter's privilege. The United States Justice Department has a self-imposed limitation upon subpoena of reporters and their notes. This privilege is not universal, and is incomplete.

Internal memos from scientific and medical journals generated in peer reviewing articles for publication are generally immune from subpoena.

In some states (such as California), rape crisis counselors and domestic violence advocates hold a statutory privilege analogous to therapist-client privilege. (See, for example, 1035 Cal. Evidence Code [35] for rape crisis advocates, and 1037.6 Cal. Evidence Code [36] for domestic violence advocates). However, these privileges are not absolute, and may be overruled by a judge upon a showing that "the probative value of the information outweighs the effect of disclosure of the information on the victim, the counseling relationship, and the counseling services", or under a number of other limited circumstances. To respect and preserve the privacy of sensitive material contained in such reports, the judge may require the disclosure of confidential information to take place in camera.

So called "priest-penitent" privilege, which precludes forced testimony of confessions made to a priest, minister, or religious adviser are statutorily defined in the United States. They vary between states. In some cases, the privilege is confusing and ill-defined. In others, there is recognized stare decisis. (See: priest-penitent privilege; Confessional Privilege (United States).)

Pre- and post-judgment execution proceedings

Discovery can be authorized for the production of documents for both pre-trial and post-trial actions. Most states either follow, or have modeled their procedures after, the Federal Rules of Civil Procedure Rule 69(a).

Judgment creditors (those who have received a favorable court ruling for monetary damages) are permitted to ask questions about a debtor's residence; recent employment history; business relationships, including partners, co-shareholders, co-officers, co-directors; the contents of a will; transfers of property; and the identity of persons who either owed a debt to the judgment debtor, or received things of value from the debtor. Information in bank accounts can also be the subject of a subpoena duces tecum. [37]

In federal court proceedings concerning judgment debtors, the inquiry is usually limited to the discovery of assets. In international cases, being tried in United States Federal Courts, the application of the Hague Service Convention is utilized where appropriate. [38]

Public access to documents filed with the court

The right of the public to access judicial records is fundamental to a democratic state and is analogous to the First Amendment right of freedom of speech and of the press and the Sixth Amendment right to public trials. [39] [40] [41] While the right to access trial records is not absolute, it is framed in presumption of public access to the proceedings and records. [42] [43] [44] [45] [46] United States Code 11, Section 107 (a), of the federal bankruptcy law, is a codification of the common-law general right to inspect judicial records and documents. However, the right is not absolute and may be denied when the entity seeking to view the records has an improper purpose. The general intent of the statute is to favor public access to court documents. [47]

Production of documents in bankruptcy

An entity (person or a corporation) may be compelled to produce documentary evidence in accordance with the subpoena powers of Federal Rule of Civil Procedure 45 as applied by Bankruptcy Rule 9016. The United States Bankruptcy Court has powers to compel production of documents from a non-debtor corporation or person concerning transactions involving the debtor corporation or person. Production of documents can be challenged as being burdensome. Assets diverted to outside corporations or bank accounts/stock portfolios and such other assets as land holdings lie within the power to compel production under subpoena duces tecum. Federal law recognizes no accountant-client privilege. A subpoena duce tecum served pursuant to Bankruptcy Rule 2004 is not a violation of accountant-client privilege. 11 United States Code section 107 (a) provides that papers filed in cases under the Bankruptcy Code and dockets of the Bankruptcy Courts are public records and are to be open to examination at reasonable times without charge.[48]

Compelling a foreign corporation to produce documents

A domestic corporation may be considered to be a "person" within the meaning of the Fourteenth Amendment of the United States Constitution. It is not necessary to treat a corporation as a person in all circumstances. United States case law is confusing concerning this matter when dealing with foreign corporations, and their operation within the United States. Especially troubling have been rulings concerning the Fourth Amendment of the United States Constitution and Fifth Amendment to the United States Constitution. A foreign agent may not claim Fifth Amendment provisions against self-incrimination. Nor can records be withheld from subpoena duces tecum on the grounds that production of such documents would incriminate officers or other members of the foreign corporation. However, there is case authority in which foreign corporations have been protected from illegal searches and seizures, including documents and books. [49] The matter of a foreign corporation operating as a "person" within the United States being afforded protection under the Fourteenth Amendment is discussed. [50] [51] [52]

Subpoena of welfare documents

Statutes governing the disclosure of information contained in welfare records exist in many jurisdictions. The rationale for the existence of these regulations is to encourage full and frank disclosure by the welfare recipient of his situation and the protection of the recipient from the embarrassment likely to result from the disclosure of information contained in such records. [53] In some states, records can be disclosed at the discretion of the state director of welfare. In general, welfare records are not public records, and should not be considered to be such. Disclosure of information is usually limited to purposes directly connected with the administration of welfare benefits. The investigation of costs of welfare programs have been held to be sufficiently related to the matters in question to justify disclosure. Statutes designed to limit welfare record availability are generally held by the courts to be not immune from the power of subpoena duces tecum. Certain state laws limit the availability of information that can be obtained from the subpoena of such documents. These are always subject to a court challenge, on a case by case basis. Welfare recipients are generally allowed access to their files, by subpoena duces tecum. Death of a welfare recipient is considered in some states to be sufficient reason to remove the reason for confidentiality. Some states have passed so-called "Right to Know" statutes, which would make welfare recipients and the information available to the public. These, along with common law, and state and federal constitutions guaranteeing freedom of the press do not give newspapers (or other news media) the right to access the names of persons on welfare, or the amounts they receive. [54]

Federal Trade Commission hearings in monopoly actions

Whenever the Federal Trade Commission (FTC) has reason to believe that any person has violated 15 USC section 13, 14, 18 or 19, it must issue and serve on that person and on the Attorney General of the United States, a complaint stating its charges in that regard. The notice shall also give a date for a hearing in the matter. Delivery of the subpoena duces tecum for production of documents may be done in person, or by certified letter. Receipt of the letter is considered proof of service. [55]

Power to issue subpoenas is extended to Robinson-Patman Act cases of price-fixing and Clayton Act cases of unlawful acquisition. [56]

A Federal District Court lacks jurisdiction to enjoin the Federal Trade Commission from proceeding in an investigation. It cannot stay (stop) a subpoena duces tecum to produce documents in the investigative stage. An injunction by a federal court does not have the power to restrain the FTC from enforcing an order requiring corporations to furnish reports and documents un 15 USC § 49. The only relief available to stop a demand for documents is to seek an action of compliance in mandamus by the Attorney General of the United States, or under 15 USC § 50 to enforce fines and forfeitures. [57]

If the FTC institutes an adjudicative proceeding (a hearing), the person who originated the matter by complaining to the FTC is not a party to the action and does not have any control over it. The FTC may allow the complaining person to participate in the proceeding by virtue of 15 USC, section 45. This allows participation for good cause, either by counsel (lawyer) or in person. You cannot intervene in an FTC hearing, except by demonstrating that substantial issues of law or fact would not be properly raised and argued—and that these issues are important and immediate enough to warrant additional expenditure of FTC resources. This involvement can be enhanced by subpoena duces tecum.

Pre-hearing conferences are the norm. These are useful in:

- Clarifying or simplifying isses
- Amending pleadings
- Entering Stipulations, admissions of fact, and contents and authenticity of documents
- Expediting discovery and presentation of evidence, including restriction of witnesses
- Matters subject to official notice that may be resolved by further production of documents related to the case

In general, pre-hearing conferences are not public.[58] The FTC is not restricted by a rigid rule of evidence. [59]

Subpoena of medical records

Administrative Law

Disabled persons under the age of 65 years can be eligible for disability benefits under Social Security Titles II and XVI. [60]

The seminal case in Social Security law is Richardson v. Perales, a Supreme Court decision from 1971. The court directed that medical reports put forth by a treating physician in Social Security hearings should be accepted as evidence, despite the hearsay nature of the medical records. These should be accepted, even if cross-examination is not available. The claimant has the right to subpoena the treating physician. In cases of conflicting medical evidence, it is not unconstitutional for the hearing officer to obtain independent medical advice to help resolve the physical questions involved. Under the Administrative Procedure Act, hearsay in the form of medical records are admissible up to the point of relevancy. [61]

Several federal agencies have adopted Jencks Act rules. Although the Jencks Act applies only to government agents or employees who testify in criminal cases, making these witnesses and relevant documents available for cross-examination after testimony, it has been applied in administrative law cases in the interests of justice and fair play. [62] The party of record must make an official request to the hearing officer to have Jencks rules followed. [63]

Some agency rules, such as National Labor Relations Board automatically follow Jencks Act requirements. [64]

Medical malpractice actions

In a case of alleged negligence by a physician, written summaries of the case by physicians provided to the insurance carrier or other parties can be the subject of a subpoena duces tecum, if, in the opinion of the court, they are relevant to the plaintiff's case. Claims that these statements are "work product" will generally fail. [65]

Medical records form the core of any medical malpractice case. [66] Actions for malpractice are controlled by the general rules of evidence in civil procedure. [67] A malpractice action necessarily involves the question of requisite care and skill applied in a medical case. With the exception of res ipsa loquitur cases, medical opinion about the care is essential. This involves the necessity to obtain a subpoena duces tecum for medical records. [68] [69] [70]

Admission of "learned treatises" (published books and medical articles) at trial varies from jurisdiction to jurisdiction. Some require that the expert admit it is an authoritative reference. [71] [72] Others will allow admission of learned treatises by judicial notice. [73] [74]

Experts and Opinion evidence

In tort actions for recovery of damages, it is necessary for the introduction of medical records to establish a basis for the claimed loss. An injured plaintiff is entitled to recover the expenses necessary to cure or treat injuries. [75] [76] [77] [78] [79] [80] [81] Courts frequently call upon expert testimony to interpret and advise, after examining medical records concerning the nature of injuries, future medical, disability and other issues before the court. [82] [83] [84] [85]

Worker's Compensation actions

Medical records introduced as evidence are crucial in determining both causation and impairment in worker's compensation cases. In cases where the evidence is contested, medical evidence in the form of records, opinions, affidavits and testimony concerning both fact and opinion is necessary. When oral testimony is taken from physicians, the usual standard is to state an opinion "within a reasonable degree of medical certainty". [86] [87] Worker's compensation laws are dictated by state statute or Federal Employees Liability Act. [88] In many states, the employer has the right to demand an independent examination and can also direct treatment be carried out by certain physicians. [89]

Mandatory reporting of child abuse

In the landmark 1976 California case of Landeros v. Flood [90] , the California Supreme Court remanded a case to the trial court for action in tort against a treating physician for failure to report suspected child abuse. [91] [92] The theory at trial was that the plaintiff, a child of about 12 months of age, had been returned to a home where further physical abuse occurred, causing more damages. This was because the physician had failed to report the abuse in violation of California law. [91] After this case, all states instituted mandatory reporting by physicians and other medical personnel of any suspected child abuse or neglect cases. In general, reporting in good faith shields the physician or health care worker from tort liability. Reporting to police or social services necessitates obtaining medical records by subpoena duces tecum. This case, and legislation that followed it were in response to several articles that appeared in the medical literature that defined *battered child syndrome* and *child abuse syndrome*. [93]

The 1962 Social Security Amendments [94] require each state to make child welfare services available throughout the state to all children and provide coordination between child welfare services (Title IV-B) and social services provided under the Aid to Families with Dependent Children Act (ADC, later known as AFDC; now called Title XX) Determinations in these cases frequently require production of medical records.

In 1972, Congressional hearings began on child abuse and neglect. In response, Congress passed the Child Abuse Prevention and Treatment Act,[95] which defined abuse as "...physical or mental injury, negligent treatment, or

maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which would indicate that the child's health or welfare is harmed or threatened thereby." The legislation created the National Center for Child Abuse and Neglect as an information clearinghouse.

The Child Abuse Prevention and Treatment Act of 1974 (42 U.S.C. § 5101 [96] - 42 U.S.C. § 5106 [97]) defined "child abuse and neglect" as "physical or mental injury, sexual abuse, negligent treatment, or maltreatment of a child under the age of eighteen by a person responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby." [98]

The Child Abuse Prevention and Treatment Act of 1988 [99] when enacted, expanded the definition of abuse. Sexual crimes were specifically identified in Sex Crimes Against Children Act of 1995 [100] These laws have made child abuse a federal crime, and routinely mandate production of medical records. [92] [101] [102] [103] [104] [105] [105] [106] [107]

Mandatory reporting of wounds and injuries

Physician-patient privilege is defined and limited by statute. Many jurisdictions have mandatory reporting laws requiring treating physicians or other medical personnel to report any suspicious injury to police or other appropriate authorities. These requirements may be imposed by statute, ordinance or regulation. Some of these may be limited to wounds typically inflicted by gun or knife. There may be similar reporting requirements in cases of domestic violence. These statutes have been generally upheld to constitutional challenges. Reporting of such cases usually voids any challenge to subpoena duces tecum of the medical records by police or state authorities. [108]

Peer review records in medical licensing and hospital credential actions

The issue of removal of a doctor from a hospital staff, or revoking or limiting a license to practice medicine usually involve various state and federal immunities. The Healthcare Quality Improvement Act (HCQIA) of 1986 granted doctors sitting on peer review committees immunity from subpoena duces tecum, or liability for the revocation of hospital privileges of other doctors. The matters of peer review cannot, in the normal course of events, be the subject of a subpoena duces tecum. This has led to claims that powerful doctors can abuse the process to punish other doctors for reasons unrelated to medical issues (termed "sham peer review").

The American Medical Association conducted a probe of the sham peer review issue and found that no pervasive problem exists. Allegations of sham peer review are easy to make (for example, by doctors whose medical mistakes have made them targets of peer review), but actual infractions are rare.[109] Advocates of sham peer review as a widespread problem counter that the sparcity of successful challenges is indicative of how difficult these actions are to win.

Related links

- Administrative Procedure Act
- attorney client privilege
- Bankruptcy in the United States
- deposition (law)
- Federal Rules of Civil Procedure
- Fourth Amendment of the United States Constitution
- Fifth Amendment to the United States Constitution
- Fourteenth Amendment of the United States Constitution
- interrogatories
- legal discovery
- physician-patient privilege
- reporter's privilege

- subpoena ad testificandum

References

Sources

- 11 USCS section 107 (a)
- Federal Rule 27 (a) (3)
- FRCP 30 (b) (5)
- FRCP 34
- FRCP 69 (a)
- Caffey, "Multiple Fractures in the Long Bones of Infants Suffering from Chronic Subdural Hematoma", 56 Am. J. Roentgen 163 (1946)
- Caffey, "Some Traumatic Lesions in Growing Bones Other Than Fractures and Dislocation - Clinical and Radiological Features", 30 Brit. J. Radiol. 225, 1957
- Kempe, "The Battered Child Syndrome", Journal of the American Medical Syndrome", 181, July 7, 1962
- Malone, Plant and Little, "Worker's Compensation and Employment Rights", West, 1980
- Pegalis, S. and Wachsman, H., "American Law of Medical Malpractice", Lawyers Cooperative, Bancroft Whitney, 1980
- Sharpe, D., Fiscina, S. and Head, M., "Law and Medicine" West, 1978
- Stein, J., "Damages and Recovery, Personal Injury and Death Actions", Lawyers Cooperative, Bancroft Whitney, 1972

American Jurisprudence

- 2 Am Jur 2nd "Administrative Law", section 328 (Jencks Act)
- 9 Am Jur 2nd "Bankruptcy", section 829, 828-829
- 16 A Am Jur 2nd "Constitutional Law", section 738
- 17 Am Jur 2nd "Continuance", sections 20, 81
- 21 A Am Jur 2nd "Criminal Law", section 666 et seq; 876 et seq
- 23 Am Jur 2nd "Depositions and Discovery" , sections 126-127
- 29 A Am Jur 2nd "Evidence", sections 1416-1420
- 30 Am Jur 2nd "Executions, Etc.", sections 720, 714, 722
- 31 A Am Jur 2nd "Expert and Opinion Evidence" sections 127-277
- 36 Am Jur 2nd "Foreign Corporations" sections 4-45
- 39 Am Jur 2nd "Habeas Corpus", section 97
- 52 Am Jur 2nd "Mandamus", section 314, 367
- 54 Am Jur 2nd "Monopolies", sections 394, 398-399, 836, 840, 862
- 61 Am Jur 2nd "Physicians, Surgeons, Etc." sections 200-377
- 70 A Am Jur 2nd "Social Security and Medicare", sections 468 et seq
- 75 AM Jur 2nd "Trial", sections 205-216
- 79 Am Jur 2nd "Welfare", section 50
- 81 Am Jur 2nd "Witnesses", section 79, 172 et seq
- 82 Am Jur 2nd "Worker's Compensation", sections 504 et seq

American Law Reports

- 48 ALR Fed 259
- 49 ALR Fed 674
- 64 ALR Fed 971 (learned treatises)
- 10 ALR 1152
- 41 ALR 433 (mandamus)
- 49 ALR 732
- 77 ALR 1490
- 112 ALR 438 (mandamus)
- 120 ALR 1103
- 128 ALR 682
- 151 ALR 475
- 76 ALR 2nd 946
- 88 ALR 2nd 650
- 90 ALR 2nd 1323
- 2 ALR 3rd 286
- 9 ALR 3rd 1413
- 14 ALR 3rd 594
- 21 ALR 3rd 912 (workers' comp discovery)
- 44 ALR 3rd 24
- 55 ALR 3rd 1322
- 59 ALR 3rd 441
- 61 ALR 3rd 1297
- 81 ALR 3rd 1297 section 3 (b), 8 (a), 9(a)
- 85 ALR 3rd 1196 (mandatory reporting of suspicious wounds)
- 97 ALR 3rd 324 (Landeros v. Flood)
- 1 ALR 4th 1124
- 22 ALR 4th 774

Proof of Facts

- 2 Proof of Facts 2nd 365 et seq (child abuse)
- 3 Proof of Facts 2nd 265 et seq (child abuse)
- 6 Proof of Facts 2nd 345 et seq (child abuse)

