1. ENGLISH

I. THE DIVISIONS OF THE LAW

Law is the element of society and also an essential medium of change. A knowledge of law increases one's understanding of public affairs. Its study promotes accuracy of expression, facility in argument and skill in interpreting the written word as well as some understanding of social values.

DISTINCTION BETWEEN CRIME AND CIVIL WRONG

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

THE CLASSIFICATION OF CIVIL WRONGS

Civil wrongs are broadly classified into three categories namely the breach of contract, tort and breach of trust. Breach of contract implies failure on the part of one of the parties to perform his part of legal obligations arising out of the contract. In this context it is important to note that a contract need not be in a formal document. It can be oral also. Every time a transaction is made a contract is entered.

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

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

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

SUBSTANTIVE AND ADJECTIVAL LAW :

A distinction cutting across between civil and criminal law is that between substantive and adjectival law. Substantive law lays down peoples rights, duties, liabilities, and powers. Adjectival Law relates to the enforcement of rights and duties. It is mainly concerned with procedural laws. For example, Civil procedure, Criminal procedure and Evidence.

THE TITLE OF CASES.

It is important to know the rules for naming of cases. Criminal trials are differently named based on the two main divisions of crimes as indictable offences and summary offences. Indictable offences are more serious offences triable in the crown court. Trials on indictment are in the name of the Queen or the King who is on the throne. Reg (Regina) or Rex respectively both conveniently abbreviate to 'R'. Thus Reg V Sikes

or Rex V Sikes may both be written R V Sikes. In some types of criminal cases the title of the cases will not contain Reg or Rex before V, but will contain the name of a private person. This happens when the case is tried summarily before magistrates i.e. justices of peace.

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

COURTS WITH CIVIL JURISDICTION

The Courts with original jurisdiction are the High Courts and County Courts. The High Court is divided into three divisions : The Queens division, the Chancery division and Family division. The First administers primarily the common law, the second equity and the third probate, divorce and admiralty cases.

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

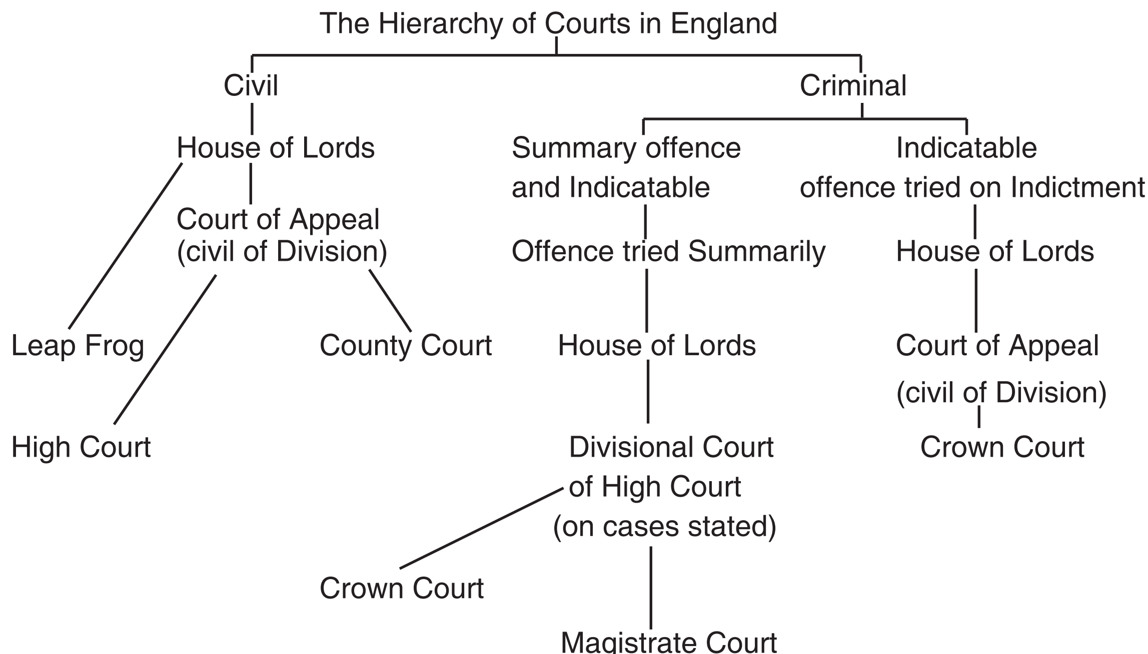
A civil case may go on appeal direct from the High Court to the House of Lords under the "Leap Frog" procedure introduced by the Administration of Justice Act 1960. This can happen with the consent of the parties and on certificate from the judges, if the case involves the interpretation of the legislation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

COURTS WITH CRIMINAL JURISDICTION

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

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

The Hierarchy of courts, both civil and criminal, can be represented diagrammatically as follows:



The Supreme Court of United Kingdom.

The Supreme Court of United Kingdom was established by part 3 of the Constitutional Reforms Act 2005 and started work on 1st of October 2009. It assumed the judicial function of the House of Lords which were executed by the lords of appeal in ordinary, commonly called Law Lords. It is the apex court in all matters under English Law, Northern Irish Law and Scottish Civil Law. It is the Court of last resort and the highest appellate court in the United Kingdom. It is located in Middlesex Gvildhall, London.

2. METHODS OF STUDY

A law student has two important aims. His primary and the most important aim is to become a lawyer and the secondary aim is to pass law examinations with credit. In order to achieve both the objects one has to read cases in the reports and also to read text books. Glanville Williams examines the relative importance of these two modes of study.