Case Law Citation

- Barron v. Florida Freedom Newspapers Inc., (Fla) 531 So 2nd 113, 13 FLW 497, 15 Media LR 1901
- Barsky v. Board of Regents, Supreme Court of the United States, 1954, 347, US 442, 74 S. Ct. 650, 98 L. Ed. 829
- Butler v. Doyle, Supreme Court of Arizona, 112 Ariz. 522, 544 P. 2nd 204
- Colorado State Board of Medical Examiners v. District Court, 191 Colo. -, 551, P. 2nd 194 (1976)
- Continental Oil Co. v. United States (Ca 9 Ariz) 330 F 2nd 347 reprinted in 9 ALR 3rd 1413
- Ex Parte Clarke, 126 Cal, 235, 58 P 546
- Fairbank v. hardin (CA 9) 429, F2d 264, cert edn 400 US 943, 27 L Ed 2nd 247, 91 S. Ct. 244
- Globe Newspaper Co. v. Superior Court of County of Norfolk, 457 US 596, 73 L ED 2nd 248, 102 S. Ct. 2613, 8 Media LR 1689
- In Re Parsons, 150 US 150, 37, 1, L Ed 1034, 14 US Supreme Court, 50
- International Harvester Co. v. Eaton Circuit Judge, 163 Mich 5, 127 NW 695
- Jencks v. United States, 355, US 657 (1957)

- Klinge v. Lutheran Charites Ass'n, United States Court of Appeals for the Eighth Circuit, 1975, 523 F. 2nd 56
- Landeros v. Flood 17 Cal. 3rd 399, 131, Cal. Reporter, 69, 551 P.2nd 389
- Matchett v. Superior Court, 40 Cal. App. 3rd, 623, 115 Cal. Reporter 317 (1974)
- Oxnard Publishing Co. v. Superior Court of Ventura County (Cal App) 68 Cal Reporter 83
- Perales v. Richardson 91 A SCR 1420, 1971
- Press-Enterprise Co. v. Superior Court of California, 478 US 1, 92 L Ed 2nd 1, 106 S. Ct. 2735, 13 Media LR 1001
- Re Iowa Freedom of Information Council (CA Iowa) 724 F 2nd 658, 10 Media LR 1120;
- Rosenthal v. Dickerman, 98 Mich 208, 57, NW 112
- Smith v. Superior Court of San Joaquin County, 189 Cal.App.2d 6; 1 Cal Reporter reprinted in 88 ALR 2nd 650

References

[1] Federal Rules of Civil Procedure 30 (b) (5), also called FRCP
[2] 23 Am Jur 2nd Depositions and Discovery, §§ 126-127
[3] 17 Am Jur 2nd "Continuance",§ 20
[4] 17 Am Jur 2nd "Continuance", § 81
[5] Jencks v. United States, 355, US 657 (1957)
[6] 23 Am Jur 2nd "Depositions and Discovery", § 443
[7] Jencks v. United States idem.
[8] 23 Am Jur 2nd "Depositions and Discovery", § 444
[9] Rosenthal v. Dickerman, Michigan
[10] International Harvester Co. v. Eaton Circuit Judge, Michigan
[11] In re: Parsons, US Supreme Court
[12] 52 Am Jur 2nd "Mandamus" § 314
[13] Smith v. Superior Court of San Joaquin County, California
[14] 88 ALR 2nd 650
[15] For mandamus as it generally applies to witnesses, see: 41 ALR 433 and 112 ALR 438
[16] Continental Oil Co. v. United States, Arizona
[17] 9 ALR 3rd 1413
[18] 52 Am Jur 2nd "Mandamus", § 367, Grand Juries
[19] Ex Parte Clarke, California
[20] 39 Am Jur 2nd "Habeas Corpus", § 97
[21] Cases listed and discussed in 81 ALR 3rd 1297, §§ 3 (b), 8 (a), 9 (a)
[22] Generally 61 ALR 3rd 1297
[23] 81 Am Jur 2nd "Witnesses", § 79
[24] 14 ALR 3rd 594
[25] 81 Am Jur 2nd Witnesses, §§ 172 et seq
[26] 1 ALR 4th 1124
[27] 59 ALR 3rd 441
[28] 55 ALR 3rd 1322
[29] 44 ALR 3rd 24
[30] Federal Rules of Civil or Criminal Procedure, Rule 501 in the Federal Rules of Evidence
[31] 48 ALR Fed 259
[32] Sharpe, Fascina and Head, "Law and Medicine", p. 5
[33] Matchett v. Superior Court, California
[34] Sharpe Fiscina and Head, "Law and Medicine" p. 69
[35] CA Codes (evid:1035-1036.2) (http://leginfo.ca.gov/cgi-bin/displaycode?section=evid&group=01001-02000&file=1035-1036.2,) retrieved 2009-11-26
[36] CA Codes (evid:1037-1037.8) (http://leginfo.ca.gov/cgi-bin/displaycode?section=evid&group=01001-02000&file=1037-1037.8)
[37] General case law is reviewed in 30 Am Jur 2nd "Executions, Etc.", §§ 720 and 714
[38] 20 Am Jur 2nd "Executions, Etc."
[39] Barron v. Florida Freedom Newspapers, Florida
[40] 75 Am Jur 2nd "Trial" § 205
[41] 21 A Am Jur 2nd 'Criminal Law" sections 666 et seq; 876 et seq
[42] Re: Iowa Freedom of Information Council, Iowa
[43] Oxnard Publishing Co.v. Superior Court of Ventura County, California

[44] Globe Newspaper Co. v. Superior Court of County of Norfolk; US Supreme Court
[45] Press-Enterprise Co. v. Superior Court of California; US Supreme Court
[46] 75 Am Jur 2nd "Trials", §§ 205-216
[47] 9 Am Jur 2nd "Bankruptcy", § 829
[48] 9 Am Jur 2nd "Bankruptcy", sections 828-829
[49] See case law: 120 ALR 1103
[50] 49 ALR 732
[51] 77 ALR 1490
[52] 36 Am Jur 2nd "Foreign Corporations", §§ 44 and 45
[53] 54 ALR 3rd 768, § 24
[54] 79 Am Jur 2nd, "Welfare", § 50
[55] 54 Am Jur 2nd "Monopolies", § 394
[56] 54 Am Jur 2nd "Monopolies", § 398-399
[57] 54 Am Jur 2nd "Monopolies", § 862
[58] 55 Am Jur 2nd, § 836
[59] 55 Am Jur 2nd, § 840
[60] 70 A Am Jur 2nd "Social Security and Medicare", sections 468 et seq
[61] Richardson v. Perales, US Supreme Court, 1971
[62] Fairback v. Hardin, 9th Circuit
[63] 2 Am Jur 2nd "Administrative Law", section 329
[64] Am. Jur. 2nd, "Administrative Law", § 329
[65] Butler v. Doyle, Arizona
[66] 61 Am Jur 2nd "Physicians, Surgeons, Etc"
[67] 29A Am Jur 2nd "Evidence", §§ 29-30
[68] 61 Am Jur 2nd "Physicians, Surgeons, Etc.", §§ 200-377
[69] Sharpe Fiscina and Head, "Law and Medicine"
[70] "Pegalis and Wachsman "American Law of Medical Malpractice"
[71] Federal Rules of Evidence, Rule 803
[72] 64 ALR Fed 971
[73] Am Jur 2nd "Evidence" § 1416, 1417
[74] Fed Rules of Evidence § 195, 258
[75] 128 ALR 682
[76] 66 ALR 1186
[77] 151 ALR 475
[78] 10 ALR 1152
[79] 2 ALR 3rd 286
[80] 90 ALR 2nd 1323
[81] 76 ALR 2nd 946
[82] Stein, J., "Damages and Recovery"
[83] Sharpe, Fiscina and Head, "Law and Medicine"
[84] Pegalis and Wachsman, "American Law of Malpractice"
[85] 31 A Am Jur 2nd "Expert and Opinion Evidence", §§ 129-277
[86] Malone, Plant and Little, "Worker's Compensation and Employment Rights", pp.288-291
[87] 21 ALR 3rd 912
[88] Malone, Platt and Little, p. 879 et seq
[89] 82 Am Jur 2nd "Workers' Compensation", §§ 504 et seq
[90] 17 Cal 3d, 399, 131 Cal rptr 69, 551 P2d, 389
[91] 97 ALR 3rd 324
[92] Sharpe, Fiscina and Head, p. 48
[93] See: Caffey, Kempe references
[94] Pub. L. No. 87-543
[95] Pub. L. No. 93-247
[96] http://www.law.cornell.edu/uscode/42/5101.html
[97] http://www.law.cornell.edu/uscode/42/5106.html
[98] 3 Proof of Facts, p.265 et seq
[99] Pub. L. No. 100-294
[100] Pub. L. No. 104-71
[101] 2 Proof of Facts 2nd 365 et seq
[102] *Landeros v. Flood*: 97 ALR 3rd 324

[103] 6 Proof of Facts 2nd p. 345 et seq
[104] 3 Proof of Facts, p. 265 et seq
[105] 22 ALR 4th 774
[106] 16 A Am Jur 2nd "Constitutional Law" § 738
[107] 49 ALR Fed 674
[108] 85 ALR 3rd 1196
[109] "Inappropriate Peer Review. Report of the Board of Trustees of the American Medical Association." (http://www.ama-assn.org/ama1/pub/upload/mm/471/bot24.doc)

Sui generis

Sui generis (pronounced /ˌsuːˈaɪ ˈdʒɛnərɪs/;[1] Latin: /ˈsʊ.iː ˈɡɛnɛrɪs/) is a Latin expression, literally meaning *of its own kind/genus* or unique in its characteristics.[2] The expression is often used in analytic philosophy to indicate an idea, an entity, or a reality which cannot be included in a wider concept.

Biology

In the taxonomical structure "*genus* → *species*" a species that heads its own genus is known as *sui generis*. This does not mean, however, that all genera with only a single member are composed of *sui generis* species. It is only if the genus was specifically created to refer to that one species, with no other known examples, that the species is *sui generis*. If the species is alone merely due to extinction, as in the case of the *Homo* genus, the surviving species is not *sui generis*, because other members of the genus are known, even if they are not currently extant.

Legal applications

In law, it is a term of art used to identify a legal classification that exists independently of other categorizations because of its singularity or due to the specific creation of an entitlement or obligation.[3] Courts have used the term in describing cooperative apartment corporations, mostly because this form of housing is considered real property for some purposes and personal property for other purposes. In intellectual property there are rights which are known as being *sui generis* to owners of a small class of works, such as intellectual property rights in mask works, ship hull designs, databases, or plant varieties. When referring to case citations and authorities, lawyers (and Judges) may refer to an authority cited as being *sui generis*, meaning in that context, it is one confined (or special) to its own facts, and therefore may not be of broader application. This is also the modern view that courts are holding when deciding judgments based on Oil and Gas leases.

In the context of British law, the term means "unique".

Statutory

In statutory interpretation, it refers to the problem of giving meaning to groups of words where one of the words is ambiguous or inherently unclear. For example, in criminal law, a statute might require a *mens rea* element of "unlawful and malicious" intent. Whereas the word "malicious" is well-understood, the word "unlawful" in this context is less clear. Hence, it must be given a meaning of the "same kind" as the word of established meaning.

This is particularly the case when the two or more words are conjoined, linked by the word "and", as opposed to placed in a disjunctive relationship, linked by the word "or". The interpretation of the two or more words might be different depending on the circumstances. Courts sometimes have to attribute a conjunctive (X *and* Y) intention to the legislature even though the list is disjunctive (X *or* Y) because, otherwise, no overall interpretation of the law in question would make sense.

Town planning

In British town planning law, certain uses of land are labeled *sui generis* to indicate that they are not covered by a 'Use Class' – effectively in a class of their own. Change of use of land within a Use Class does not require planning permission; however, changing between certain Use Classes, or any change of use of *sui generis* land, requires planning permission. Examples of *sui generis* use (identified in the Use Classes Order 1987) include embassies, theatres, amusement arcades, laundrettes, taxi or vehicle hire businesses, petrol filling stations, scrapyards, nightclubs, motor car showrooms, retail warehouses, clubs and hostels.

Aboriginal law and education

The term has been used in the context of Canadian Aboriginal law to describe the nature of Aboriginal title. *Sui generis* is also used in Aboriginal education to describe the work of Aboriginal people to define and create contemporary Aboriginal education as a "thing of its own kind". (Hampton, E. (p. 10-11) in Battiste & Barman (Eds.). *First Nations Education in Canada: The Circle Unfolds*. UBC Press, 1995) The motto "Sui Generis" has been adopted by the Akitsiraq Law School both in honour of the defining characteristic of aboriginal title in Canadian Law, and in acknowledgment of the unique form, admissions and curriculum of this one-of-a-kind professional legal education.

Intellectual property law

Generally speaking, protection for intellectual property is extended to matter depending upon its characteristics. The main types of intellectual property law -- copyrights, patents, and trademarks -- define characteristics and any matter that meets such criteria are extended protection. However, there exist statutes in many countries that extend IP-type protection to matter that does not meet traditional definitions of protected intellectual property. For example, U.S. law creates special protection for vessel hull designs, French law protects fashion designs, and some countries protect databases. These are referred to as *sui generis* protection laws.

The United States, Japan, and many EU countries protect the topography of semiconductor chips and integrated circuits under *sui generis* laws, some of whose aspects are borrowed from patent or copyright law. The U.S. law known as the Semiconductor Chip Protection Act of 1984 is codified at 17 U.S.C. §§ 901-915.

Political science

In political science, the unparalleled development of the European Union as compared to other international organizations has led to its designation as a *sui generis* geopolitical entity. There has been widespread debate over the legal nature of the EU given its mixture of intergovernmental and supranational elements, with the organisation thus possessing some characteristics common to confederal and federal entities.

A similar case which has led to the use of the label *sui generis* is the unique relationship between France and New Caledonia, since the legal status of New Caledonia can aptly be said to lie "somewhere between an overseas collectivity and a sovereign nation". Whereas there are perhaps other examples of such a status for other disputed or dependent territories, this arrangement is certainly unique within the French Republic.

The old Holy Roman Empire may also fit under this category for its unique organization and place in European history.

In local government, a *sui generis* entity is one which does not fit with the general scheme of local governance of a country. For example in England, the City of London and the Isles of Scilly are the two *sui generis* localities, as their forms of local government are both very different from those of elsewhere in the country (for historical and geographical reasons).

The legal status of the Holy See has been described as a *sui generis* entity possessing a international personality.

Sociology

In the sociology of Émile Durkheim, *sui generis* is used to illustrate his theories on social existence. Durkheim states that the main object of sociology is to study social facts. These social facts can only be explained by other social facts. They have a meaning of their own and cannot be reduced to psychological or biological factors. Social facts have a meaning of their own, they are 'sui generis'. Durkheim states that when one takes an organization and replaces some individuals with some others, the essence of the organization does not (necessarily) change. It can happen, for example, that over the course of a few decades, the entire staff of an organization is replaced, while the organization retains its distinctive character. Durkheim does not limit this thought to organization, but extends it to the whole society: he maintains that society, as it was there before any living individual was born, is independent of all individuals. His *sui generis* (its closest English meaning in this sense being 'independent') society will furthermore continue its existence after the individual ceases to interact with it.

Psychology

In the psychology of Otto Rank and cultural anthropology of Ernest Becker, *sui generis* represents the self that constitutes its self. Schneider writes, "In the reflexive movement of consciousness, a part of the self is revealed to the self" (Schneider, 1977, p. 25). This is related to Husserl's thought that, *for the ego and for the flux of experience in its relation to it-self ...there must be something like immanent perception* (Husserl, 1962, no.46, p. 130; also see Levinas, 1973, p. 34) Kauffman writes how the self experiences trauma when the self is in danger of losing this assumption of its self which is presumed. The self, for a self-organizing creature, is more than just an important concern-it is the entire universe. Otto Rank explained the nature of psychology in terms of this primitive concept of an immortal double which is the self's soul-belief in immortality. Ernest Becker cast this Denial of Death (1973) as cultural development where the *sui generis* project appears as a lost battle with the ultimate reality of death and the fearful prospect of our annihilation. Into this breach are the *causa sui* projects that in the creator's mind will fundamentally change the world and secure the creator's immortality. Rank made a detailed study of such projects in Art and Artist (1932) to explain how and why a collective ideology would promote individual genius. Becker emphasized the danger of evil in the modern individual psychology when the collective society participates in this project with the surrender of individual moral decisions and responsibilities by transferring them to the hero-leader. The tragic consequences from Hitler to Charles Manson to Mao are explained by Becker as man, *trying to affirm in a cowardly way his feeble powers.* The *causa sui* projects naturally arise from our *sui generis* nature. Recognizing the cause tends to be hidden from the self by its own presumed assumptions which include a belief in immortality.

References

[1] " sui generis (http://oed.com/cgi/findword?query_type=word&find=Find+word&queryword=sui+generis)". *Oxford English Dictionary.* Oxford University Press. 2nd ed. 1989.

[2] Dictionary.com "Word of the day" 2001-06-14 (http://dictionary.reference.com/wordoftheday/archive/2001/06/14.html) accessed 2007-10-14

[3] See *Dunway v. New York*,442 U.S. 200 (1979).

Sui iuris

Sui iuris, commonly also spelled **sui juris**, is a Latin phrase that literally means “of one’s own laws”.

Secular law

In civil law the phrase sui juris indicates legal competence, the capacity to manage one’s own affairs (Black's Law Dictionary, Oxford English Dictionary). It also implies someone who is capable of suing and/or being sued in a legal proceeding in their own name, without the need of an ad litem.

Thus in Roman law the caregiver or guardian of a spendthrift (*prodigus*) or of a person of unsound mind (*furiosus*), and, particularly, one who takes charge of the estate of an *adolescens*, i.e., of a person sui juris, above the age of a *pupillus*, fourteen or twelve years (boys and girls, respectively), and below the full age of twenty-five. Such persons were known as minors, i.e., *minores viginti quinque annis*. While the tutor, the guardian of the pupillus, was said to be appointed for the care of the person, the curator took charge of the property.

The English word “autonomous” is derived from the Ancient Greek αυτονόμος (from *autos* - self, and *nomos* - law) which corresponds to the Latin "sui iuris".

Examples of secular usage

The Congress of the United States is a good example of a *sui juris*–based institution. The two chambers of the Congress assemble into session by their own right as defined in the US Constitution (Twentieth Amendment) on January 3 every year. The US President does not have to invite or call the Congress to assemble for regular sessions (although he has the option to call special sessions). In the United States, the legislature is independent of the executive (although there are some checks and balances). This is in contrast with many parliamentary democracies like India, where the federal Parliament can assemble if and only if the President of India summons it (on the advice of the Prime Minister). This is because the Indian Constitution is largely based upon the conventions of the British monarchy, in which it was a crime of treason for the English Parliament to assemble without the permission of the King.

Catholic ecclesiastical use

Church documents such as the *Code of Canons of the Eastern Churches* apply the Latin term *sui iuris* to the particular Churches that together compose the Catholic Church (i.e., the Roman Catholic Church and those in communion with her). By far the largest of these "sui iuris" or autonomous Churches is that known as the Latin Church or the Latin Rite. Over this particular Church the Pope exercises, as well as his papal authority, the authority that in other particular Churches belongs to a Patriarch. He has therefore been referred to also as Patriarch of the West.[1] The other particular Churches are called Eastern Catholic Churches, each of which, if large enough, has its own patriarch or other chief hierarch, with authority over all the bishops of that particular Church or rite.

The same term is applied also to missions that, though lacking enough clergy to be set up as apostolic prefectures, are for various reasons given autonomy, and thus are not part of any diocese, apostolic vicariate or apostolic prefecture. In 2004, there were eleven such missions: three in the Atlantic, Cayman Islands, Turks and Caicos, and Saint Helena, Ascension and Tristan da Cunha; two in the Pacific, Funafuti (Tuvalu), and Tokelau; and six in central Asia, Afghanistan, Baku (Azerbaijan), Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

Examples of Catholic ecclesiastical use

- Mission sui iuris
- "The Eastern Catholic Churches are not 'experimental' or 'provisional' communities; these are sui iuris Churches; One, Holy, Catholic and Apostolic, with the firm canonical base of the *Code of Canons of the Eastern Churches* promulgated by Pope John Paul II." [2]
- "The hierarchs of the Byzantine Metropolitan Church sui iuris of Pittsburgh, in tile United States of America, gathered in assembly as the Council of Hierarchs of said Church, in conformity with the *Code of Canons of the Eastern Churches*, ..." [3]
- "It would likewise be helpful to prepare a Catechetical Directory that would 'take into account the special character of the Eastern Churches, so that the biblical and liturgical emphasis as well as the traditions of each Church sui iuris in patrology, hagiography and even iconography are highlighted in conveying the catechesis' (CCEO, can. 621, §2)" John Paul II [4]
- "On behalf of the Kyrgyzstan Catholics I would like to express our gratitude to the Holy Father for his prayers and for all that he has done for us: ... and for the creation of the new 'missioni sui iuris' in Central Asia, in a special way — for the trust placed on the 'Minima Societas Jesu', to which he entrusted the mission in Kyrgyzstan." [5]
- "...[T]he rays originating in the one Lord, the sun of justice which illumines every man (cf. Jn 1:9 [6]), ... received by each individual Church sui iuris, has value and infinite dynamism and constitutes a part of the universal heritage of the Church." "Instruction for Applying the Liturgical Prescriptions of the Code of Canons of the Eastern Churches", issued January 6, 1996 by the Congregation for the Eastern Churches [7].

Churches *sui iuris*

The term Church sui iuris is used in CCEO to denote the autonomous churches in Catholic communion.

A church sui iuris is " a community of the Christian faithful, which is joined together by a hierarchy according to the norm of law and which is expressly or tacitly recognized as sui iuris by the supreme authority of the Church"(CCEO.27) . The term sui iuris is an innovation of CCEO (Codex Canonum Ecclesiarum Orientalium - Code of Canons of the Oriental Churches) and it denotes the relative autonomy of the oriental Catholic Churches. This canonical term, pregnant with many juridical nuances, indicates the God-given mission of the Oriental Catholic Churches to keep up their patrimonial autonomous nature. And the autonomy of these churches is relative in the sense that it is under the supreme authority of the Roman Pontiff.[8]

“Una Chiesa Orientale cattolica è una parte della Chiesa Universale che vive la fede in modo corrispondente ad una delle cinque grandi tradizioni orientali- Alessandrina, Antiochena, Costantinopolitina, Caldea, Armena- e che contiene o è almeno capace di contenere, come sue componenti minori, piú communià diocesane gerarchicamente riunite sotto la guida di un capo commune legittimamente eleto e in communione con Roma, il quale con il proprio Sinodo costituisce la superiore istanza per tutti gli affari di carattere amministrativo, legislativo e giudiziario delle stesse Communità, nell'ambitto del diritto commune a tutte le Chiese, determinato nei Canoni sancti dai Concili Ecumenici o del Romano Pontefice, sempre preservando il diritto di quest'ultimo di intervenire nei singoli casi”[9]

Categories of *sui iuris* churches

According to CCEO the Oriental Catholic churches sui iuris are of four categories:

Patriarchal churches

A patriarchal church is a full-grown form of an Eastern Catholic church. It is a 'a community of the Christian faithful joined together by' a Patriarchal hierarchy. The Patriarch together with the synod of bishops has the legislative, judicial and administrative powers within jurisdictional territory of the patriarchal church, without prejudice to those powers reserved, in the common law to the Roman pontiff (CCEO 55-150). Among the catholic oriental churches the following churches are of patriarchal status:

1. Coptic Catholic Church (1741):Cairo, (163,849), Egypt
2. Maronite Church[10] (union re-affirmed 1182): Bkerke, (3,105,278), Lebanon, Cyprus, Jordan, Israel, Palestine, Egypt, Syria, Argentina, Brazil, United States, Australia, Canada, Mexico
3. Syriac Catholic Church[11] (1781): Beirut,(131,692), Lebanon, Iraq, Jordan, Kuwait, Palestine, Egypt, Sudan, Syria, Turkey, United States and Canada, Venezuela
4. Armenian Catholic Church[12] (1742): Beirut, (375,182), Lebanon, Iran, Iraq, Egypt, Syria, Turkey, Jordan, Palestine, Ukraine, France, Greece, Latin America, Argentina, Romania, United States, Canada, Eastern Europe
5. Chaldean Catholic Church[13] (1692): Baghdad, (418,194), Iraq, Iran, Lebanon, Egypt, Syria, Turkey, United States
6. Melkite Greek Catholic Church[14] (1726): Damascus, (1,346,635), Syria, Lebanon, Jordan, Israel, Jerusalem, Brazil, United States, Canada, Mexico, Iraq, Egypt and Sudan, Kuwait, Australia, Venezuela, Argentina

Major archiepiscopal churches

Major archiepiscopal churches are the oriental churches, governed by the major archbishops being assisted by the respective synod of bishops. These churches also have almost the same rights and obligations of Patriarchal Churches. A major archbishop is the metropolitan of a see determined or recognized by the Supreme authority of the Church, who presides over an entire Eastern Church sui iuris that is not distinguished with the patriarchal title. What is stated in common law concerning patriarchal Churches or patriarchs is understood to be applicable to major archiepiscopal churches or major archbishops, unless the common law expressly provides otherwise or it is evident from the nature of the matter" (CCEO.151, 152). Following are the Major Archiepiscopal Churhes:

1. Syro-Malankara Catholic Church[15] (1930): Trivandrum, (412,640), India, United States of America
2. Syro-Malabar Church[16] (1663): Ernakulam, (3,902,089), India, Middle East, Europe and America
3. Romanian Church United with Rome, Greek-Catholic[17] (1697): Blaj, (776,529), Romania, United States of America
4. Ukrainian Greek Catholic Church[18] (1595): Kiev, (4,223,425), Ukraine, Poland, United States, Canada, Great Britain, Australia, Germany and Scandinavia, France, Brazil, Argentina

Metropolitan churches

The sui iuris church, which is governed by a metropolitan, is called a metropolitan church sui iuris. " A Metropolitan Church sui iuris is presided over by the Metropolitan of a determined see who has been appointed by the Roman Pontiff and is assisted by a council of hierarchs according to the norm of law" (CCEO. 155§1). The Catholic metropolitan churches are the following:

1. Ethiopian Catholic Church[19] (1846): Addis Ababa, (208,093), Ethiopia, Eritrea
2. Ruthenian Catholic Church[20] (1646) - a *sui juris* metropolia [21], an eparchy [22], and an apostolic exarchate [23]: Uzhhorod, Pittsburgh, (594,465), United States, Ukraine, Czech Republic
3. Slovak Greek Catholic Church (1646): Prešov, (243,335), Slovak Republic, Canada

Other *sui iuris* churches

Other than the above mentioned three forms of sui iuris churches there are some other sui iuris ecclesiastical communities. It is "a Church sui iuris which is neither patriarchal nor major archiepiscopal nor Metropolitan, and is entrusted to a hierarch who presides over it in accordance with the norm of common law and the particular law established by the Roman Pontiff" (CCEO. 174). The following churches are of this juridical status:

1. Albanian Greek Catholic Church (1628) - apostolic administration: (3,510), Albania
2. Belarusian Greek Catholic Church (1596) - no established hierarchy at present: (10,000), Belarus
3. Bulgarian Greek Catholic Church[24] (1861) - apostolic exarchate: Sofia,(10,107), Bulgaria
4. Byzantine Church of the Eparchy of Križevci[25] (1611) - an eparchy and an apostolic exarchate: Križevci, Ruski Krstur (21,480) + (22,653), Croatia, Serbia and Montenegro
5. Greek Byzantine Catholic Church[26] (1829) - two apostolic exarchates: Athens, (2,325), Greece, Turkey
6. Hungarian Greek Catholic Church[27] (1646) - an eparchy and an apostolic exarchate: Nyiregyháza, (290,000), Hungary
7. Italo-Albanian Catholic Church (Never separated) - two eparchies and a territorial abbacy: (63,240), Italy
8. Macedonian Greek Catholic Church (1918) - an apostolic exarchate: Skopje, (11,491), Republic of Macedonia
9. Russian Catholic Church[28] (1905) - two apostolic exarchates, at present with no published hierarchs: Russia, China; currently about 20 parishes and communities scattered around the world, including five in Russia itself, answering to bishops of other jurisdictions

Sources and external links

- GigaCatholic [29]
- Papal Address to Bishops of Central Asia - 23 September 2001 [30]
- Catholic Mission [31] Catholic Churches in Turks and Caicos Islands
- Overview of the *sui iuris* status according to the Syro-Malankara Catholic Church [32]
- Article distinguishing between *unity* and *uniformity*, from Kottayam Catholic diocese [33]
- Syro Malankara Catholic Church International website [34]

References

[1] | (1913). "Eastern Churches" (http://en.wikipedia.org/wiki/Wikisource:catholic_encyclopedia_(1913)/eastern_churches). *Catholic Encyclopedia*. New York: Robert Appleton Company. .

[2] http://www.ukrweekly.com/Archive/2000/290007.shtml

[3] http://www.byzcath.org/news/1999/AEP19990928-1.html

[4] http://www.byzcath.org/news/LOR19981028.html

[5] http://www.zenit.org/english/asia/cong17.html

[6] http://drbo.org/cgi-bin/d?b=drb&bk=50&ch=001&l=9

[7] http://www.cin.org/docs/eastinst.html

[8] Church sui iuris (http://www.scribd.com/doc/2057012/Malankara-Catholic-Church-sui-iuris-Juridical-Status-and-Power-of-Governance)

[9] For a better understanding of the concept of church sui iuris see, Žužek, *Understanding The Eastern Code*, pp. 103-104.

[10] http://www.bkerkelb.org/

[11] http://www.syriaccatholic.org/

[12] http://www.armeniancatholic.org/

[13] http://www.st-adday.com/

[14] http://www.pgc-lb.org/

[15] http://www.catholicate.net/

[16] http://www.smcim.org/

[17] http://www.bru.ro/

[18] http://www.ugcc.org.ua/

[19] http://www.ecs.org.et/

[20] http://www.byzcath.org/

[21] http://www.archeparchy.org/page/metropolia/metropolia.htm

[22] http://www.mgce.uz.ua/

[23] http://www.exarchat.cz/

[24] http://www.catholic-bg.org/eng/

[25] http://krizevci.hbk.hr/

[26] http://www.elcathex.com/

[27] http://www.atanaz.hu/

[28] http://www.rkcvo.ru/

[29] http://www.gcatholic.com/dioceses/data/typemiss.htm

[30] http://www.catholic-forum.com/saints/pope0264ur.htm

[31] http://www.catholic.tc

[32] http://www.scribd.com/doc/7756490/SyroMalankara-Catholic-Church-Church-sui-iuris-Juridical-Satus-and-Power-of-Governance-by-Thomas-Kuzhinapurath

[33] http://www.kottayamdiocese.com/sui_juris.htm

[34] http://www.syromalankara.org/

Suo motu

Suo motu, meaning "on its own motion," is a Latin legal term, approximately equivalent to the term *sua sponte*. It is used, for example, where a government agency acts on its own cognizance, as in "the Commission took *suo motu* control over the matter." Example - "there is no requirement that a court *suo motu* instruct a jury upon these defenses." State v. Pierson.

See also

- List of legal Latin terms

Supra (grammar)

Supra (Latin for "above") is an academic and legal citation signal used when a writer desires to refer a reader to an earlier-cited authority. For example, an author wanting to refer to a source in his or her third footnote would cite: *See **supra*** note 3. Or for text in that note: *See **supra*** text accompanying note 3.

Supra can also be used to provide a short form citation to an earlier (but not immediately preceding) authority. For example:

- Stephen J. Legatzke, Note, The Equitable Recoupment Doctrine in United States v. Dalm: Where's the Equity, 10 Va. Tax Rev. 861 (1991).
- Legatzke, supra at 862.

In this example, the second citation refers the reader to page 862 in the journal in which the article by Legatzke appears.

See also

- Ibid.
- Id.
- Super

Surrogatum

Surrogatum is a thing put in the place of another or a substitute.[1] The **Surrogatum Principle** pertains to a Canadian income tax principle involving a person who suffers harm caused by another and may seek compensation for (a) loss of income, (b) expenses incurred, (c) property destroyed, or (d) personal injury, as well as punitive damages, under the surrogatum principle, the tax consequences of a damage or settlement payment depend on the tax treatment of the item for which the payment is intended to substitute.[2] [3]

Surrogatum Principle

For taxation in Canada purposes, damages or compensation received, either pursuant to a court judgment or an out-of-court settlement, may be considered as on account of income, capital, or windfall to the recipient. The nature of the injury or harm for which compensation is made generally determines the tax consequences of damages. Under the surrogatum principle, the tax consequences of a damage or settlement payment depend on the tax treatment of the item for which the payment is intended to substitute.[4]

As a judge-made tax principle, the surrogatum principle must relate to tax treatment, not just to the nature of the payment, though in most cases the two will go hand-in-hand. The surrogatum principle should apply to assist in reaching a tax result in accordance with the tax legislation, not to encourage a result of either windfall at one end of the spectrum, or double taxation at the other end. The surrogatum principle should apply to maintain tax neutrality of damages.[5]

If a taxpayer in the course of carrying on a business or earning income from a property receives damages or similar compensation, such as that received as a result of another party's breach of contract or tortuous act, the receipt will be either income or capital for income tax purposes. As a general rule, the courts have held that the character of such a receipt will depend on the character of the item or subject matter that the receipt is intended to replace. This judge-made rule is often described as the “surrogatum principle”.

The general principle is that damages in lieu of receipts that would otherwise have been taxable to the taxpayer are taxable as income.

"Where, pursuant to a legal right, a trader receives from another person, compensation for the trader's failure to receive a sum of money which, if it had been received, would have been credited to the amount of profits (if any) arising in any year from the trade carried on by him at the time when the compensation is so received, the compensation is to be treated for income tax purposes in the same way as that sum of money would have been treated if it had been received instead of the compensation. The rule is applicable whatever the source of the legal right of the trader to recover the compensation. It may arise [1] from a primary obligation under a contract, such as a contract of insurance; [2] from a secondary obligation arising out of nonperformance of a contract, such as a right to damages, either liquidated, as under the demurrage clause in a charter party, or unliquidated; [3] from an obligation to pay damages for tort . . . ; [4] from a statutory obligation; [5] or in any other way in which legal obligations arise." [6]

Thus, one must determine whether the receipts, in lieu of which the damages compensate, would have been taxable. Note, however, the characterization of damages as taxable income or non-taxable capital receipts depends upon the nature of the legal right settled and not upon the method used to calculate the award.

Case law

In the seminal case of London and Thames Haven Oil Wharves, [1967] 2 All E.R. 124, the taxpayer's jetty, which was used in its income-earning operations, was damaged by an oil tanker. In settlement of a tort claim for negligence, the taxpayer received compensation from the owner of the oil tanker, part of which compensated for the loss of the jetty during the period of repair. In holding that the compensation effectively replaced the taxpayer's profits and was therefore taxable as income, Lord Diplock of the House of Lords described the guiding principle as follows:

> "I start by formulating what I believe to be the relevant rule. Where, pursuant to a legal right, a trader receives from another person compensation for the trader's failure to receive a sum of money which, if it had been received, would have been credited to the amount of profits (if any) arising in any year from the trade carried on by him at the time when the compensation is so received, the compensation is to be treated for income tax purposes in the same way as that sum of money would have been treated if it had been received instead of the compensation. The rule is applicable whatever the source of the legal right of the trader to recover the compensation. It may arise from a primary obligation under a contract, such as a contract of insurance; from a secondary obligation arising out of non-performance of a contract, such as a right to damages, either liquidated, as under the demurrage clause in a charterparty, or unliquidated; from an obligation to pay damages for tort, as in the present case; from a statutory obligation; or in any other way in which legal obligations arise."