The two aims can be pursued by the same means. One must study cases, either in the original law reports or in case books. It is through applying oneself to cases that one gets, to understand how legal problems present themselves and how legal argument is conducted. That understanding is important whether one's object is to solve examination problems or to give sound opinions on points of legal practice.

There is a difference between preparation for practice and preparation for examinations. What the practitioner needs is a grasp of general legal principles, a sound knowledge of practice and procedure, an ability to argue and general knowledge of-where to find the law he wants. But it is not essential for him to carry much law in the mind. To shine at examinations, on the other hand, one must not only know how to argue and be able to display a first hand knowledge of the sources; one must also be able to memorise a considerable number of rules and authorities. The introduction of problems into examination papers has done something to redress the balance between intelligence and memory but too much memorising is still required. Copies of statutes are now allowed to be used in some law examinations. It is indeed not to lower the standard of the examinations but to raise it, for it means that the examinations can be made more truly a test of intelligence and lawyerly ability. There is no reason why case books should not be permitted, or atleast lists of names of cases. In the United States, some teachers allow their students to take in to the examination hall materials that they have prepared themselves.

READING TEXT BOOKS

Repeated reading of text books is essential for a law student to understand and assimilate the legal materials. When a book on an unfamiliar subject is read for the first time it is rather heavy going and one seems not to remember much of it. The second reading is both interesting and easier and more is remembered. It is better that a student reads the book a third fourth and fifth time. Learning by heart is best performed in short periods distributed over as long a time as possible. For example, it is better to devote one hour a day to revision than six hours at a stretch in once a week. Learning can be Increased by sleep or rest period. When every reading is followed by an attempt to recall the efficiency of learning and retention is enormously enhanced. Tests have shown that when time is distributed between reading and recall, fifty percent more is remembered than when the same time is spent merely in reading the passage over and over.

READING CASE BOOKS

The author says that some law teachers do not recommended the use of case books. In their view, the only way to proficiency is to read the cases in full. But , considering the amount of time actually available to a law student, the use of case books has two advantages. First, the case book saves him the trouble making his own notebook of cases. Secondly it does something to remove the immaterial facts thus helping in the search of facts that are legally material. However, it must be remembered that the use of case books by no means dispenses with the need for reading the original reports. For example, there may be latest cases, not covered by the case book, which the student may be keen to read in reports.

LECTURE AND CLASSES

The question whether the age - old lecture method of teaching should be continued any more, has been the subject of debate across the world. The author is of the opinion that it depends upon the particular lecture and the particular lecturers. The lecture method as a means of instruction has several merits. Lectures can quicken interests. The lecturers can give the basis and essentials of the subject and elucidate the broad principles. By varying his emphasis a lecturer can make “himself more easily understood than the toneless words of a book can. Moreover, a lecturer can bring textbooks up-to-date and in a small class he can solve the individual difficulties. However, average lectures are of not much use and it is waste of time to sit through such lectures and to make notes mechanically without thinking what they are about. Some teachers are blamed for telling too many valuable things in too short a time.

DISCUSSION CLASS

The discussion classes generally called a class supervision or tutorial is considerably more important and useful than an average lecture. The discussion which is centred on legal problem is more beneficial to the students. In the discussion classes the students must entirely participate by attempting to work out problems rather than remaining passive listeners. Smaller strength is ideal for discussion classes. The author advises the students to develop the habit of working a full morning and stresses that alcohol is totally inconsistent with study. Instead of using bound lecture note books, the author recommends loose-leaf system where the student needs to take with him only a single loose leaf note book. Notes taken in this form can be rearranged and expanded at pleasure. Finally, the author suggests that the law students need to have a grasp of history in the study not only of constitutional but of pure legal history.

3. CASE LAW TECHNIQUES

In English legal system previous decisions are followed within more or less well -defined limits. The like cases shall be decided alike and therefore mentioned as precedents. A decision on a point of law followed as the correct exposition of law in subsequent decisions is called a precedent on the point. A judicial precedent speaks in England with authority. It is not merely evidence of the law but a source of it and the courts are bound to follow the law that is so established .

Ratio decidendi and obiter dictum.

It is not everything said in a judgement that is reckoned as law . Only the ratio decidendi therein forms law. The ratio decidendi of a case can be defined as the materiel facts of the case plus the decision thereon. What facts are legally material depends on the particular case. For example , in an action for injuries sustained through negligent driving, the defendant’s name, complexion, address etc., are facts which are not material. On the other hand the fact that the defendant drove negligently and the fact that in consequence he injured the plaintiff are material and a decision in favour of the plaintiff on such facts will be an authority for the proposition that a person is liable for causing damage through the negligent driving of a vehicle.

Glanville Williams, for better illustration of the way ratio decidendi is extracted , cites a case that is Wilkinson vs. Downton, decided in 1897. In this case, the defendant represented to the plaintiff that her husband was smashed up in an accident and was lying with both legs broken. All this was false. The effect of the statement on the plaintiff was a violent shock to her nervous system resulting in weeks of suffering and medical care. The essential facts of the pith of the judgement were "The defendant by way of what was meant to be a joke told the plaintiff that the latter's husband had been smashed up in an accident . The plaintiff who has previously been of normal health, suffered a shock and serious illness. The decision was that the defendant was liable not perhaps for the tort of deceit but because the defendant had wilfully done an act calculated to cause physical harm to the plaintiff and had in fact caused such harm. However from the whole thing that is material facts plus the decision, the wider ratio that can be extracted is "whoever wilfully does an act which is calculated to and does cause physical harm is liable in tort". The above ratio in Wilkinson's case was applied in a subsequent case in 1919 that is Janvier vs. Sweeney, wherein the defendant threatened to arrest and prosecute the defendant, a foreign servant girl, if she did not give certain information.