In Commissioners of Inland Revenue v. Fleming & Co. (Machinery), Ltd., (1951), 33 TC 57, the taxpayer received an amount as compensation for the loss of a sales agency agreement with a manufacturer of explosives. The taxpayer had been the sole selling agent pursuant to the agreement. The amount paid to the taxpayer was arrived at by doubling the normal annual commission that it had received pursuant to the agreement. The agency provided between 30% and 45% of the company's total earnings in commissions. In finding that the amount received by the taxpayer was income, Lord Russell formulated the following test, which has been cited in several subsequent Canadian cases and is also described in paragraph 8 of Interpretation Bulletin IT-365R2:

> "When the rights and advantages surrendered on cancellation are such as to destroy or materially to cripple the whole structure of the recipient's profit-making apparatus, involving the serious dislocation of the normal commercial organization and resulting perhaps in the cutting down of the staff previously required, the recipient of the compensation may properly affirm that the compensation represents the price paid for the loss or sterilization of a capital asset and is therefore a capital and not a revenue receipt … On the other hand when the benefit surrendered on cancellation does not represent the loss of an enduring asset in circumstances such as those above mentioned — where for an example the structure of the recipient's business is so fashioned as to absorb the shock as one of the normal incidents to be looked for and where it appears that the compensation received is no more than a surrogatum for the future profits surrendered — the compensation received is in use to be treated as a revenue receipt and not a capital receipt."

In contrast, if a contract constitutes a significant part of the company's business structure, compensation paid on the termination of the contract may be on capital account. In Van den Berghs, Ltd. v. Clark, [1935] A.C. 431, the taxpayer was an English company that entered into an agreement with a competing Dutch company which provided that the two companies (which were manufacturers and dealers in margarine) would conduct their businesses in cooperation with one another along certain prescribed lines and that they would share profits or losses. The agreement was to run for thirty years, but differences subsequently arose over the proper distribution of the profits. A settlement was reached under which a lump-sum amount was paid by the Dutch company to the taxpayer and the agreement was terminated. The House of Lords held that the rights of the taxpayer under the agreement constituted a capital asset and the sum paid for their cancellation was a capital receipt.

The case of Parsons-Steiner Ltd. v. Minister of National Revenue, 62 DTC 1148 (Ex. Ct.) was one of the first in Canada to consider the nature of damages received upon the termination of a business contract. The taxpayer

received a lump-sum payment upon the cancellation of a sales agency contract under which it sold “Doulton” figurines and china products. This agency, when combined with another with the same company, accounted for 80% of the taxpayer's business and in the last two or three years of the agency one of the products accounted for 55% of the taxpayer's business. The agency relationship had lasted twenty years prior to its termination. Given the length of the agency relationship, its importance to the taxpayer's business operations, and the fact that the taxpayer suffered decreased sales by reason of its inability to replace the agency with an equivalent arrangement, the Exchequer Court found the damages to be capital. The Court held that the damages related to the loss of the taxpayer's interest in the goodwill and business in Doulton products in Canada, which the Court viewed as “a capital asset of an enduring nature”.

In H. A. Roberts Ltd. v. Minister of National Revenue, 69 DTC 5249, the taxpayer carried on a mortgage business in one of its five departments, having obtained two mortgage agencies (as well as a third less significant agency). The mortgage department was operated as a separate division from the taxpayer's other businesses. The net income of the mortgage department ranged from 27% to 51% of the taxpayer's total net income. The two agencies were cancelled and pursuant to the agency agreements the taxpayer received compensation payments. The cancellation of the agencies terminated the taxpayer's mortgage business; the department was closed and the staff was disbanded. In holding that the payments were capital, the Supreme Court of Canada held that the loss of the two agencies represented “the loss of capital assets of an enduring nature the value of which had been built up over the years and that therefore the payments received by this appellant represented capital receipts”.

In The Queen v. Manley, 85 DTC 5150, the taxpayer was hired to find a purchaser for the shares of a family-owned company in exchange for a finder's fee. When he found such a purchaser but was not paid, he sued the former controlling shareholder of the company, who on behalf of the other family shareholders had agreed to pay the finder's fee. The taxpayer was successful in the lawsuit and was awarded damages for the shareholder's breach of warranty of authority. In holding that the damages were income from a business, the Federal Court of Appeal held that they were compensation for the failure to receive the finder's fee, which would have been income from a business because the taxpayer had engaged in an adventure in the nature of trade.

In Canadian National Railway Company v. The Queen, 88 DTC 6340, the taxpayer received an amount upon the termination of a contract for the transportation by road and rail of certain supplies and building materials. Justice Strayer of the Federal Court–Trial Division held that the operations under the contract did not constitute a separate business and that they were not that significant that the termination of the contract destroyed the taxpayer's “profit-making apparatus” or seriously dislocated its “normal commercial organization”. He went on to hold that the purpose of the compensation provision in the contract was to enable the taxpayer to “absorb the shock as one of the normal incidents to be looked for” and that the compensation received was “no more than a surrogatum for the future profits surrendered”. As a result, the payment was income. In contrast, in Pe Ben Industries Company Limited v. The Queen, (88 DTC 6347), heard concurrently with Canadian National Railway, a similar payment was held to be capital. In that case, Justice Strayer concluded that the payment was compensation for the destruction of a distinct part of the taxpayer's business. It had been the first “intermodal” undertaking of the taxpayer, which required it to establish a base of operations at a rail yard solely for that purpose. Justice Strayer held that the termination of the contract put an end to the intermodal operations of the taxpayer, such that the payment was capital. He went on to hold that the taxpayer's rights under the contract constituted “property” and that the termination payment constituted “compensation for property destroyed” and therefore proceeds of disposition received in respect of the property. Since the taxpayer had a nil adjusted cost basis in the contract, the amount of the termination payment was a capital gain.

In T. Eaton Company Limited v. The Queen, 99 DTC 5178, the taxpayer was a tenant under a long-term lease for retail space in a shopping centre. The terms of the lease included a “participation clause” entitling the taxpayer to 20% of the annual net profits of the shopping centre over the duration of the lease. For several years, the taxpayer reported the amounts received under the participation clause as income. In 1989, the landlord offered to buy out the

participation clause for $9.25 million. The offer was accepted and the taxpayer reported the $9.25 million amount as proceeds of the disposition of a capital property that had an acquisition cost of nil. Accordingly, the taxpayer reported a capital gain of $9.25 million. The Minister reassessed the taxpayer on the ground that the entire amount constituted income from a business. The Tax Court of Canada agreed with the Minister and characterized the participation clause as part of an ordinary business contract not forming part of the taxpayer's capital structure. However, the Tax Court decision was overturned on appeal to the Federal Court of Appeal. The Federal Court rejected the Minister's position that the participation clause was analogous to an ordinary trade contract. The Federal Court instead characterized the participation clause as an integral part of the lease, which was a capital asset of the taxpayer. The Court held that buy-out of the participation clause had the effect of diminishing the value of this capital asset by $9.25 million. Accordingly, the buy-out amount was on capital account.

Historically, the surrogatum principle has been applied by the courts only in the determination of profit from a business or property under general principles. However, in the case of Tsiaprailis v. The Queen, 2005 DTC 5119, the Supreme Court of Canada applied the principle in its consideration of a more specific statutory provision dealing with amounts received pursuant to a disability insurance plan, namely paragraph 6(1)(f). The case dealt with a lump-sum settlement payment received in respect of a disputed claim under a disability insurance plan. The payment ostensibly represented both past disability benefits accruing to the time of the settlement and the taxpayer's foregone future benefits under the plan. The Court held that the portion of the lump-sum payment reflecting the taxpayer's future benefits was not made pursuant to the insurance plan because there was no obligation to make such a lump-sum payment under the terms of the plan. Therefore, such amount was not taxable under paragraph 6(1)(f). However, turning to the portion of the payment that represented the past benefits under the plan, the Court applied the surrogatum principle in concluding that the portion was taxable under paragraph 6(1)(f) because it was meant to replace amounts that were payable pursuant to the plan.

In Transocean Offshore Limited v. The Queen, 2005 DTC 5201, the non-resident taxpayer received a US$40 million lump-sum payment from a group of Canadian residents who had repudiated a bare boat charter agreement. The Federal Court of Appeal held that withholding tax under paragraph 212(1)(d) applied to the payment because it was made “in lieu of” rent that would have been pursuant to the agreement had it not been repudiated. Although the Court did not apply the judge-made surrogatum principle, simply because the “in lieu of” language of paragraph 212(1)(d) effectively constituted a statutory surrogatum rule, Justice Sharlow described the surrogatum principle as follows:

> "… a judge-made rule, sometimes called the “surrogatum principle”, by which the tax treatment of a payment of damages or a settlement payment is considered to be the same as the tax treatment of whatever the payment is intended to replace. Thus, an amount paid as a settlement or as damages is income if it is paid as compensation for lost future rent … It is a capital receipt if it is compensation for a diminution of capital of the recipient: Westfair Foods Ltd v. Minister of National Revenue, [1991] 1 C.T.C. 146, 91 DTC 5073 (F.C.T.D.), affirmed [1991] 2 C.T.C. 343, 91 DTC 5625 (F.C.A.)."
>
> "The surrogatum principle need not be considered in this case because the words “in lieu of” in paragraph 212(1)(d) of the Income Tax Act express a similar idea. The fact finding process that precedes the application of the surrogatum principle is similar to the fact finding process that must be undertaken to determine whether a payment has been made “in lieu of” a specified thing. Here, the fact finding exercise was completed when the Judge determined that the US$40 million payment was made as compensation for lost future rent.
>
> More recently, the surrogatum principle was applied by the Tax Court of Canada in Bourgault Industries Ltd. v. The Queen, 2006 DTC 3420, where a settlement payment arising from an infringement of the taxpayer's patents was held to be on account of lost profits and therefore included in the taxpayer's income. The principle was also applied by the Tax Court in Bueti et al. v. The Queen, 2006 DTC 3047, where the taxpayer as landlord received a lump-sum payment upon the termination of a lease by the tenant. The payment was held to reflect foregone rent under the lease and therefore was included in the taxpayer's income. Both the Bourgault and Bueti decisions were appealed to the Federal Court of Appeal. Those appeals had not been decided at the

time of writing."

References

[1] New Shorter Oxford English Dictionary. 1997. Version 1.0.03
[2] Krishna, Vern. The Fundamentals of Canadian Income Tax (9th Edition), Electronic Version
[3] Principles of Canadian Income Tax Law
[4] Canadian Tax Foundation article (http://www.ctf.ca/articles/News.asp?article_ID=2499)
[5] Gowlings - Taxation law (http://www.gowlings.com/resources/enewsletters/taxationlaw/Htmfiles/V1N62_20050505.en.html)
[6] Schwartz v. Canada, [1994] 2 C.T.C. 99, 94 D.T.C. 6249 (F.C.A.); revd. [1996] 1 S.C.R. 254, [1996] 1 C.T.C. 303, 96 D.T.C. 6103 (S.C.C.)]

Syndic

Syndic (Late Lat. *syndicus*, Gr. *σύνδικος*, one who helps in a court of justice, an advocate, representative), a term applied in certain countries to an officer of government with varying powers, and secondly to a representative or delegate of a university, institution or other corporation, entrusted with special functions or powers.

The meaning which underlies both applications is that of representative or delegate. Du Cange (*Gloss, s.v. Syndicus*), after defining the word as defensor, fair onus, advocatus, proceeds "Syndici maxime appellantur Actores universitatum, collegiorum, societatum et aliorum corporum, per quos, tanquam in republica quod communiter agi fierive oportet, agitur et fit," and gives several examples from the 13th century of the use of the term. The most familiar use of "syndic" in the first sense is that of the Italian *sindaco*, who is the head of the administration of a *comune*, comparable to a mayor, and a government official, elected by the residents of commune.

The president of Andorra's parliament is known as the *sindic*. Until the 1993 Constitution, the sindic was the effective head of government of Andorra.

Nearly all companies, guilds, and the University of Paris had representative bodies the members of which were termed *syndici*. Similarly in England, the Regent House of the University of Cambridge, which is the legislative body, delegates certain functions to special committees of its members, appointed from time to time by Grace (a proposal offered to the Regent House and confirmed by it); these committees are termed "syndicates" and are permanent or occasional, and the members are styled "the syndics" of the particular committee or of the institution which they administer; thus there are the syndics of the Fitzwilliam Museum, of the Cambridge University Press, of local examinations, etc.

Tabula in naufragio

Tabula in naufragio is a legal Latin phrase, literally interpreted as "a plank in a shipwreck".

The phrase is used metaphorically to designate the power subsisting in a third (or subsequent) mortgagee, who took the third mortgage without notice of the second mortgage, and then acquired the first mortgage and attached it to the third mortgage, thereby obtaining priority over the second mortgagee.

According to *Black's Law Dictionary*:

> "It may be fairly said that the doctrine survives only in the unjust and much criticised English rule of tacking."

The phrase was first attributed to Sir Matthew Hale, although Hale died over 200 years before the advent of the modern English doctrine of tacking.[1]

References

[1] *Hopkinson v Rolt* (1861) 9 HLC 513

Terra nullius

Terra nullius (pronounced /ˈtɛrə nʌˈlaɪ.əs/) is a Latin expression deriving from Roman law meaning 'land belonging to no one' (or 'no man's land'), which is used in international law to describe territory which has never been subject to the sovereignty of any state, or over which any prior sovereign has expressly or implicitly relinquished sovereignty. Sovereignty over territory which is *terra nullius* may be acquired through occupation.[1]

History in Australia

European settlement of Australia commenced in 1788. Prior to this, Indigenous Australians inhabited the continent and had unwritten legal codes, as documented in the case of the Yirrkala community.

The first test of *terra nullius* in Australia occurred with the decision of *R v Tommy* (Monitor, 28 November 1827), which indicated that the native inhabitants were only subject to English law where the incident concerned both natives and settlers. The rationale was that Aboriginal tribal groups already operated under their own legal systems. This position was further reinforced by the decisions of *R v Boatman or Jackass and Bulleyes* (Sydney Gazette, 25 February 1832) and *R v Ballard* (Sydney Gazette, 23 April 1829).

In 1835 Governor Bourke implemented the doctrine of *terra nullius* by proclaiming that Indigenous Australians could not sell or assign land, nor could an individual person acquire it, other than through distribution by the Crown.[2]

The first decision of the New South Wales Supreme Court to make explicit use of the term *terra nullius* was *R v Murrell and Bummaree* (unreported, New South Wales Supreme Court, 11 April 1836, Burton J). *Terra nullius* was not endorsed by the Judicial Committee of the Privy Council until the decision of Cooper v Stuart in 1889, some fifty three years later. [3]

However, journalist Michael Connor has claimed that the concept was a straw man developed in the late twentieth century:

> "By the time of Mabo in 1992, *terra nullius* was the only explanation for the British settlement of Australia. Historians, more interested in politics than archives, misled the legal profession into believing that a phrase no one had heard of a few years before was the very basis of our statehood, and Reynolds' version of our history, especially The Law of the Land, underpinned the Mabo judges' decision-making." [4]

There is some controversy as to the meaning of the term. For example, it is asserted that, rather than implying mere emptiness, *terra nullius* can be interpreted as an absence of civilized society. The English common law of the time allowed for the legal settlement of "uninhabited or barbarous country". [5]

In 1971, in the controversial Gove land rights case, Justice Blackburn ruled that Australia had been *terra nullius* before European settlement, and that there was no such thing as native title in Australian law. Court cases in 1977, 1979, and 1982 brought by or on behalf of Aboriginal activists challenged Australian sovereignty on the grounds that *terra nullius* had been improperly applied, therefore Aboriginal sovereignty should still be regarded as being intact. These cases were rejected by the courts, but the Australian High Court left the door open for a reassessment of whether the continent should be considered "settled" or "conquered".

Mabo

The concept of *terra nullius* became a major issue in Australian politics when in 1992, during an Aboriginal rights case known as *Mabo*, the High Court of Australia issued a judgment which was a direct overturning of *terra nullius*. In this case, the Court found that there was a concept of native title in common law, that the source of native title was the traditional connection to or occupation of the land, that the nature and content of native title was determined by the character of the connection or occupation under traditional laws or customs and that native title could be extinguished by the valid exercise of governmental powers provided a clear and plain intention to do so was manifest.

In 1996, The High Court re-visited the subject of native title in Wik. The 4-3 majority in the Wik Decision stated that native title and pastoral leases could co-exist over the same area and that native peoples could use land for hunting and performing sacred ceremonies even without exercising rights of ownership. However, in the event of any conflict between the rights and interests of pastoralists and native title, it would be the former that would prevail.

The court's ruling in *Mabo* has enabled some Aboriginal peoples to reclaim territory appropriated under the doctrine of *terra nullius*. This has proven extremely controversial, as it has led to lawsuits seeking the transfer or restoration of land ownership rights to native groups. An estimated 3,000 further agreements have been reached in which Aboriginal peoples have regained former lands. An example is that of a December 2004 case in which the Noonkanbah people were recognised as the traditional owners of a 1811 km^2 (699 sq mi) plot of land in Western Australia. In the Northern Territory, 40 per cent of the land and most of its coastline is now owned by Aboriginal peoples.

Terra nullius elsewhere

Western Sahara

Terra nullius was still relevant to international law in the 1970s, as evidenced by the UN General Assembly's request to the International Court of Justice in 1974 to determine the status of the Western Sahara (Río de Oro and Saguia el-Hamra) at the time of colonization by Spain.

Svalbard

Svalbard was considered to be a *terra nullius* until Norway was given sovereignty over the islands in the Spitsbergen Treaty of 9 February 1920. England, the Netherlands, and Denmark-Norway all claimed sovereignty over the region in the seventeenth century, but none permanently occupied the islands. Each only visited Svalbard during the summer for whaling, with the first two sending a few wintering parties in the 1620s and 1630s.

Greenland

Norway occupied and claimed parts of (then uninhabited) Eastern Greenland in the 1920s, claiming that it constituted *terra nullius*. The matter was decided by the Permanent Court of International Justice against Norway.

Antarctica

Another example of a *terra nullius* is Antarctica, none of which has yet been capable of supporting human habitation without supplies from outside, and its status as *terra nullius* is partly enforced by the Antarctic Treaty System.

West Bank

Sir Elihu Lauterpacht, editor of *Oppenheim's International Law* has been cited in a 2006 opinion commentary[6] as an authority for viewing the West Bank as having been a *res nullius* from the date of Britain's withdrawal on 15 May 1948 from the Palestinian Mandate. The writers' opinion is controversial in view of United Nations Security Council Resolution 478 which affirmed that the Jerusalem Law was null and void and a violation of international law, and in view of plans for a Palestinian State as part of the Road map for peace.

Scarborough Shoal

The Philippines and the People's Republic of China both claim the Scarborough Shoal or Panatag Shoal or Huangyan Island (黄岩岛), nearest to the island of Luzon, located in the South China Sea. The Philippines claims it under the principles of *terra nullius* and EEZ (Exclusive Economic Zone). China's claim refers to its discovery in the 13th century by Chinese fishermen.

New Zealand

Lieutenant William Hobson, following instructions of the British government, in 1840 pronounced the southern island of New Zealand to be uninhabited by civilised peoples, which qualified the land to be "Terra Nullius", and therefore fit for the Crown's political occupation.

Canada

Joseph Trutch insisted that First Nations had never owned land, and thus, could safely be ignored. It is for this reason that most of British Columbia remains unceded land.[7]

This argument was formally negated by the *Guerin v. The Queen* Supreme Court decision on aboriginal rights, where the Court first stated that the government has a fiduciary duty toward the First Nations of Canada and established aboriginal title to be a sui generis right.

Guano Islands

The Guano Islands Act from August 18, 1856, enabled citizens of the U.S. to take possession of islands containing guano deposits. The islands can be located anywhere, so long as they are not occupied and not within the jurisdiction of other governments. It also empowers the President of the United States to use the military to protect such interests, and establishes the criminal jurisdiction of the United States.

Current *Terra nullius*

Bir Tawil

Between Egypt and Sudan is the 2060 km^2 (795 sq mi) landlocked territory of Bir Tawil, which was created during a border change between the two countries, along with the Hala'ib Triangle. Both countries insist on using the border that lets them claim the Hala'ib Triangle, which is significantly larger and next to the Red Sea, meaning Bir Tawil is

claimed by neither country.

Marie Byrd Land

Because of its remoteness, even by Antarctic standards, most of Marie Byrd Land (the portion east of 150°W) has not been claimed by any sovereign nation. According to the Antarctic Treaty of 1959 the signatory states agree not to make such claim, however the Russian Federation and the United States reserved the right to do so as well as the non-signatory states. The signatories of the treaty agree to treat it under the common heritage of mankind principle.

International sea

Under the United Nations Convention on the Law of the Sea of 1982, the international waters and international seabed are treated under the common heritage of mankind principle by the signatories of the convention.

Celestial bodies

According to the Outer Space Treaty of 1967 outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.[8] They are treated under the common heritage of mankind principle by the signatories of the treaty.

Limits of national jurisdiction and sovereignty

The principal treaties defining sovereignty beyond land territory are the Outer Space Treaty and the United Nations Convention on the Law of the Sea. They confirm the full national jurisdiction over the coastal waters (internal and territorial) and over the continental shelf underground. There are limitations that allow foreign vessels the right of passage and for foreign states to lay pipelines and cables in the territorial waters, exclusive economic zone and continental shelf surface. Exploitation of marine life and mineral resources in these areas is reserved right for the coastal state. Exploitation mineral resources in the extended continental shelf is reserved right for the coastal state, but it has to pay tax over these activities to the International Seabed Authority (UNCLOS, Art.82). The arhipelagic waters are covered by special hybrid regime with rules from territorial and internal waters.

On vessels, spacecrafts and structures in places with international jurisdiction or terra nullius the general rule is that the operator state of the vessel is responsible for it and regulates laws there. Additionally the crew are subject to the laws of the state of their citizenship. Earth orbital slots are the only type of extraterrestrial real estate recognised by law and are allocated by the International Telecommunication Union (part of the UN System).

There are some undefined limits for the application of jurisdiction and sovereignty:

- Boundary between outer space and airspace is not defined (30 km - 120 km)
- UNCLOS commission is defining the limits of the extended continental shelf
- UNCLOS is inconclusive about the status of airspace over the contiguous zone (whether it is treated as international airspace or some special rules apply there).
- There is no defined bottom underground limit for jurisdiction and sovereignty, because in practice there are no cases where it is relevant and the current technology level does not allow reach of depths were conflicting claims could be made (there are some disputes about border underground oil and gas reserve reservoirs, but their depth is not enough so that the curvature of the Earth and the exact line of the underground border between the states matters).

The current entities that exercise jurisdiction and sovereignty rights are:

- the 192 United Nations member states;
- Holy See, the United Nations observer state;
- Cook Islands and Niue, associated with and represented in foreign affairs by New Zealand;

- the 16 non-self-governing territories with recognised right for self-determination by the United Nations (currently under jurisdiction of 5 UN members);
- the 10 states with limited recognition;
- Order of Malta, the sole sovereign non-state entity and UN observer that has no territorial claims, but grants citizenship;
- the current terra nullius cases of Bir Tawil and Marie Byrd Land are not claimed by any of the other 222 entities;
- Stateless persons that do not have citizenship of any of the 222 entities.

Limits of national jurisdiction and sovereignty

<table>
<tr><td colspan="7">Outer space (including Earth orbits; the Moon and other celestial bodies, and their orbits)</td></tr>
<tr><td colspan="2">national airspace</td><td>territorial waters airspace</td><td>contiguous zone airspace</td><td colspan="3">international airspace</td></tr>
<tr><td>land territory surface</td><td>internal waters surface</td><td>territorial waters surface</td><td>contiguous zone surface</td><td>Exclusive Economic Zone surface</td><td colspan="2">international waters surface</td></tr>
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<tr><td colspan="2" rowspan="2">land territory underground</td><td colspan="3">Continental Shelf surface</td><td>extended continental shelf surface</td><td>international seabed surface</td></tr>
<tr><td colspan="3">Continental Shelf underground</td><td>extended continental shelf underground</td><td>international seabed underground</td></tr>
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full national jurisdiction and sovereignty restrictions on national jurisdiction and sovereignty international jurisdiction per common heritage of mankind

See also

- Aboriginal land claims
- Australia
  - Henry A. Reynolds
  - History wars
  - Native title
    - Mabo v Queensland
    - Wik Peoples v Queensland
- Manifest destiny
- Neutral territory
- *Res nullius* (original and broader formulation in law)
- Sealand
- Uncontacted people
- Bir Tawil

External links

- Aboriginal and Torres Strait Islander Social Justice Commissioner, Social Justice Reports, 1994-2009 http://www.humanrights.gov.au/social_justice/sj_report/and Native Title Reports, 1994-2009 http://www.humanrights.gov.au/social_justice/nt_report/index.html
- A History of the concept of "Terra Nullius" The University of Sydney [9]
- Governor Burke's 1835 Proclamation of *terra nullius* [10] NSW Migration Heritage Centre - Statement of Significance
- Veracini L, An analysis of Michael Conner's denial of *terra nullius* (*The Invention of Terra Nullius*) [11]
- Terror Nullius (http://www.wulfdhund.de/rassismusanalyse/?Ergaenzungen:Australien)
- [12] High Court of Australia - MABO AND OTHERS v. QUEENSLAND (No. 2) (1992) 175 CLR 1 F.C. 92/014
- [13] High Court of Australia - The Wik Peoples v The State of Queensland & Ors; The Thayorre People v The State of Queensland & Ors [1996] HCA 40 (23 December 1996)
- [14] 1975 International Court of Justice - Advisory Opinion regarding Western Sahara
- "History before European Settlement" [15] Parliament of New South Wales - note mis-spelling as "terra nulius"
- material on *terra nullius* [16] - NSW Primary School curriculum
- [17] R. v. Boatman or Jackass and Bulleye - Decisions of the Superior Courts of New South Wales, 1788-1899 (Published by the Division of Law, Macquarie University)

References

[1] "New Jersey v. New York, 523 US 767 (1998)" (http://openjurist.org/523/us/767/new-jersey-v-new-york). US Supreme Court. 26 May 1998. . Retrieved 29 January 2010. "Even as to terra nullius, like a volcanic island or territory abandoned by its former sovereign, a claimant by right as against all others has more to do than planting a flag or rearing a monument. Since the 19th century the most generous settled view has been that discovery accompanied by symbolic acts give no more than "an inchoate title, an option, as against other states, to consolidate the first steps by proceeding to effective occupation within a reasonable time.*8 I. Brownlie, Principles of Public International Law 146 (4th ed.1990); see also 1 C. Hyde, International Law 329 (rev.2d ed.1945); 1 L. Oppenheim International Law §§222-223, pp. 439-441 (H. Lauterpacht 5th ed.1937); Hall A Treatise on International Law, at 102-103; 1 J. Moore, International Law 258 (1906); R. Phillimore, International Law 273 (2d ed. 1871); E. Vattel, Law of Nations, §208, p. 99 (J. Chitty 6th Am. ed. 1844)."*

[2] "Governor Bourke's Proclamation 1835 (UK)" (http://www.foundingdocs.gov.au/item.asp?dID=42). *Documenting a Democracy: 110 key documents that are the foundation of our nation*. National Archives of Australia. . Retrieved 2008-03-05. "This document implemented the doctrine of *terra nullius* upon which British settlement was based, reinforcing the notion that the land belonged to no one prior the British Crown taking possession of it. Aboriginal people therefore could not sell or assign the land, nor could an individual person acquire it, other than through distribution by the Crown. . . Although many people at the time also recognised that the Aboriginal occupants had rights in the lands (and this was confirmed in a House of Commons report on Aboriginal relations in 1837), the law followed and almost always applied the principles expressed in Bourke's proclamation. This would not change until the Australian High Court's decision in the Mabo Case in 1992."

[3] http://www.law.mq.edu.au/scnsw

[4] Michael Connor in *The Bulletin* (Sydney), 20 August 2003: (see further Connor 2005.)

[5] http://www.austlii.com.au/special/rsjproject/rsjlibrary/archives/mabo8.html

[6] *Why Israel is free to set its own borders* (http://www.jmu.edu/nelsoninstitute/Israel's Borders (Commentary 2006-Krauss&Pham).pdf) Krauss M. I. and Pham J. P., in William R Nelson Institute's Commentary, July-August 2006

[7] A Short Commentary on Land Claims in BC (http://www.ubcic.bc.ca/Resources/shortcommentary.htm)

[8] A 1969 Time article (http://www.time.com/time/magazine/article/0,9171,901102-8,00.html)

[9] http://www.arts.usyd.edu.au/departs/history/research/projects/fitzmaurice_terra.shtml

[10] http://www.migrationheritage.nsw.gov.au/exhibitions/objectsthroughtime/objects/bourketerra/

[11] http://www.onlineopinion.com.au/view.asp?article=4141

[12] http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/high%5fct/175clr1.html?query=title+%28+%22mabo%22+%29

[13] http://www.austlii.edu.au/cgi-bin/disp.pl/au/cases/cth/HCA/1996/40.html?query=title%28wik+peoples+near+queensland%29

[14] http://www.icj-cij.org/icjwww/igeneralinformation/ibbook/Bbook8-2.15.htm

[15] http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/HistoryBeforeEuropeanSettlement

[16] http://www.bosnsw-k6.nsw.edu.au/linkages/IntegratedUnits/aboriginal/invasion_learn03.html

[17] http://www.law.mq.edu.au/scnsw/Cases1831-32/html/r_v_boatman_or_jackass_and_bul.htm

- Connor, Michael. "The invention of *terra nullius*", Sydney: Macleay Press, 2005.

- Culhane, Dara. *The Pleasure of the Crown: Anthropology, Law, and the First Nations.* Vancouver: Talon Books, 1998.
- Lindqvist, Sven. Terra nullius. A Journey through No One's Land. Translated by Sarah Death. Granta, London 2007. Pbk 2008. The New Press, New York 2007. Details here (http://www.svenlindqvist.net/main.asp?cat=2&lang=2&id=218)
- Rowse, Tim. "Terra nullius" - The Oxford Companion to Australian History. Ed. Graeme Davison, John Hirst and Stuart Macintyre. Oxford University Press, 2001.

Tertium quid

Tertium quid (Latin loan translation of Greek "tríton ti" for a "third thing") was a term first used in the Christological debates of the fourth century to refer to the followers of Apollinaris who spoke of Christ as something neither human nor divine, but a mixture of the two, and therefore a "third thing".

The term in more recent times has been employed in non-religious usage.

Tertium quid was applied to the name of a potential third party in American politics that arose in 1804 during Thomas Jefferson's first term in office. The Tertium quids, or Quids for short, were reactionary members of the Democrat-Republican Party led by Virginia's John Randolph of Roanoke, who stood by the party's original stance for strict construction of the Constitution and opposed Jefferson's pragmatic approach to governing.

The term is also used in the important Supreme Court case *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.* 529 U.S. 205 (2000). In this Lanham Act case, the court, when discussing product packaging vs. product design, referred to the type of trade dress in its earlier *Two Pesos* decision as "some tertium quid" that may be a mutation of product packaging and product design—a "third thing."

Kipling employs the term in "At the Pit's Mouth," for an adulterer: "Once upon a time there was a Man and his Wife and a Tertium Quid."

Trial de novo

Civil procedure in the United States

- *Federal Rules of Civil Procedure*
- *Doctrines of civil procedure*
- Jurisdiction
  - Subject-matter jurisdiction
  - Diversity jurisdiction
  - Personal jurisdiction
  - Removal jurisdiction
- Venue
  - Change of venue
  - *Forum non conveniens*
- Pleadings and motions
  - Service of process
  - Complaint
    - Cause of action
    - Case Information Statement
    - Class action
      - Class Action Fairness Act of 2005
  - Demurrer
  - Answer
    - Affirmative defense
  - Reply
  - Counterclaim
  - Cross-claim
  - Joinder
    - Indispensable party
  - Impleader
  - Interpleader
  - Intervention
- Pre-trial procedure
  - Discovery
  - Interrogatories
  - Depositions
  - Request for Admissions
- Resolution without trial
  - Default judgment
  - Summary judgment
  - Voluntary dismissal
  - Involuntary dismissal
  - Settlement

- Trial
  - Parties
    - Plaintiff
    - Defendant
  - Jury
    - Voir dire
  - Burden of proof
  - Judgment
    - Judgment as a matter of law (JMOL)
    - Renewed JMOL (JNOV)
    - Motion to set aside judgment
    - New trial
    - Remedy
      - Injunction
      - Damages
      - Attorney's fees
        - American rule
        - English rule
      - Declaratory judgment
- Appeal
  - Mandamus
  - Certiorari

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In law, the expression ***trial de novo*** means a "new trial" by a different tribunal (*de novo* is a Latin expression meaning 'afresh', 'anew', 'beginning again,' hence the literal meaning "new trial"). A *trial de novo* is usually ordered by an appellate court when the original trial failed to make a determination in a manner dictated by law.

In the United States, some states provide for bench trials only for small claims, criminal and traffic offenses, and criminal offenses with a penalty of imprisonment of less than six months, then provide the ability to appeal a loss to a higher court for a brand-new trial. In opposition to the standard practice of the appellate court only examining the issues raised in the original trial, the entire case is tried over from scratch. The Supreme Court of Virginia said this in *Santen v. Tuthill*, 265 Va. 492 (2003), about the practice of an appeal from District court *trial de novo* to Circuit court: "This Court has repeatedly held that the effect of an appeal to Circuit court is to 'annul[] the judgment of the inferior tribunal as completely as if there had been no previous trial.'"[1]

It is often used in the review of *administrative proceedings* or the judgements of a *small claims court*. If the determination made by a lower body is overturned, it may be renewed *de novo* in the review process (this is usually before it reaches the court system). Sometimes administrative decisions may be reviewed by the courts on a de novo basis.

In common law systems, one feature that distinguishes an appellate proceeding from a trial *de novo* is that new evidence may not ordinarily be presented in an appeal, though there are rare instances when it may be allowed--usually evidence that came to light only after the trial and could not, in all diligence, have been presented in the lower court. The general rule, however, is that an appeal must be based solely on "points of law", and not on "points of fact". Appeals are frequently based on a claim that the trial judge or jury did not allow or appreciate all the facts; if that claim is successful the appeal judges will often order a trial "de novo". In order to protect the individual's rights against double jeopardy ordering a trial "de novo" is often the exclusive right of an appeal judge.

In American Federal Civil (non-criminal) Law courts, new trial is governed by Federal Rules of Civil Procedure Rule 59. Motions for new trial are made after the fact-finder has returned a verdict. New trials are granted upon motion of a party to the suit, guided by the standards of "manifest miscarriage of justice" and "clear weight of the evidence". New trial is an alternative to the more strict judgment as a matter of law. A party will usually move for

judgment as a matter of law and, in the alternative, new trial.

For example, a system may relegate a claim of a certain amount to a judge but preserve the right to a new trial before a jury.