Distinction between ratio decidendi and obiter dicta.

As it is the ratio decidendi that is reason for the decision of a case that alone creates a binding precedent, it is very essential to understand the distinction between ratio decidendi and obiter dicta.

Ratio decidendi

"Ratio decidendi" means that legal principle which has been formulated and applied in deciding a point of controversy in the cases. However, in the process of interpreting a decision for the purpose of extracting the Ratio, a judge may be restrictive or non restrictive. Restrictive distinguishing is the process of cutting down the expressed ratio decidendi so as to interpret it as narrowly as possible. Non-restrictive distinguishing occurs where a court accepts the express ratio decidendi of the earlier case without curtailing it, but finds that the case before it does not fall with in the ratio decidendi because of some material difference of the fact.

Obiter dicta

Obiter dictum is a mere saying by the way, a chance remark, which is not binding upon future courts. To be more precise, obiter dictum is a legal principle discussed in the judgment but not applied to the case. It may be respected according to the reputation of the judge, the eminence of the court and the circumstances in which it came to be pronounced. The reason for not regarding an Obiter dictum as binding is that it was probably made without consideration of the cases on the point. In some cases a judge may illustrate his general reasoning with reference to hypothetical situations and the law which he considers to apply to them. These observations, though not binding, are important because they not only help to rationalise the law but also suggest solutions to problems not yet decided by the courts.

DIVERGENT OPINIONS

The extraction of ratio decidendi becomes more complicated when different members of a composite court express different opinions. Where the opinion of different judges differs so greatly that there is no majority for any single view, all that can be done, to ascertain the ratio decidendi, is to add up to the facts regarded as material by any group of judges whose votes constitute a majority, and to base the ratio on these facts.

THE HIERARCHY OF AUTHORITY - BINDING FORCE OF PRECEDENTS

The general rule is that every court is bound to follow any case decided by a court above it in the hierarchy. When the appellate court reverses or overrules a case decided by the court below, the case so reversed or overruled loses all authority. Reversal means the same case is decided the other way in appeal, whereas overruling takes place when a decision of a lower court is considered in a different case taken on appeal and held to be wrongly decided.

In 1966 the House of Lords, departing from its earlier practise, declared that it would not be bound by its own decision. The court of appeal generally, binds itself both on civil and on criminal sides. However, in exceptional cases it can refuse to follow its own previous decisions. Such situations arise where the earlier decision was inconsistent by inadvertence or otherwise, an earlier decision that has been overruled by the House of Lords or where the earlier decision was Per Incuriam (i.e) by oversight - non - consideration of a relevant statute, contrary to the provisions of the statute or non - consideration of a relevant decision of the House of Lords. As a special rule the Criminal Division of Court of Appeal sitting as a full court of five judges, instead of the usual three can overrule its own previous decision rendered against the defendant. But the court is bound by its own decision rendered in favour of the defendant on a point of substantive law.

Towards the close of the 20th century, there was a strong current of judicial opinion spearheaded by Lord Denning in favour of general freedom from the courts own past decisions which appear to be clearly wrong. Nevertheless, Denning's views could not prevail for want of appeal from the House of Lords. The position maintained by the House of Lords was that the exceptional rules freeing the court of appeal from the authority of its own previous decisions did not operate to free it from the authority of the House of Lords. The House of Lords never does anything per incuriam.

The decisions of the Divisional Courts are binding precedents for magistrates courts in other cases. Also, Divisional Courts bind themselves. However, in criminal cases they exercise the same freedom as the Court of Appeal.

But the Divisional Court does not bind the Crown Court judges who try cases with juries because they do not form part of the same judicial hierarchy. The Crown Court is the branch of the Supreme Court having equal status with the High Court therefore with a Divisional Court of the High Court.

Single judges of the High Court trying civil cases bind County Courts and the magistrates is in their jurisdiction but they do not absolutely bind other High Court judges. One High Court judge may refuse to follow another judge. This may result in conflict of decisions which have to be settled by the Court of Appeal. Decisions of court inferior to the High Court do not create binding precedents, nor do they bind themselves.

CIRCUMSTANCES AFFECTING THE WEIGHT OF A DECISION AS A PRECENDENT

There are certain circumstances that increase or diminish the authority of a decision as the binding precedent. The eminence of the particular judge or judges, reserved judgement, frequently followed judgments, judgements creating expectations in commercial or proprietary matters are the important factors that add to the authority of a decision. Among the circumstances that diminish the authority of a decision are the presence of the strong dissenting judgements; the fact that majority do not agree in reasoning but only in their result; the failure of counsel to cite an inconsistent case in argument etc.

The above circumstances are not relevant if the case is absolutely binding on the court before which it is cited and if it is incapable of being distinguished. But they are of great importance if the case is not binding, or if on the facts of the later case it is capable of being distinguished or extended at the pleasure of the court.

A judge is not under any obligation to decide a case in a particular way when he is free. He then has to chose between notions of justice, convenience, public policy, morality, analogy and so on. He has to balance too opposing needs in the law; the need for stability and certainty and the need for changes.

4. WORKING OUT PROBLEMS

I scarce think it is harder to resolve very difficult cases in law, than it is to direct a young gentleman what course he should take to enable himself so to do.

—Sir Roger North, On the Study of the Laws.