In American Federal Court systems, "de novo" can also refer to a Standard of review for courts of appeal. Sometimes, particularly potent issues are brought before an appeals court, such as a constitutional determination made by a lower court, or summary judgment granted by a lower court. When this sort of issue is on appeal, the court of appeals will review the lower court decision "de novo" or from the beginning. In this process, the panel of judges for the court of appeals will review the lower court's reasoning and fact-finding from the beginning, based on the record. This is a high level of scrutiny that is more likely to result in reversal or remand of an issue.

This is in contrast to more relaxed standards of review such as "clearly erroneous" or "substantial evidence." These relaxed standards usually do not result in reversals, as the court of appeals grants more deference to the judgment of the lower courts.

In UK law, appeals to the Crown Court against convictions in the Magistrates Court are held de novo.

De novo ("anew," or "over again") review refers to the appellate court's authority to review the trial court's conclusions on questions of the application, interpretation, and construction of law. Generally, the proper standard of review for employee benefit decisions, such as the denial of benefit claims, is de novo. Also, where the appellate court undertakes judicial review of compulsory arbitration proceedings that were required by statute, the reviewing court must conduct a de novo review of the interpretation and application of the law by the arbitrators.

See also

- New trial
- Appeal

References

[1] *Santen v. Tuthill*, Case No. 021781, decided April 17, 2003, http://www.courts.state.va.us/opinions/opnscvwp/1021781.pdf , retrieved May 2, 2010.

Uberrima fides

Uberrima fides (sometimes seen in its genitive form **uberrimae fidei**) is a Latin phrase meaning "utmost good faith" (literally, "most abundant faith"). It is the name of a legal doctrine which governs insurance contracts. This means that all parties to an insurance contract must deal in good faith, making a full declaration of all material facts in the insurance proposal. This contrasts with the legal doctrine of *caveat emptor* (let the buyer beware).

Insurance contracts

Thus the insured must reveal the exact nature and potential of the risks that he transfers to the insurer, while at the same time the insurer must make sure that the potential contract fits the needs of, and benefits, the assured.

A higher duty is exacted from parties to an insurance contract than from parties to most other contracts in order to ensure the disclosure of all material facts so that the contract may accurately reflect the actual risk being undertaken. The principles underlying this rule were stated by Lord Mansfield in the leading and often quoted case of *Carter v Boehm* (1766) 97 ER 1162, 1164,

> "Insurance is a contract of speculation... The special facts, upon which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only: the under-writer trusts to his representation, and proceeds upon confidence that he does not keep back any circumstances in his knowledge, to mislead the under-writer into a belief that the circumstance does not exist... Good faith forbids either party by concealing what he privately knows, to draw the other into a bargain from his ignorance of that fact, and his believing the contrary.[1]

Fiduciary duties

The fact that a contract is one of utmost good faith does not however mean that it gives rise to a general fiduciary relationship. The relationship between insured and insurer is not akin to the relationship between, say, guardian and ward, principal and agent, or trustee and beneficiary. In these latter instances, the inherent character of the relationship is such that the law has traditionally imported general fiduciary obligations. The insurer-insured relationship is contractual; the parties are parties to an arms-length agreement. The principle of uberrima fides does not affect the arms-length nature of the agreement, and cannot be used to find a general fiduciary relationship. The insurance contract, as noted above, imposes certain specific obligations on its parties. These obligations, however, do not import general fiduciary duties into each and every insurance relationship. Before such fiduciary obligations can be imported there must be specific circumstances in the relationship that call for their imposition.

See also

- Adverse selection
- English contract law
- Insurance bad faith - distantly-related American cause of action

External links

- Uberrima Fides And Concealment in the Marine Policy Application [2] from the Maritime Law Association of the United States
- *New Hampshire Ins. v. C'Est Moi, Inc.* [3]

References

[1] See, generally, Parkington, ed., MacGillivray and Parkington On Insurance Law, 8th ed. (1988) para. 544; Brown and Menezes, Insurance Law in Canada, 2d ed. (1991) pp. 8-9; and 25 Halsbury's Laws of England, 4th ed. para. 365 et seq.
[2] http://www.mlaus.org/article.ihtml?id=572&issue=40&folder=0
[3] http://www.ca9.uscourts.gov/ca9/newopinions.nsf/6C903EFFD869B353882574120005C0BE/$file/0655031.pdf?openelement

Ultimus haeres

Scots law

This article is part of the series:
Law of Scotland

Ultimus haeres (Latin for *ultimate heir*) is a concept in Scots law where if a person in Scotland who dies without leaving a will (i.e. intestate) and has no blood relative who can be easily traced, the estate is claimed by the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown.

In England, the equivalent concept is called *bona vacantia*.

External links

- QLTR on ultimus haeres [1]

References

[1] http://www.crownoffice.gov.uk/About/roles/qltr/Ultimus-Haeres

Ultra posse nemo obligatur

Ultra posse nemo obligatur is a Latin legal term, meaning, "No one is obligated beyond what he is able to do."

Ultra vires

Ultra vires is a Latin phrase that literally means "beyond the powers". Its inverse is called ***intra vires***, meaning "within the powers". It is used as a legal term in a number of common law contexts.

Corporate law

In corporate law, *ultra vires* describes acts attempted by a corporation that are beyond the scope of powers granted by the corporation's Articles of Incorporation or in a clause in its Bylaws; in the laws authorizing its formation, or similar founding documents. Acts attempted by a corporation that are beyond the scope of its charter are void or voidable.

Basic principles included the following:

1. An *ultra vires* transaction cannot be ratified by shareholders, even if they wish it to be ratified.
2. The doctrine of estoppel usually precluded reliance on the defense of *ultra vires* where the transaction was fully performed by one party
3. *A fortiori*, a transaction which was fully performed by both parties could not be attacked.
4. If the contract was fully executory, the defense of *ultra vires* might be raised by either party.
5. If the contract was partially performed, and the performance was held to be insufficient to bring the doctrine of estoppel into play, a suit for quasi contract for recovery of benefits conferred was available.
6. If an agent of the corporation committed a tort within the scope of his or her employment, the corporation could not defend on the ground the act was *ultra vires*.

Several modern developments relating to corporate formation have limited the probability that ultra vires acts will occur. Except in the case of non-profit corporations (including municipal corporations), this legal doctrine is obsolescent; within recent years, almost all business corporations are chartered to allow them to transact any lawful business. The Model Business Corporation Act of the United States states that: "The validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act." The doctrine still has some life among non-profit corporations or state-created corporate bodies established for a specific public purpose, like universities or charities. In many jurisdictions, such as Australia, legislation provides that a corporation has all the powers of a natural person [1] plus others; also, the validity of acts which are made ultra vires is preserved [2].

However, certain other types of legal entity are not covered by such legislation. In the United Kingdom in *Hammersmith and Fulham London Borough Council v Hazell* [1992] 2 AC 1 the House of Lords held that interest rate swaps entered into by local authorities (a popular method of circumventing statutory restrictions on local authorities borrowing money at that time) were all *ultra vires* and void, sparking a raft of satellite litigation.

According to American laws, the concept of *ultra vires* can still arise in the following kinds of activities in some states:

1. Charitable or political contributions
2. Guaranty of indebtedness of another
3. Loans to officers or directors
4. Pensions, bonuses, stock option plans, job severance payments, and other fringe benefits
5. The power to acquire shares of other corporations
6. The power to enter into a partnership

In the United Kingdom, the Companies Act 2006 (S.31 and S.39) greatly reduced the applicability of *ultra vires* in corporate law, although it can still apply in relation to charities and a shareholder may apply for an injunction, in advance only, to prevent an act which is claimed to be *ultra vires*.

Constitutional law

Under constitutional law, particularly in Canada and the United States, constitutions give federal and provincial or state governments various powers. To go outside those powers would be **ultra vires**; for example, although the court did not use the term, in striking down a federal law in *United States v. Lopez* on the grounds that it exceeded the Constitutional authority of Congress, the Supreme Court effectively declared the law to be *ultra vires*.

According to Article 15.2 of the Irish Constitution, the Oireachtas is the sole lawmaking body in Ireland. In the case of *CityView Press v AnCo* however, the Irish Supreme Court held that the Oireachtas may delegate certain powers to subordinate bodies through primary legislation, so long as these delegated powers allow the delegatee only to further the principles and policies laid down by the Oireachtas in primary legislation and not craft new principles or policies themselves. Any piece of primary legislation which grants the power to make public policy to a body other than the Oireachtas is unconstitutional; however, as there is a presumption in Irish constitutional law that the Oireachtas acts within the confines of the Constitution, any legislation passed by the Oireachtas must be interpreted in such a way as to be constitutionally valid where possible. Thus, in a number of cases where bodies other than the Oireachtas were found to have used powers granted to them by primary legislation to make public policy, the impugned primary legislation was read in such a way that it would not have the effect of allowing a subordinate body to make public policy. In these cases, the primary legislation was held to be constitutional but the subordinate or secondary legislation, which amounted to creation of public policy, was held to be *ultra vires* the primary legislation and was therefore struck down.

In British constitutional law, *ultra vires* describes patents, ordinances and the like enacted under the prerogative powers of the Crown that contradict statutes enacted by the King-in-Parliament. Almost unheard of in modern times, *ultra vires* acts by the Crown or its servants were previously a major threat to the rule of law.

Boddington v British Transport Police is an example of an appeal heard by House of Lords which contested that a byelaw was beyond the powers conferred to it under section 67 of the Transport Act 1962. [3]

Administrative law

In administrative law, an act may be judicially reviewable *ultra vires* in a narrow or broad sense. Narrow ultra vires applies if an administrator did not have the substantive power to make a decision or it was wrought with procedural defects. Broad *ultra vires* applies if there is an abuse of power (e.g., Wednesbury unreasonableness or bad faith) or a failure to exercise an administrative discretion (e.g., acting at the behest of another or unlawfully applying a government policy). Either doctrine may entitle a claimant to various prerogative writs, equitable remedies or statutory orders if they are satisfied.

In the seminal case of Anisminic v Foreign Compensation Commission [1969] 2 WLR 163, Lord Reid is accredited with formulating the doctrine of ultra vires. However, ultra vires, together with unreasonableness, was mentioned much earlier by Lord Russell in the well known case, Kruse v Johnson,1898, regarding challenging by-laws and other rules. Aninminic is better known for not depriving courts of their jurisdiction to declare a decision a nullity, even if a statute expressly prevents the decision being subject to judicial review. Further cases such as Bromley LBC v Greater London Council [1983] AC 768 (see Lord Wilberforce's judgment) and Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374 (see Lord Diplock's judgment) have sought to refine the doctrine.

See also

- Judicial activism
- Judicial Review in English Law
- Mark Elliott (St. Catharine's College, Cambridge proposes the modified ultra vires doctrine for administrative law, placing it firmly in the correct constitutional setting. (*The Ultra Vires Doctrine in a Constitutional Setting: Still the Central Principle of Administrative Law* [1999] Cambridge Law Journal Vol. 58 129)
- Precedent

References

Notations

- Robert W. Hamilton. *The Law of Corporation* 4th Edition, 1996 West Group

References

[1] http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s124.html
[2] http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s125.html
[3] Boddington v British Transport Police [1998] UKHL 13

Uti possidetis

Uti possidetis (Latin for "as you possess") is a principle in international law that territory and other property remains with its possessor at the end of a conflict, unless provided for by treaty. Originating in Roman law, the phrase is derived from the Latin expression *uti possidetis, ita possideatis*, meaning "as you possessed, you shall possess henceforth". This principle enables a belligerent party to claim territory that it has acquired by war. The term has historically been used to legally formalize territorial conquests, such as the annexation of Alsace-Lorraine by the German Empire in 1871.

In the early 17th century, the term was used by England's James I to state that while he recognized the existence of Spanish authority in those regions of the Western Hemisphere where Spain exercised effective control, he refused to recognize Spanish claims to exclusive possession of all territory west of longitude 46° 37' W under the Treaty of Tordesillas.

More recently, the principle has been used in a modified form (see Uti possidetis juris) to establish the frontiers of newly independent states following decolonization, by ensuring that the frontiers followed the original boundaries of the old colonial territories from which they emerged. This use originated in South America in the 19th century with the withdrawal of the Spanish Empire.[1] By declaring that *uti possidetis* applied, the new states sought to ensure that there was no *terra nullius* in South America when the Spanish withdrew and to reduce the likelihood of border wars between the newly independent states. This last goal was ultimately unsuccessful, since many wars over borders did occur.

The same principle was applied to Africa and Asia following the withdrawal of European powers from those continents, and in locations such as the former Yugoslavia and the Soviet Union where former centralized governments fell, and constituent states gained independence. In 1964 the Organisation of African Unity passed a resolution stating that the principle of stability of borders—the key principle of *uti possidetis*—would be applied across Africa. Most of Africa was already independent by this time, so the resolution was principally a political directive to settle disputes by treaty based on pre-existing borders rather than by resorting to force. To date, adherence to this principle has allowed African countries to avoid border wars; the notable exception, the Eritrean–Ethiopian War of 1998–2000, had its roots in a secession from an independent African country rather than

a conflict between two decolonized neighbours. On the other hand, the colonial boundaries often did not follow ethnic lines, and this has helped lead to violent and bloody civil wars among differing ethnic groups in many post-colonial (and post-Communist) countries, including Sudan, the Democratic Republic of the Congo, Angola, Nigeria, and the former Yugoslavia.[2]

The principle was affirmed by the International Court of Justice in the 1986 Case *Burkina-Faso v Mali*:

> [Uti possidetis] is a general principle, which is logically connected with the phenomenon of obtaining independence, wherever it occurs. Its obvious purpose is to prevent the independence and stability of new states being endangered by fratricidal struggles provoked by the changing of frontiers following the withdrawal of the administering power.

See also

- Uti possidetis juris
- Status quo ante bellum
- Revanchism

Further reading

- Helen Ghebrewebet: "Identifying Units of Statehood and Determining International Boundaries: A Revised Look at the Doctrine of Uti Possidetis and the Principle of Self-Determination", Verlag Peter Lang 2006, ISBN 3631550928.

References

[1] Hensel, Paul R.; Michael E. Allison and Ahmed Khanani (2006). "Territorial Integrity Treaties, Uti Possidetis, and Armed Conflict over Territory." (http://mailer.fsu.edu/~phensel/garnet-phensel/Research/iowa06.pdf) Presented at the Shambaugh Conference "Building Synergies: Institutions and Cooperation in World Politics," University of Iowa, 13 October 2006.

[2] Shaw, Malcolm N. (1997). "Peoples, Territorialism and Boundaries." (http://ejil.oxfordjournals.org/cgi/reprint/8/3/478) *European Journal of International Law* 8 (3).

Uti possidetis juris

Uti possidetis juris is a principle of international law that states that newly formed sovereign states should have the same borders that they had before their independence.

History

Uti possidetis juris began as a Roman law governing the rightful possession of property. During the medieval period it evolved into a law governing international relations.

Application

Uti possidetis juris has been applied to in modern history such regions as South America, Africa, Yugoslavia, the Soviet Union, and numerous other regions of where centralized governments were broken up, or where imperial rulers were overthrown. It is often applied to prevent foreign intervention by eliminating any contested *terra nullius*, or no man's land, that foreign powers could claim.

Success

The application of *uti possidetis juris* has had mixed success as it often ignores ethnic and political differences in and between regions. This has led to conflicts, and war crimes like those committed in the former Yugoslavia, Rwanda and Burundi, the Democratic Republic of Congo, Sudan, and elsewhere.

See also

- *Uti possidetis*

References

- Shaw, Malcolm N. (1997). "Peoples, Territorialism and Boundaries." [1] *European Journal of International Law* 8 (3).
- Hensel, Paul R.; Michael E. Allison and Ahmed Khanani (2006). "Territorial Integrity Treaties, Uti Possidetis, and Armed Conflict over Territory." [2] Presented at the Shambaugh Conference "Building Synergies: Institutions and Cooperation in World Politics," University of Iowa, 13 October 2006.

References

[1] http://ejil.oxfordjournals.org/cgi/reprint/8/3/478

[2] http://mailer.fsu.edu/~phensel/garnet-phensel/Research/iowa06.pdf

Venire facias de novo

In law, ***venire facias de novo*** (Latin for "may you cause to come anew"), sometimes abbreviated to ***venire facias*** ("may you cause to come") is a writ issued by an officer of the court summoning prospective jurors, which the court uses when there has been some impropriety or irregularity in the jury, or where the verdict is so imperfect or ambiguous that no judgment can be given upon it, and so a new jury must be chosen.

See the 1817 decision of the U.S. Supreme Court in *Laidlaw v. Organ* (15 U.S. 178): "...the judgment must be reversed, and the cause remanded to the district court of Louisiana, with direction to award a *venire facire de novo*" (John Marshall).

Vi et armis

Vi et armis is an archaic Latin legal phrase which means "with force and arms." In other words, it means that the subject was taken by force or was under arrest.

Vis major

Vis major (pronounced /ˌvɪs ˈmeɪdʒər/; in Latin 'a superior force') is a greater or superior force; an irresistible force. It may be a loss that results immediately from a natural cause that could not have been prevented by the exercise of prudence, diligence and care. It is also termed as *vis divina* or superior force.

It is an irresistible violence; inevitable accident or act of God. Its nature and power absolutely uncontrollable, for example, the inroads of a hostile army or forcible robberies, may relieve from liability from contract.

This term has specific meaning in regard to strict liability. Strict liability in the law of torts allows for the accrual of liability against an actor where there is no fault or proximate cause given the damages arose from their participation in an ultrahazardous activity, i.e. blasting, damming of water, etc. However, "vis major" offers an exception to such liability. In *Fletcher v. Rylands* In the Exchequer Chamber, L.R. 1 Ex. 265, 1866, affirmed in the House of Lords on appeal in *Rylands v. Fletcher* L.R. 3 H.L. 330, the exception of vis major is introduced:

> "[Defendant] can excuse himself by showing that the escape [of a dangerous substance] was owing to the plaintiff's default; or perhaps that the escape was the consequence of *vis major*, or the act of God... [emphasis added]" -Blackburn J *Fletcher v. Rylands* L.R. 1 Ex. 265, 1866.