[Since much of the value of this chapter must depend upon the concrete illustrations it gives, I have been forced to assume the reader's knowledge of a certain amount of elementary law. He should postpone reading it until he has made a start with the study of a case-law subject like Constitutional Law, Criminal Law, Contract or Tort.]

The object of including problems in the examination paper is to discover legal ability. But it is not easy even for an intelligent candidate in the heat of the examination to show the calm judgment that a problem requires. It is, therefore, most important to train oneself in problem answering beforehand. In doing so the student will not merely be preparing in the best possible way for his examination: he will also be developing his mind as a working instrument and preparing himself for legal practice. The technique of solving academic problems is almost the same as the technique of writing a legal opinion upon a practical point. The chief difference is that in practical problems the material facts often lie buried in a much larger mass of immaterial detail, while the examination problem contains comparatively little beyond the material facts.

If the student is studying under a tutor or supervisor an adequate number of problems will be supplied to him. If not, he will have to buy or otherwise get sight of copies of past examination papers.

Perhaps the most important piece of advice with problems, as with all examination questions, is to read every word of the problem. Almost every word has been put in for a purpose and needs to be commented upon. In the law of contract, for instance, the word "orally" or "verbally" or "on the telephone," in describing the formation of a contract for the sale of land, will invite discussion of section 40 of the Law of Property Act 1925. Even if you are of opinion that a fact stated in the problem is immaterial, you should not (in general) pass it

by in silence but should express your opinion that it is immaterial, and, if possible, give reasons. However, there is no need to deal in this way with an argument that, if raised, would not receive a moment's serious consideration from the court.

FACTS STATED IN THE PROBLEM ARE CONCLUSIVE

A common query on the part of the novice, when he reads an examination problem is: "How could such facts ever be proved?" The teacher's answer is that the student must assume this proof. (Actually, it is surprising how facts often can be proved in practice that at first sight seem to be unprovable if the defendant is prepared to contradict them. But in any case the student is not concerned with this question.)

The student should not assume facts contrary to those stated in the problem for the purpose of giving the examiner a piece of information for which he did not ask. Also, there is generally no need to assume facts that go clean beyond those given in the problem: had the examiner wanted a discussion of such facts he would have inserted them himself. Here is an example of a problem in criminal law where the examiner clearly wanted to confine the facts to a narrow compass.

X and Y, discovering that Z intended to commit a burglary in A's house, arranged together to persuade him to steal therefrom certain articles for them. Have X, Y or Z committed an offence?

The fact that the question is thrown into the perfect tense shows beyond doubt that no other facts than those stated in the first sentence are to be assumed. The question is: have they on those facts alone committed an offence? An answer that assumes that X and Y have persuaded Z to steal, or that Z has stolen, will therefore miss the mark. The correct answer to the question is that X and Y are guilty of conspiring to incite (or, indeed, of conspiring to commit) burglary or theft. (There are technical points relating to the charge that need not be considered here.)

OMITTED FACTS

Although supplementary facts should not, in general, be added to a problem, the case is different with what may be called omitted facts. One of the marks of a competent lawyer is his ability to know what gaps there are in the facts of his case. The solicitor, for example, when interviewing a client has to draw from him by questions many legally relevant facts that the client has not thought of disclosing. The barrister, too, may find that such facts are missing from his brief, and have to extract them from his instructing solicitor in conference. In order to test the candidate's perspicacity a problem may deliberately omit some¬thing that is important. Always look for such omissions and state how your answer will be affected by the presence or absence of the fact in question. Here is a simple illustration from the law of tort.

B is A's employee. Discuss A's liability for an accident caused by B's negligence in the following cases:

(i) B, when driving A's van, picks up his friend C and gives him a lift to the station. An accident happens by B's negligence.

(ii) [etc.]

Two vital facts are omitted from this casually stated problem. First, we are not told who was injured. We are to understand that owing to B's negligence an injury was sustained either by C or by some other user of the highway. But the answer may differ according as the person injured was C or some other user of the highway. This distinction should therefore be taken, and each of the two possibilities discussed separately.

Secondly, we are not told whether the station lay on or near B's proper route, or whether it was so much off the route that every yard he went was a yard away from his employment and not to it. This distinction, coupled with the previous one, yields four possible combinations of fact, each needing discussion.

Another example of an economically worded problem, this time taken from criminal law:

A killed his baby thinking that it was a rabbit. Discuss A's criminal responsibility.

Here A's mistake is so extraordinary that we are justified in wondering whether he was not insane at the time of the deed, his insanity being an omitted fact. On the other hand we are not positively told that he was insane, and so we must also consider the unlikely hypothesis that the mistake was merely an act of folly. (As a matter of fact, nature imitates not only art but examination questions; not long ago a man of my acquaintance shot his wife in the leg, in the shrubbery, thinking she was a rabbit.) Or there is the possibility that A killed his baby in the course of a dream. The answer, then, again falls into two parts:

(i) on the assumption that A was sane, (ii) on the assumption that he was insane. However, it is not justifiable to discuss a problem from the angle of insanity if there is no indication of insanity in the facts of the problem.

One more example, again from criminal law:

A, a mountaineer, roped to his fellows, cut the rope in order to prevent them from dragging the leader of the party to death. Discuss.

Presumably A is being prosecuted for murder; but the question does not actually say that A's fellows were killed as a result of what he did. We must assume that they were killed, or at least injured, in order to create a legal problem. Presumably, too, A sets up the defence of necessity; we are not expressly told that there was (or that A thought there was) no other way of saving the leader's life, but this is a fair inference from the question. Finally, the question tells us that A's object was to save the leader; it does not tell us whether his object was also to save himself. In other words it does not tell us whether he cut the rope above or below himself. If he cut it below himself his object was presumably to save himself as well as his leader. If he cut it above himself he presumably fell, and in that case his life was evidently saved by something approaching a miracle—at any rate, we know that he was saved because otherwise he would be beyond the jurisdiction and the question would have no legal interest. Perhaps this last doubt is irrelevant; it may not matter whether A's object was entirely altruistic or partially self- interested. But on the other hand it may, and so the point ought to be taken.

Having thus discussed the interpretation of this problem, you would, of course, go on to consider the law relating to it.

If, as in the last illustration, you decide that a fact can be inferred from what is given, though not explicitly stated, it is wise to guard yourself by stating expressly that you assume the fact to exist. For the examiner may not agree that the fact is implied in the question; but he will not mind about this if he sees that your assumption is not the result of carelessness but is your considered interpretation of the question. If you are in any doubt whether a fact is implied you should "play safe" and take the problem each way, that is, first on the assumption that the fact exists and then on the assumption that it does not exist.

Even if all the relevant facts (in one sense of the word "facts") are stated, what is legally called a "question of fact" may still arise on the problem—e.g. a question whether the defendant has, on the facts, been negligent, or whether a lapse of time is "reasonable." In a real case these would be questions for the jury (if the case were tried with a jury), although the judge might withdraw the issue from the jury if satisfied that there was no evidence of negligence or unreasonableness. On such a problem, although you may venture an opinion as to the proper verdict on the point, and argue your opinion to the best of your ability, you should not, in the last resort, usurp the function of the jury (or of the judge when there is no jury). The most you should say is that on these facts there is evidence of negligence (or unreasonable¬ness) , and that a finding to that effect would clearly be right (or conversely). If the point is at all doubtful, take the facts each way and state the legal result following on each possible finding. The following problem in the law of contract illustrates the importance of this.

A telegraphed an offer to sell his library to B for £1,000. B telegraphed in reply: "Will give £900. B." A day elapsed in which nothing further occurred. Then at 9 a.m. A handed to the post office a telegram to B: "You can have the library for £900. A." At exactly the same moment B handed to the post office a telegram to A: "Cancel my first telegram. I will take the library for £1,000. B." A received B's telegram at 9.30 a.m. B received A's telegram at 9.40 a.m. What contract, if any, exists?

Everything in this problem turns on the unobtrusive sentence: "A day elapsed. ..." The question is whether this was an unreasonable delay on the part of A in replying to B's counter-offer of £900. If it was unreasonable, the offer (i.e. B's counter-offer) has lapsed, and there is no contract. If it was not unreasonable, the offer was still alive when A handed in at the post office his telegram of acceptance, and the contract was therefore completed at that moment. Now it is not possible to give a confident answer to the question whether the delay was unreasonable. The only rule of law is that an offer by telegram raises a presumption that a speedy reply is expected (Quener- duaine v. Cole), and therefore the lapse of a whole day would normally be too long. But it is to be noticed that in our problem the telegraphing business was started not by B but by A. B may have sent his counter-offer by telegram simply out of politeness, and not because he was in any hurry. It is not certain, therefore, whether the rule in Quenerduaine v. Cole would apply, though on the whole I think it would, because I do not think that a court would speculate on the reasons that moved B to telegraph rather than write.

There is more to say about this problem, but the essence of it is this question of fact. (Although telegrams are now little used in business matters, the question could arise in connection With international cables.)

It may be added that where facts are given from which the negligence or unreasonableness (or absence of it) may be inferred, you should argue from these facts in much the same way as if you were addressing a jury. But, as I have said, your opinion on this should not (except in a completely unarguable case) deter you from taking the problem each way.

TWO POINTS OF TECHNIQUE

Some examiners conclude the statement of facts in a problem with the direction to discuss it: others adopt the mannerism of requesting you to advise one of the parties. This second form of question does not mean that you are expected to bias your answer in favour of the particular party; the legal advice you give in your answer will generally be the same whichever party you are supposed to be advising. However, there may be some practical advice to be given to the party you are supposed to be advising, and you should certainly comply with the examiner's direction as far as you are able. By the way, do not use the second person in your answer—make the answer impersonal, thus you should say "X is liable," not "You are liable."

If the examiner has exercised his fancy by using fictitious names, like Tomkins, you are perfectly entitled to abbreviate them to the initial letter—unless, of course, two parties in the same problem have the same initial letter.

RULES AND AUTHORITIES

Next, a few remarks upon the giving of reasons and authorities for an opinion. A bald answer to a problem, even though correct, will not earn many (perhaps not any) marks, because the examiner cannot tell whether the student has knowledge or is just guessing. Reasons and authorities should, therefore, always be given. Pretend to yourself that the examiner will disagree with your point of view, and set yourself to win him over by argument.'

One of the most important of a lawyer's accomplishments is the ability to resolve facts into their legal categories. The student should therefore take pains to argue in terms of legal rules and concepts. It is a common fault, particularly in criminal law, to give the impression that the answer is based wholly upon common sense and a few gleanings from the Sunday newspapers. The following illustration of a question and answer in criminal law may show this.

Q.—A fire-engine driven at full speed to a lire knocks down and kills somebody. Discuss the criminal responsibility of the driver.