The existence of vis major, or an act of God, will preclude the use of the theory of strict liability given the impossibility of anticipating such an event. (Think of a dam breaking after a hurricane where there is no negligence found on the part of the owner/operator of the dam.)

See also

- Force Majeure

References

- Black's Law Dictionary, P.1567, 7th Edn.,
- Mitra's Legal & Commercial Dictionary – 4th Edn., Eastern Law House, Page 790
- Prosser Wade and Schwartz's Torts: Cases and Materials, 11th Edn., Foundation Press, P. 694

Volens

In law, ***volens*** is a state of mind, referring to voluntary acceptance of a specific risk. It is usually pleaded by way of defence, and often employs the legal Latin *volenti non fit injuria*. The term *volens* itself is often used in contradistinction to the terms *sciens* (meaning mere knowledge of the risk, without any volunary assumption of it).

The effect of the defence varies from country to country. In some countries it is (or can be) a total defence to show that the claimant knew and accepted the risk of the injury in undertaking their course of conduct. In other countries it can give rise to a partial defence of contributory negligence.

In contract law, many clauses in contracts which at first appear to be exemption clauses relating to personal injury (which are in many countries invalid by law[1]) are in fact phrased so as to demonstrate that the person signing the contract was aware of and voluntarily accepted the risk of personal injury, which may then subsequently establish a successful *volenti* defence.

References

[1] See for example the Unfair Contract Terms Act 1977 in the United Kingdom

Volenti non fit injuria

Volenti non fit injuria (Latin: "to a willing person, no injury is done" or "no injury is done to a person who consents") is a common law doctrine which means that if someone willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they cannot then sue if harm actually results. *Volenti* only applies to the risk which a reasonable person would consider them as having assumed by their actions; thus a boxer consents to being hit, and to the injuries that might be expected from being hit, but does not consent to (for example) his opponent striking him with an iron bar, or punching him outside the usual terms of boxing. *Volenti* is also known as a "voluntary assumption of risk."

Volenti is sometimes described as the plaintiff "consenting to run a risk." In this context, *volenti* can be distinguished from legal consent in that the latter can prevent some torts arising in the first place (for example, consent to a medical procedure prevents the procedure from being a trespass to the person, or consenting to a person visiting your land prevents them from being a trespasser).

Volenti in English Law

In English tort law, *volenti* is a full defence, i.e. it fully exonerates the defendant who succeeds in proving it. The defence has two main elements:

1. The claimant was fully aware of all the risks involved, including both the nature and the extent of the risk; and
2. The claimant expressly (by his statement) or impliedly (by his actions) consented to waive all claims for damages. His knowledge of the risk is not sufficient: *sciens non est volens* ("knowing is not volunteering"). His consent must be free and voluntary, i.e. not brought about by duress. If the relationship between the claimant and defendant is such that there is doubt as to whether the consent was truly voluntary, such as the relationship between workers and employers, the courts are unlikely to find *volenti*.

It is not easy for a defendant to show both elements and therefore contributory negligence usually constitutes a better defence in many cases. Note however that contributory negligence is a partial defence, i.e. it usually leads to a reduction of payable damages rather than a full exclusion of liability. Also, the person consenting to an act may not always be negligent: a bungee jumper may take the greatest possible care not to be injured, and if he is, the defence available to the organiser of the event will be *volenti*, not contributory negligence.

For the similar principle in American law, see Assumption of risk

Cases

Trespassers

The Occupiers' Liability Act 1984 requires all owners of property to take reasonable steps to make their premises safe for anyone who enters them, even those who enter as trespassers, if they are aware of a risk on the premises. However, the doctrine of *volenti* has been applied to cases where a trespasser exposed themselves deliberately to risk:

- *Titchener v British Railways Board* [1983] 1 WLR 1427
- *Ratcliff v McConnell* [1997] EWCA Civ 2679
- *Tomlinson v Congleton Borough Council* [2003] UKHL 47

In the first case (decided before the Occupier's Liability Act was passed), a girl who had trespassed on the railway was hit by a train. The House of Lords ruled that the fencing around the railway was adequate, and the girl had voluntarily accepted the risk by breaking through it. In the second case, a student who had broken into a closed swimming-pool and injured himself by diving into the shallow end was similarly held responsible for his own injuries. The third case involved a man who dived into a shallow lake, despite the presence of "No Swimming" signs;

the signs were held to be an adequate warning.

Drunk drivers

The defence of *volenti* is now excluded by statute where a passenger was injured as a result of agreeing to take a lift from a drunk car driver. However, in a well-known case of *Morris v Murray* [1990] 3 All ER 801 (Court of Appeal), *volenti* was held to apply to a drunk passenger, who accepted a lift from a drunk pilot. The pilot died in the resulting crash and the passenger who was injured, sued his estate. Although he drove the pilot to the airfield (which was closed at the time) and helped him start the engine and tune the radio, he argued that he did not freely and voluntarily consent to the risk involved in flying. The Court of Appeal held that there was consent: the passenger was not so drunk as to fail to realise the risks of taking a lift from a drunk pilot, and his actions leading up to the flight demonstrated that he voluntarily accepted those risks.

Rescuers

For reasons of policy, the courts are reluctant to criticise the behaviour of rescuers. A rescuer would not be considered *volens* if:

1. He was acting to rescue persons or property endangered by the defendant's negligence;
2. He was acting under a compelling legal, social or moral duty; and
3. His conduct in all circumstances was reasonable and a natural consequence of the defendant's negligence.

An example of such a case is *Haynes v. Harwood* [1935] 1 KB 146, in which a policeman was able to recover damages after being injured restraining a bolting horse: he had a legal and moral duty to protect life and property and as such was not held to have been acting as a volunteer or giving willing consent to the action - it was his contractual obligation as an employee and police officer and moral necessity as a human being to do so, and not a wish to volunteer, which caused him to act.

By contrast, in *Cutler v. United Dairies* [1933] 2 KB 297 a man who was injured trying to restrain a horse was held to be *volens* because in that case no human life was in immediate danger and he was not under any compelling duty to act.

Unsuccessful attempts to rely on *volenti*

Examples of cases where a reliance on *volenti* was unsuccessful include:

- *Nettleship v. Weston* [1971] 3 All ER 581 (Court of Appeal)
- *Baker v T E Hopkins & Son Ltd* [1959] 3 All ER 225 (Court of Appeal).

In the first case, the plaintiff was an instructor who was injured while teaching the defendant to drive. The defence of *volenti* failed i.a. because the plaintiff specifically inquired if the defendant's insurance covered him before agreeing to teach. In the second case, a doctor went in to try to rescue workmen who were caught in a well after having succumbed to noxious fumes. He did so despite being warned of the danger and told to wait until the fire brigade arrived. The doctor and the workmen all died. The court held that it would be "unseemly" to hold the doctor to have consented to the risk simply because he acted promptly and bravely in an attempt to save lives.

See also

- Acts of the claimant
- Assumption of risk
- Consent
- *Ex turpi causa non oritur actio*
- List of Latin phrases
- *Sciens*
- *Volens*

Voluntas necandi

In jurisprudence, **voluntas necandi** (Latin *voluntas*, "will" + gerund of *neco*, "to kill") describes the animus nocendi of a person who willfully kills another human being. Establishment of *voluntas necandi* is necessary to prove murder or voluntary manslaughter as opposed to involuntary manslaughter.

Writs of Amparo and Habeas Data

The **Writs of Amparo** and **Habeas Data** are prerogative writs to supplement the inefficacy of Philippine habeas corpus (Rule 102, Revised Rules of Court). Amparo means protection, while habeas data is access to information. Both writs were conceived to solve the extensive Philippine extrajudicial killings and forced disappearances since 1999.[1]

On July 16, 2007, Philippine Chief Justice Reynato Puno and Justice Adolfo Azcuna officially declared the legal conception of the Philippine Writ of Amparo – "*Recurso de Amparo*", at the historic Manila Hotel National Summit on Extrajudicial Killings and Enforced Disappearances.[2] [3]

On August 25, 2007, Reynato Puno (at the College of Law of Silliman University in Dumaguete City) declared the legal conception of amparo's twin, the supplemental Philippine Habeas Data. Puno by judicial fiat proclaimed the legal birth of these twin peremptory writs on October, 2007, as his legacy to the Filipino nation. Puno admitted the inefficacy of Habeas Corpus, under Rule 102, Rules of Court, since government officers repeatedly failed to produce the body upon mere submission of the defense of alibi.

By invoking the truth, Habeas Data will not only compel military and government agents to release information about the desaparecidos but require access to military and police files. Reynato Puno's *writ of amparo* -- Spanish for protection -- will bar military officers in judicial proceedings to issue denial answers regarding petitions on disappearances or extrajudicial executions, which were legally permitted in Habeas corpus proceedings.[4]

The Supreme Court of the Philippines announced that the draft guidelines (Committee on Revision of Rules) for the writ of amparo were approved on September 23, to be deliberated by the En Banc Court on September 25.[5]

Origin

Mexican amparo

Chief Justice Reynato Puno noted that the model for Amparo was borrowed from Mexico: the Writ of Amparo is a Mexican legal procedure to protect human rights.[6] Of Mexican origin, thus, “Amparo” literally means “protection” in Spanish.[7] de Tocqueville’s "Democracy in America" had been available in Mexico, in 1837 and its description of judicial review practice in the U.S. appealed to many Mexican jurists.[8] Mexican justice Manuel Crescencio Rejón, drafted a constitutional provision for his native state, Yucatan, which empowered jurists to protect all persons in the

enjoyment of their constitutional and legal rights. This was incorporated into the 1847 national constitution.[9] [10] The great writ proliferated in the Western Hemisphere, slowly evolving into various fora. Amparo became, in the words of a Mexican Federal Supreme Court Justice, Mexico's "task of conveying to the world's legal heritage that institution which, as a shield of human dignity, her own painful history conceived."[11] [12]

Amparo's evolution and metamorphosis had been witnessed, for several purposes: "(1) amparo libertad for the protection of personal freedom, equivalent to the habeas corpus writ; (2) amparo contra leyes for the judicial review of the constitutionality of statutes; (3) amparo casacion for the judicial review of the constitutionality and legality of a judicial decision; (4) amparo administrativo for the judicial review of administrative actions; and (5) amparo agrario for the protection of peasants' rights derived from the agrarian reform process." [13]

Latin American countries, except Cuba, used the great writ to protect against human rights abuses especially committed in countries under military juntas, adopting an all-encompassing amparo, even to protect socio-economic rights. But other countries like Colombia, Chile, Germany and Spain, opted to limit amparo shield only to some constitutional guarantees or fundamental rights.[14] In the Philippines, while the 1987 Constitution of the Philippines failed to expressly provide for amparo, several amparo protections are already guaranteed, thus: by paragraph 2, Article VIII, Section 1, the "*Grave Abuse Clause*" - which grants a similar general protection to human rights extended by the amparo contra leyes, amparo casacion, and amparo administrativo. Amparo libertad is similar to habeas corpus in the 1987 Constitution. The Clause is borrowed from the U.S. common law tradition of judicial review (1803 case of Marbury v. Madison).[15] [16]

Justice Adolfo Azcuna, a member of two Constitutional Commissions of 1971, and 1986 previously made a study on the writ amparo as published in the Ateneo Law Journal (see Adolfo S. Azcuna, The Writ of Amparo: A Remedy to Enforce Fundamental Rights, 37 ATENEO L.J. 15 (1993).).[17]

The "*recurso de amparo*" is an exhaustive remedy which originated from Latin America's Mexican, Chile and Argentina legal systems, *inter alia*. Mexico's amparo is found in Articles 103 and 107 of the Mexican Constitution -- the judicial review of governmental action, to empower state courts to protect individuals against state abuses. Amparo was sub-divided into 5 legal departments:

(a) the Liberty Amparo (*amparo de libertad*);
(b) the Constitutionality Amparo (*amparo contra leyes*);
(c) the Judicial or "*Cassation*" Amparo, aimed at the constitutionality of a judicial interpretation;
(d) the Administrative Amparo (*amparo como contencioso-administrativo*); and
(e) the Agrarian Amparo (*amparo en matera agraria, ejidal y comunal*).[18]

Argentine amparo

Amparo was also legally enshrined in Latin America legal systems. It is now an extraordinary legal remedy in Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Paraguay Peru, Brazil and Argentina. Amparo in Argentina is a limited, summary, emergency procedure, and merely supplementary, requiring previous exhaustion of administrative remedies before rendition of judgment of mandamus or injunction. The decision bars monetary awards and penal provisions except contempt or declaration of unconstitutionality.[19]

Habeas Corpus

Historically, Philippine Habeas Corpus (from 1901 until the present) miserably failed to produce efficacious legal remedy for victims of extrajudicial killings and desaparecidos. The "*amparo de libertad*" transcends the protection of habeas corpus. Once a lawsuit is filed under Habeas Corpus, Rule 102, Rules of Court, the defendants, government officers would merely submit the usual defense of alibi or non-custody of the body sought to be produced.[20] [21] The 1987 Philippine Constitution, however, empowers the Supreme Court of the Philippines to promulgate amparo and Habeas Data, as part of the Rules of Court expressly: "*Promulgate rules concerning the protection and enforcement of constitutional rights.*" (Sec. 5, (5), Article VIII, 1987, Constitution)[22] [23]

The writ of habeas corpus is an "extraordinary", "common law", or "Prerogative writ", which were historically issued by the courts in the name of the monarch to control inferior courts and public authorities within the kingdom. The most common of the other such prerogative writs are *quo warranto*, *prohibito*, *mandamus*, *procedendo*, and *certiorari*.[24] The due process for such petitions is not simply civil or criminal, because they incorporate the presumption of nonauthority,[25] so that the official who is the respondent has the burden to prove his authority to do or not do something, failing which the court has no discretion but to decide for the petitioner, who may be any person, not just an interested party.

National Summit on Extrajudicial Killings and Enforced Disappearances

On July 16, 2007, Justices, activists, militant leaders, police officials, politicians and prelates attended the Supreme Court of the Philippines's 2-day summit at the Manila Hotel, Metro Manila to solve extrajudicial killings. Chief Justice Reynato Puno stated that the "*National Consultative Summit on Extrajudicial Killings and Forced Disappearances: Searching for Solutions*" would help stop the murders. Based on CBCP - Bishop Deogracias Yniguez-church's count, the number of victims of extrajudicial killings was record at 778, while survivors of "*political assassinations*" was 370; 203 "*massacre*" victims; 186 desaparecido; 502 tortured, and those illegally arrested.[26]

Puno requested for truce and talks with insurgents: "*Let us rather engage in the conspiracy of hope…and hope for peace*." Puno forwarded the summit's recommendation to President Gloria Macapagal-Arroyo, the Senate of the Philippines and House of Representatives.[27] [28] [29]

"*Extralegal killings*" (UN instruments term) are those committed without due process of law, which include summary and arbitrary executions, "*salvagings*" , [[threats to take the life of journalists, *inter alia*. "*Enforced disappearances*" (defined by Declaration on the Protection of All Persons from Enforced Disappearances), include: arrest, detention or abduction by a government official or organized groups under the government; the refusal of the State to disclose the fate or whereabouts of missing persons, *inter alia*.[30]

Writs of Amparo and Habeas Data

On August 17, 2007 Puno said that the writ of amparo, would bar the military plea of denial (at a speech at the Volunteers Against Crime and Corruption's 9th anniversary, Camp Crame). Under the writ, plaintiffs or victims will have the right of access to information on their lawsuits -- a constitutional right called the "*habeas data*" derived from constitutions of Latin America. The final draft of these twin writs (retroactive) will be promulgated on October. Puno tersely summed the writs "*In other words, if you have this right, it would be very, very difficult for State agents, State authorities to be able to escape from their culpability.*"[31] [32]

Puno stated that with the writ of Habeas corpus, the writs of Habeas Data and writ of amparo will further assist "*those looking for missing loved ones*".[4] On August 30, 2007, Puno (speech at Silliman University in Dumaguete City, Negros Oriental) promised to institute the *writ of habeas data* ("*you should have the idea*" or "*you should have the data*"). Puno explained that amparo bars alibi, while Habeas Data "*can find out what information is held by the officer, rectify or even the destroy erroneous data gathered*". Brazil used the writ, followed by Colombia, Paraguay, Peru, Argentina and Ecuador.[33]

The Philippine 1987 Constitution was derived from the 1973 Ferdinand Marcos Constitution, it's 1981 amendment, from the 1935 constitution, and from the United States Constitution. The United States Constitution was adopted in its original form on September 17, 1787, by the Constitutional Convention in Philadelphia, Pennsylvania, and later ratified by conventions in each state in the name of "*the People*." The U.S. Constitution is the oldest written national constitution except possibly for San Marino 's Statutes of 1600, whose status as a true constitution is disputed by scholars. The Writ of Amparo is a remedy to enforce fundamental rights. "*among the different procedures that have been established for the protection of human rights, the primary ones that provide direct and immediate protection*

are habeas corpus and amparo. The difference between these two writs is that habeas corpus is designed to enforce the right to freedom of the person, whereas amparo is designed to protect those other fundamental human rights enshrined in the Constitution but not covered by the writ of habeas corpus."[34] [35]

The literal translation from Latin of Habeas Data is "*you should have the data*". Habeas Data is a constitutional right to protect, per lawsuit filed in court, to protect the image, privacy, honour, information self-determination and freedom of information of a person. Habeas Data can used to discover what information is held about his or her person (via rectification or destruction of the personal data held. Habeas Data originated, *inter alia*, from the Council of Europe's 108th Convention on Data Protection of 1981 (aimed at protecting the privacy of the individual regarding the automated processing of personal data; with right to access their personal data held in an automated database.[36]

Historical Promulgations of Writs of Amparo and Habeas Data

AM No. 08-1-16-SC, the Rule on the Writ of Habeas Data

On September 25, 2007, Chief Justice Reynato Puno officially announced the approval or promulgation of the Writ of Amparo: "*Today, the Supreme Court promulgated the rule that will place the constitutional right to life, liberty and security above violation and threats of violation. This rule will provide the victims of extralegal killings and enforced disappearances the protection they need and the promise of vindication for their rights. This rule empowers our courts to issue reliefs that may be granted through judicial orders of protection, production, inspection and other relief to safeguard one's life and liberty The writ of amparo shall hold public authorities, those who took their oath to defend the constitution and enforce our laws, to a high standard of official conduct and hold them accountable to our people. The sovereign Filipino people should be assured that if their right to life and liberty is threatened or violated, they will find vindication in our courts of justice*."[37]

On January 22, 2008, the Supreme En Banc approved the rules for the writ of Habeas Data ("to protect a person's right to privacy and allow a person to control any information concerning them"), effective on February 2, the Philippines' Constitution Day.[38] Reynato Puno traced the history of Habeas Data "to the Council of Europe's 108th Convention on Data Protection of 1981; Brazil was the first Latin American country to adopt the Writ of Habeas Data in 1988 and was strengthened by its National Congress in 1997; in 1991, Colombia incorporated Habeas Data in its Constitution; Paraguay followed in 1992, Peru in 1993, Argentina in 1994, and Ecuador in 1996." In Argentina, Habeas Data allowed "access to police and military records otherwise closed to them."[39] [40]

The Resolution and the Rule on the Writ of Amparo gave legal birth to Puno's brainchild.[41] [42] [43] No filing or legal fee is required for Amparo which takes effect on October 24 in time for the 62nd anniversary of the United Nations. Puno also stated that the court will soon issue rules on the writ of Habeas Data and the implementing guidelines for Habeas Corpus. The petition for the writ of amparo may be filed "*on any day and at any time*" with the Regional Trial Court, or with the Sandiganbayan, the Court of Appeals, and the Supreme Court. The interim reliefs under amparo are: temporary protection order (TPO), inspection order (IO), production order (PO), and witness protection order (WPO, RA 6981).[44] and as of now..