Student's answer.—"If the driver has been careful he is not responsible. (1) It is a well-known custom that as soon as the siren of a fire-engine is heard, other vehicles should pull up at the side of the road, in order to afford free passage. It is therefore safe for a fire-engine driver to proceed at a higher speed than would be possible for other drivers. Further (2) it is reasonable for a fire-engine to proceed quickly to a fire, for life and property may be in danger. But I do not put much weight on this second ground, for great as may be the importance of putting out a fire, it is not sufficiently great to justify the driver in leaving a trail of destruction behind him."

Upon reading this answer the examiner may well comment: "A commendable effort by an intelligent student who has not read the textbook and knows no criminal law." The answer, to be complete, should have stated the crimes for which the driver may be prosecuted (manslaughter, causing death by reckless driving, or, in the magistrates' court, driving without due care and attention); it should have stated the requirements of each crime, so far as relevant; and it should have pointed out that the burden of proving these requirements beyond reasonable doubt lies on the prosecution. It should also have discussed the possible defence of necessity, referring to it expressly by that name, not vaguely as the last two sentences of the answer do. Put into this legal setting the answer would have been first-class.

It is bad style to begin an answer to a problem by citing a string of cases. Begin by addressing yourself to the problem. If the law is clear, first state the law and then give the authorities for your statement. If the law is not clear, first pose the legal question and then set out the authorities bearing on it.

When citing cases, the mere giving of the name is of little use. What is wanted is not only the name but a statement of the legal points involved in the decision, and perhaps also a consideration of its standing - i.e. whether it has been approved or criticised. This is so even though the case directly covers the problem. Still more is it so when the case is not on all fours with the problem. New points often occur in the law, and the lawyer in advising his client must, in effect, predict the probable decision of the court. So also in examinations: a problem is often set upon some point of law that is not covered exactly by authority. No candidate who fails to see this point can get a first class on that question. The late Dr. Coulton, in his autobiography, told a tale of a great mathematical teacher at Cambridge who met a candidate in the College court just after the Tripos.

"That was a d— good answer of yours, A, to the sixteenth question." Yes, sir, but it was a be good question, wasn't it?" In order to create this relationship of mutual esteem between yourself and your examiner, pay him the compliment of searching for the point of his problem. Ask yourself what is the point it raises that is not precisely covered by authority.

Failure to follow this common-sense rule is a frequent error of the tyro. Take again, for instance, the "mountaineering" problem already given (p.115). Most raw beginners think that they have adequately solved this problem if they quote R. v. Dudley and Stephens and declare that necessity is no defence. But if they paused to reflect, they would discover several differences between R. v. Dudley and Stephens and the facts of their problem. It cannot be asserted with confidence that every, or even any, of these distinctions would find favour with a judge, but at any rate they are possible distinctions which would certainly be made much of by an experienced counsel for the defence. They are as follows:

(1) In Dudley and Stephens there was a choice as to who was to die. It will be remembered that Dudley and Stephens was the case where three men and a cabin-boy were compelled to take to an open boat after the wreck of their yacht Mignonette. On the twentieth day after the wreck two of the men killed the boy for food; four days later they were rescued. The two men were convicted of murder. It may be said that these facts are materially different from those in our problem, for in our problem there seems to be no choice as to who is to die: it is simply (one supposes) a question of some or all. It is true that in Dudley and Stephens the jury found that the boy was in a much weaker condition than the others and was likely to have died before them. But the jury did not find that the boy might not have been revived had one of the others been killed to provide food for him. So long as the boy was alive and had a chance of survival he was as much entitled to retain that chance as the others; whereas in our problem it may be that the men who are cut away have no chance of survival at all.

(2) It is not certain on the facts of Dudley and Stephens that the two defendants would have died had they not killed the boy. All that the jury found was that had they not done so they would probably not have survived to be rescued. It may be that on the facts of our problem the death of the leader is certain, hot merely probable, if the rope is not cut. But it must be admitted that this is not a very strong distinction, for in Dudley and Stephens the jury also found that "at the time of the act there was no sail in sight, nor any reasonable prospect of relief'; and it would seem that if the law recognises necessity as a defence it should proceed upon the facts as they appeared to the defendant at the time.

(3) In Dudley and Stephens the cabin-boy was not by his own conduct, voluntary or involuntary, bringing the others nearer to death. In our problem the men whom the defendant presumably sends to death are themselves dragging the leader to what will otherwise be his death. It is true that they cannot help it; but does that matter? If a lunatic attacks me, I am surely entitled to defend myself, even though he is not criminally responsible for his conduct. Also, I am entitled to defend another. Is not our problem a case of defending another?

Another illustration, this time from the law of contract, is as follows:

A writes to B offering to sell him his horse Phineas for £100. B posts a letter accepting, but he misdirects it and in consequence it is a week late in being delivered to A. Meanwhile A has sold Phineas to C. Discuss.

The ordinary beginner answers this problem simply by quoting Household Fire Insurance Co. v. Grant,6 or some other authority to the same effect, and saying that by our law an offeror can be landed with a contract even though he never receives an acceptance, since the contract is held to be complete on the posting of the letter of acceptance. But the whole point of the question is whether Grant's case applies to a misdirected letter of acceptance. I cannot help thinking that the booby who so completely misses the point of the question is often actuated by some hidden (and mistaken) motive of self-preservation. He really scents the difficulty but thinks it too hard for discussion and so conveniently pretends that he has not seen it. If this ostrich only knew, he would gain more marks by posing the legal difficulty, even though he suggested no solution, than he ever could by blinking it completely. If, in addition to posing the difficulty, he could say that there is no authority in point and that Grant's case is distinguishable, and could also suggest some reasons why on these facts it ought to be distinguished, he would get a first class on that question instead of a very doubtful pass.

One of the techniques of argument is to take an extreme case. " 'I took an extreme case,' was Alice's tearful reply. 'My excellent preceptress always used to say, When in doubt take an extreme case. And I was in doubt.' " The technique need not always result in tears. Let us make our problem into a more extreme case. A week's delay in a letter does not sound inordinately long, but to isolate the question of principle let us make it longer. Suppose that the misdirected letter of acceptance had taken two months on its way, or had never

arrived. Had it been properly directed there would have been a good contract and A would have been liable in damages to B for not delivering the horse. That is a harsh rule from A's point of view (I think a stupid rule, and I hope that if you are the reader of this book who is destined to become Lord Chancellor you will get it changed), but it would be even worse if the same rule were applied where B has carelessly misdirected his letter, resulting in gross delay or loss. The rule in Grant's case cannot possibly apply to such circumstances. If this be conceded, the next question is . . . what? Close your eyes and think deeply. If you have done that, compare your answer with mine. The next question is whether B's letter is to be regarded as an acceptance from the time when A receives it. If that is the rule, then there will be a good contract if the lapse of a week before acceptance is not thought to be an unreasonable time; and, on these assumptions, A not having revoked his offer before acceptance is liable to B for breach of contract if he does not deliver the horse. If the lapse of time is held to be unreasonable, there is no contract.

But an alternative rule is possible. This is that B's letter is a nullity even if it arrives on time. When A posts the offer to B he impliedly authorises B to conclude the contract by posting a letter of acceptance, but only on the assumption that the acceptance is properly addressed; if it is not, there is no acceptance even though the Post Office cleverly delivers it on time. I do not myself think that this alternative is correct, but it would be worth putting forward in court.

The general lesson from this is in all legal problems use your brain and have the courage to argue.

If a case falls midway between two authorities, this may indicate that there is a fundamental conflict of principle between the two authorities, and that it is necessary to hold that one of them was wrongly decided. Alternatively, you may come to the conclusion that there is a real distinction between the authorities, and in this event the problem must be looked at from the point of view of general legal principle or public policy to decide whether it should be brought under the one head or the other. The situation was characterised by Paley, an eighteenth-century divine, as the "competition of opposite analogies."

To sum up, when the problem is possibly distinguishable from the authority or authorities nearest in point, a careful analysis of the possible distinction or distinctions should always be given. This is particularly important if the authority in question has been doubted by judges or criticised by legal writers. It may be that the student does not feel competent to discuss the various distinctions, but even so the existence of the possible distinctions should be pointed out in the answer. Moreover, distinctions should be pointed out even though in the opinion of the student they are not material, if it could conceivably be argued that they are material: of course the student should express his own opinion that they are not material.

If there is a possibility of the authority in question being overruled, it is more important than ever to mention its status in the judicial hierarchy, as well as stating any objections that have been urged against it.

When you have a number of cases to quote, it is generally best to quote the nearest authority first and to allot it the most space; the other cases can be brought more casually into the discussion, as you have time. When you have read a case in the reports or in a case book, do your best to convey this fact by referring to some apposite passage in the judgment or some other relevant detail of the report which will indicate that you have not merely relied on a textbook.

If you know that there is no case bearing directly upon the problem, say so. The fact that the problem is not covered by authority is in itself a valuable piece of information. If the authority for a proposition is a statute, say this also, even though you have forgotten the name of the statute.

DOUBT

Where the law is doubtful, a categorical statement that the rule is one way or the other will earn few, if any, marks. This is particularly important in answering problems. If the answer to the problem is doubtful, say so, and then suggest what the answer ought to be. It is a mistake to simulate confidence where you have no certain knowledge.

After discussing a "mooty" problem, try to avoid the weak conclusion that "A is perhaps liable." Your conclusion may be that if the facts are so-and-so, he is liable; if they are such and such, he is not. Or, if the court follows Smith v. Jones, then A will be liable, but if it follows Robinson v. Edwards, which is to be preferred for reasons previously given, then A will not be liable.

A point can often be scored by demonstrating that the law applicable to a problem may depend upon the court before which the case comes. For example, there are some decisions of the Court of Appeal, like that in Musgrove v. Pandelis, that would probably be reluctantly followed by the Court of Appeal but would almost certainly be overruled by the House of Lords. Consequently, the "law" on the subject of Musgrove v. Pandelis (strict liability for petrol in the tank of a car) may depend upon the number of appeals that the client is prepared to take.

PROBLEMS ON STATUTES

A problem may be set on a statute as well as on a case. You must then recall the words of the statute as best you can, apply them to the problem and, as in all problems, look for the "catch." Here is an illustration from constitutional law:

Aikenhead J., a judge of the High Court, is convicted of driving under the influence of drink. Can he be dismissed from his judicial office, and if so by whom?

The attitude of students towards a problem like this varies. Some, though knowing the terms of the Act of Settlement, or of the similar statute now in force, steer clear of the problem because they are afraid of it. Others write down simply:

By the Act of Settlement 1701, "Judges' Commissions [shall] be made quamdiu se bene gesserint, but upon the Address of both Houses of Parliament it may be lawful to remove them."10 Aikenhead J. can be removed under this provision.