Recent events

- On September 26, 2007, human rights lawyer Jose Manuel Diokno (Free Legal Assistance Group, FLAG) stated that the writ of amparo can be invoked by journalists in stories censorship by the government concerning the anti-terrorism law (Human Security Act). Diokno, in the workshop sponsored by the Philippine Center for Investigative Journalism in Baguio City added that journalist, in the petition, can submit the censored story as annex, and it becomes a public document that can be used for publication.[45]
- On October 23, 2007, the Free Legal Assistance Group issued a (a 47-question-and-answer format) primer on the writ of amparo.[46] On October 24, 2007, in a first test case, Merlinda Cadapan and Concepcion Empeno, mothers

of 2 missing Philippine students filed the first petition for writ of amparo with the Supreme Court of the Philippines, to direct the military to let them search army offices for their daughters.[47] The Court later amended the Rules by providing specifics on the period to file the return.[48]

- On December 3, 2007, Reynato S. Puno stated that the writ released only 3 victims (including Luisito Bustamante, Davao City), since amparo was enforced on October 24: "I would like to think that after the enactment and effectivity (of the writ), the number of extrajudicial killings and disappearances have gone down." [49]
- On January, 2008, 11 ABS-CBN news personnel filed the writ of amparo petition with the Supreme Court, which accordingly ordered the government to comment on the petition for protection from harassment and threats of arrest.[50]
- On February, 2008, 7 The Supreme Court of the Philippines issued a writ of amparo against President Gloria Macapagal-Arroyo and several other government and security officials, granting the petition filed by relatives of the key witness in the Senate investigation of the national broadband network (NBN) controversy.[51]

First landmark amparo Supreme Court judgment

The Supreme Court of the Philippines, on October 7, 2008, rendered its very first amparo decision, affirming the December 26, 2007 Philippine Court of Appeals judgment in favor of Raymond and Reynaldo Manalo brothers. Reynato Puno's 49-page unanimous ponencia granted amparo relief to the Manalo brothers who were abducted by the Citizens Armed Forces Geographical Unit (CAFGU) in San Ildefonso, Bulacan in February 2006. They escaped on August 13, 2007, after 18 months of detention and torture.[52] [53] [54]

International criticism

On September 28, 2007, the Asian Human Rights Commission (AHRC) commented on the Writ of Amparo and Habeas Data (Philippines) for being insufficient to resolve the problems of extralegal killings and enforced disappearances in the Philippines, there must be a cooperative action on all parts of the government and civil society, it said: "*Though it responds to practical areas it is still necessary that further action must be taken in addition to this. The legislative bodies, House of Representatives and Senate, should also initiate its own actions promptly and without delay. They must enact laws which ensure protection of rights—laws against torture and enforced disappearance and laws to afford adequate legal remedies to victims*." AHRC objected since the writ failed to protect non-witnesses, even if they too face threats or risk to their lives.[55]

See also

- Habeas Corpus Restoration Act of 2007
- Philippine Habeas Corpus Cases
- Constitution of the Philippines
- Chief Justice of the Philippines
- Associate Justice of the Supreme Court of the Philippines
- The Supreme Court of the Philippines [56] – Official website

External links

- Supremecourt.gov.ph, A.M. No. 07-9-12-SC, THE RULE ON THE WRIT OF AMPARO [57]
- S.C. Resolution, A.M. No. 07-9-12-SC, THE RULE ON THE WRIT OF AMPARO [58]
- The Corpus Juris, A.M. No. 07-9-12-SC, The Rule on the Writ of Amparo [59]
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- The Corpus Juris, A.M. No. 08-1-15-SC, The Rule on the Writ of Habeas Data [61]
- Report on Human Rights Situation in Chile [62]
- Library of Congress, Federal Research Division [63]
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- supremecourt.gov.ph, Period to File Return in Amparo Cases Amended [66]
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- gmanews.tv/video, Reporters file petition for writ of amparo - 01/21/2008 [68]
- Abs-Cbn Interactive, Petition for Writ of amparo filed by 11 ABS-CBN reporters to ask SC to declare Nov. 29 arrest illegal [69]
- pnp.gov.ph, Writ of Amparo [70]
- supremecourt.gov.ph, A.M.No.08-1-16-SC.pdf [71]
- supremecourt.gov, ANNOTATION TO THE WRIT OF AMPARO [72]

References

[1] Supremecourt.gov.ph, National Consultative Summit on Extrajudicial Killings and Enforced Disappearances Summary of Recommendations (http://www.supremecourt.gov.ph/publications/benchmark/2007/07/070717.php)

[2] Supremecourt.gov.ph,Summit on Extrajudicial Killings Sows Hope (http://www.supremecourt.gov.ph/publications/benchmark/2007/07/070701.php)

[3] Extrajudicial killings, 'View from the mountaintop' (http://opinion.inquirer.net/inquireropinion/talkofthetown/view_article.php?article_id=78036)

[4] Inquirer.net, SC drafting writ of habeas data invoking right to truth (http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=85704)

[5] News.balita.ph, Draft Guidelines on Writ of Amparo approved on September 23 (http://news.balita.ph/html/article.php/20070922123746082)

[6] Links.jstor.org, The Writ of Amparo - Mexican Procedure to Protect Human Rights (http://links.jstor.org/sici?sici=0002-7162(194601)243<107:TWOAMP>2.0.CO;2-5)

[7] [Barker, R., "Constitutionalism in the Americas: A Bicentennial Perspective," 49 University of Pittsburgh Law Review (Spring, 1988) 891, 906.]

[8] [Id., citing Zamudio, F., "A Brief Introduction to the Mexican Writ of Amparo," 9 California Western International Law Journal (1979) 306, 309]

[9] ["At the time it adopted Rejón's amparo, Yucatan had separated itself from Mexico. After a few months, the secession ended and the state resumed its place in the union." (Barker, R., supra at 906.)]

[10] [Acta de Reformas, art. 25 (1847) (amending Constitution of 1824).]

[11] [Rule on the Writ of Amparo: Annotation, p. 45. See Article 107 of the Constitution of Mexico; Article 28(15) of the Constitution of Ecuador; Article 77 of the Constitution of Paraguay; Article 43 of the Constitution of Argentina; Article 49 of the Constitution of Venezuela; Article 48 (3) of the Constitution of Costa Rica; and Article 19 of the Constitution of Bolivia.]

[12] [Provost, R., supra at 698, citing Ramirez, F., "The International Expansion of the Mexican Amparo," 1 Inter-American Law Review (1959) 163, 166.]

[13] [Rule on the Writ of Amparo: Annotation, p. 45; see also Zagaris, B., "The Amparo Process in Mexico," 6 Mexico Law Journal (Spring 1998) 61, 66 and Provost, R., supra at 708-709.]

[14] [Brewer-Carias, A., "The Latin American Amparo Proceeding and the Writ of Amparo in the Philippines," Second Distinguished Lecture, Series of 2007, Supreme Court, Philippine Judicial Academy in coordination with the Philippine Association of Law Schools, March 7, 2008.]

[15] [See 1987 Phil. Const. Art. III, §§ 13 & 15; Art. VII, § 18; Art. VIII, § 5(1).]

[16] [5 U.S. 137 (1803). See Gormley, K. "Judicial Review in the Americas: Comments on the United States and Mexico," 45 Duquesne Law Review (Spring, 2007) 393.]
[17] supremecourt.gov, ANNOTATION TO THE WRIT OF AMPARO (http://www.supremecourt.gov.ph/Annotation_amparo.pdf)
[18] Inquirer.net, Joaquin G. Bernas, The Mexican amparo (http://services.inquirer.net/express/07/09/03/html_output/xmlhtml/20070903-86232-xml.html)
[19] Inquirer.net, Joaquin G. Bernas, The Argentine amparo (http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=87599)
[20] Supremecourt.gov.ph, Rules of Court (http://www.supremecourt.gov.ph/court issuances/rules/index.php)
[21] Supremecourt.gov.ph, Rule 102, Rules of Court, Habeas Corpus (http://www.supremecourt.gov.ph/rulesofcourt/RULES OF COURT.htm#rule_102)
[22] Chan Robles, Rule 102, Rules of Court (http://www.chanrobles.com/rulesofcourtspecialproceedings.htm#RULE 102)
[23] ChanRobles, Article VIII, Judiciary, 1987 Constitution (http://www.chanrobles.com/article8.htm)
[24] "Common Law Writs" (http://www.constitution.org/writ/writs.htm). www.constitution.org. . Retrieved 2007-10-04. (in the context of U.S. law)
[25] Jon Roland. "Presumption of Nonauthority and Unenumerated Rights" (http://www.constitution.org/9ll/schol/pnur.htm). www.constitution.org. . Retrieved 2007-10-04.
[26] GMA NEWS.TV, Justices, activists, prelates map out ways to end killings (http://www.gmanews.tv/story/51197/Justices-activists-prelates-map-out-ways-to-end-killings)
[27] GMA NEWS.TV, CPP: SC summit can't stop mastermind of killings (http://www.gmanews.tv/story/51466/CPP-SC-summit-cant-stop-mastermind-of-killings)
[28] Inquirer.net, Let's engage in a conspiracy of Hope (http://newsinfo.inquirer.net/topstories/topstories/view_article.php?article_id=77149)
[29] ABS-CBN Interactive, More groups ask Supreme Court to junk anti-terror law (http://www.abs-cbnnews.com/storypage.aspx?StoryId=84857)
[30] Abs-Cbn Interactive, The writ of amparo: Judiciary's sword unsheathed (http://www.abs-cbnnews.com/storypage.aspx?StoryId=93560)
[31] Inquiret.net, Military can't shrug off killings--Chief Justice (http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=83222)
[32] ABS-CBN Interactive, SC ready with writ of amparo by Sept - Puno (http://www.gmanews.tv/story/56476/SC-ready-with-writ-of-amparo-by-September---Puno)
[33] Inquirer.net, Habeas data: SC's new remedy vs killings, disappearances (http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=85617)
[34] Law.ateneo.edu, Ateneo De Manila Law School (http://law.ateneo.edu/?p=191&type=2&sec=1&aid=16&PHPSESSID=5b05ee64cda85720318e623ce1b4233f)
[35] Irb-cisr.gc.ca,RESPONSES TO INFORMATION REQUESTS (http://www.irb-cisr.gc.ca/en/research/rir/?action=record.viewrec&gotorec=432819)
[36] Warwick.ac.uk Andres Guadamuz, "Habeas Data: The Latin American response to data protection", Journal of Information, Law & Technology 2000(2). (http://www2.warwick.ac.uk/fac/soc/law/elj/jilt/2000_2/guadamuz)
[37] Inquirer.net, SC approves use of writ of amparo (http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=90626)
[38] newsinfo.inquirer.net/breakingnews, Supreme Court okays rules of 'habeas data' (http://newsinfo.inquirer.net/breakingnews/nation/view/20080122-114091/Supreme-Court-okays-rules-of-habeas-data)
[39] mb.com.ph, Supreme Court adopts Writ of Habeas Data (http://www.mb.com.ph/MAIN20080123115104.html)
[40] supremecourt.gov.ph, SC Promulgates Rule on the Writ of Habeas Data (http://www.supremecourt.gov.ph/news/courtnews flash/2008/01/01240801.php)
[41] Supremecourt.gov.ph, A.M. No. 07-9-12-SC, THE RULE ON THE WRIT OF AMPARO (http://www.supremecourt.gov.ph/RULE.pdf)
[42] S.C. Resolution, A.M. No. 07-9-12-SC, THE RULE ON THE WRIT OF AMPARO (http://www.supremecourt.gov.ph/A.M.No.07-9-12-SC.pdf)
[43] Supremecourt.gov.ph, SC Approves Rule on Writ of Amparo (http://www.supremecourt.gov.ph/news/courtnews flash/2007/09/09250701.php)
[44] GMA NEWS.TV, SC approves rule on writ of amparo vs extralegal killings (http://www.gmanews.tv/story/61889/SC-approves-rule-on-writ-of-amparo-vs-extralegal-killings)
[45] Abs-Cbn Interactive, Journalists can cite writ of amparo vs censorship (http://www.abs-cbnnews.com/story_page/tabid/55/cat/national/news/3716/default.aspx)
[46] gmanews.tv, Writ of amparo takes effect; lawyers' group issues primer (http://www.gmanews.tv/story/65642/Writ-of-amparo-takes-effect-lawyers-group-issues-primer)
[47] Reuters, Missing activists' mothers test Manila court rule (http://www.reuters.com/article/latestCrisis/idUSMAN193825)
[48] supremecourt.gov.ph, Period to File Return in Amparo Cases Amended (http://www.supremecourt.gov.ph/publications/benchmark/2007/10/100705.php)
[49] GmaNews.tv, 'Amparo' frees 3 detainees - SC chief (http://www.gmanews.tv/story/71467/Amparo-frees-3-detainees----SC-chief)
[50] Abs-Cbn Interactive, Journalists file P10M lawsuit over Peninsula arrests (http://www.abs-cbnnews.com/storypage.aspx?StoryId=107123)

[51] Inquirer.net, (UPDATE) SC issues writ of amparo vs gov't on Lozada case: Orders PNP to explain 'abduction' (http://newsinfo.inquirer.net/breakingnews/nation/view/20080207-117383/UPDATE-SC-issues-writ-of-amparo-vs-govt-on-Lozada-case)
[52] supremecourt.gov, SC Decides Its 1st Amparo Case; Upholds Right to Security (http://www.supremecourt.gov.ph/news/courtnewsflash/2008/10/10070801.php)
[53] inquirer.net, SC upholds amparo for Manalo brothers (http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20081008-165181/SC-upholds-amparo-for-Manalo-brothers)
[54] G.R. No. 180906, Secretary of National Defense vs. RAYMOND MANALO and REYNALDO MANALO, October 7, 2008 (http://www.supremecourt.gov.ph/jurisprudence/2008/october2008/180906.htm)
[55] GMA NEWS.TV, Writ of amparo not enough – Hong Kong rights group (http://www.gmanews.tv/story/62409/Writ-of-amparo-not-enough--Hong-Kong-rights-group)
[56] http://www.supremecourt.gov.ph
[57] http://www.supremecourt.gov.ph/RULE.pdf
[58] http://www.supremecourt.gov.ph/A.M.%20No.%2007-9-12-SC.pdf
[59] http://www.thecorpusjuris.com/jurisprudence/jurisprudence2001to2010/234-jurisprudence2007/2168-am-no-07-9-12-sc.html
[60] http://www.thecorpusjuris.com/jurisprudence/jurisprudence2001to2010/234-jurisprudence2007/2169-am-no-07-9-12-sc-amendments.html
[61] http://www.thecorpusjuris.com/jurisprudence/jurisprudence2001to2010/235-jurisprudence2008/2167-am-no-08-1-16-sc.html
[62] http://www.cidh.oas.org/countryrep/Chile85eng/chap.8a.htm
[63] http://lcweb2.loc.gov/frd/cs/profiles/Mexico.pdf
[64] http://law.ateneo.edu/?p=191&type=2&sec=1&aid=16&PHPSESSID=5b05ee64cda85720318e623ce1b4233f
[65] http://www.asiaviews.org/?content=153499ym32dddw4&headline=20070628025425
[66] http://www.supremecourt.gov.ph/publications/benchmark/2007/10/100705.php
[67] http://www.supremecourt.gov.ph/speech/11-19-07-speech.pdf
[68] http://www.gmanews.tv/video/17016/Reporters-file-petition-for-writ-of-amparo
[69] http://www.abs-cbnnews.com/storypage.aspx?StoryId=106268
[70] http://www.pnp.gov.ph/down/content/CHR/WritofAmparo.pdf
[71] http://www.supremecourt.gov.ph/rulesofcourt/2008/jan/A.M.No.08-1-16-SC.pdf
[72] http://www.supremecourt.gov.ph/Annotation_amparo.pdf

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