This is not a bad answer and would win a pass. Had the candidate added that dismissal was actually effected by the Crown he might have risen to a second. To obtain a first class, one needs to do a little thinking. Aikenhead J. was appointed "during good behaviour." He has been convicted of crime, and we shall assume for the moment that he has not behaved himself within the meaning of these words. Clearly he can be dismissed if both Houses present an Address to that effect. But can he not, in this case, be dismissed even without an Address? What the examiner is evidently after is the correct interpretation of the words of the Act of Settlement, or rather of the Act now in force replacing the Act of Settlement. Do these words mean that judges can be dismissed by the Crown only upon an Address of both Houses (with a direction to the Houses that they are not to present an Address unless the judge has misbehaved himself)? Or do the words mean that judges can be dismissed by the Crown either if they have not behaved themselves (e.g. been convicted of crime) or on an Address of both Houses? In other words, are the Houses the sole judges of the correctness of the judges' behaviour, or not? The second interpretation can be arrived at by reading the provision in two parts: (1) judges' commissions are to be made for as long as they behave themselves, implying that if they misbehave they may be dismissed by the Crown; (2) they may be removed by the Crown on an Address of both Houses, even though they have not misbehaved themselves. The first interpretation can be arrived at by reading the provision as a whole (judges are appointed during good behaviour, and the two Houses are the sole judges of bad behaviour).

A good lawyer, who reads carefully, ponders meanings and is prepared to discuss difficulties, might be able to see this point in the problem even though he had read nothing upon it. When one studies the literature one finds that, surprising as it may seem, the weight of legal opinion is in favour of the second view; and it is not even clear what is the proper legal means that the Crown should use to establish misbehaviour before dismissing a judge. A, further question that arises (and that might be perceived on the face of this problem) is whether dismissal by the Crown can only be for misbehaviour in office or whether it can be for an offence not related to judicial office or affecting judicial ability. If the latter, can it be for any offence or only for a serious one, and is the offence in the problem sufficiently serious? In practice the Crown would now be unlikely to dismiss a judge without an Address, and it would be for the two Houses to decide whether the misbehaviour justified dismissal.

This example shows how it is possible to display the qualities of a good lawyer without knowing much law. Here is another problem in constitutional law to reinforce the point.

A statute is passed giving power to make Orders in Council for the public safety and defence of the realm. Would it be a valid objection to an Order made under this statute that it imposes a tax?

The type of answer to be expected from the Painful Plodder would be as follows:

"A statute similar in terms to that in the problem was DORA, passed in the First World War. By Regulations under this statute the Food Controller was empowered to regulate dealings in any article. Under these powers the Food Controller ordered that no milk should be sold within certain counties except under licence. In Att.-Gen. v. Wilts United Dairies the question arose whether the Food Controller was entitled to charge for the granting of a licence under this Order. It was held by the H.L. that he was not. This case was approved by the Court of Appeal in Congreve v. Home Office. * The answer to the question is therefore 'Yes.'"

This answer exhibits a common defect: it cites a case without explaining the legal principle involved in it, i.e. the legal ground on which the case was decided. Plodder says that in Att.-Gen. v. Wilts U.D. it was held that the Food Controller could not charge for the licence. This is true, but we need to know why. The facts of the case contained three elements: (1) DORA, giving power to make Regulations for the public safety

and defence of the realm; (2) the “daughter” Regulations made under DORA, allowing the Food Controller to regulate dealings in any article; and (3) the Food Controller’s Order (“granddaughter” of DORA) that no milk should be sold without licence, coupled with his grant of a licence on condition of receiving payment. Now the decision was that the money promised by the dairy company could not be recovered by the Crown, for the reason that (a) any prerogative power to tax had been taken away by the Bill of Rights 1689, and that (b) as for the statutory powers of DORA, the Regulations under which the Food Controller was acting did not on their wording enable him to impose a tax. The Regulations enabled him to regulate dealings in an article, but regulation of dealings is one thing, taxing another. Order (3) was therefore ultra vires15 the Regulations (2). Had the candidate understood these reasons he would at once have seen that the decision in Att.-Gen. v. Wilts U.D. did not conclude the question he was asked. All that the case decided was that the Food Controller was acting outside the Regulations since the Regulations did not give the power to tax. The question whether a Regulation that expressly gave the power to tax would itself be ultra vires DORA was not decided.

Now here is the answer of a gentleman who may be called the Discerning Dilettante. He knows nothing about the Bill of Rights or the decision in Att.-Gen. v. Wilts U.D., but he addresses himself to the question and uses his intelligence.

“It may be that the Order is intra vires16 the statute. The statute gives power to make Orders for the public safety and defence of the realm: in other words for the waging of war. Obviously you cannot wage war without taxing. Money, it is said, makes the sinews of war.

“To this it may be objected that although it is necessary to tax in order to wage war, it is not necessary for the Executive to tax without a statute. Parliament is still in being; why not leave taxation to Parliament?

“I think that a valid reply to this objection would be that it is a political objection to the passing of a statute worded in this wide way, not a legal objection to the validity of the Order, if a statute worded so widely has been passed. If the objection were legally valid it could be used to defeat almost all Orders made under this statute, which would be absurd. Suppose that under this defence statute the Government makes an Order requisitioning land for anti-aircraft missile sites. It would obviously be no valid objection to such an Order that the Order is not necessary for public safety because Parliament could have passed it. The object of the defence statute is to delegate to the Executive what in peacetime would be the function of Parliament. Surely the question whether Parliament could have passed the particular legislation is logically irrelevant to the question whether the legislation is for the public safety and defence of the realm.

“At the same time I do not suppose that a court would take the view that I am here expressing. The English tradition that it is for Parliament to do the taxing is so deep-seated that the court would probably assert a legal presumption, as a matter of statute interpretation, that powers of taxation are not included in a statutory delegation of power unless clear words are used, and that a general formula like that in the statute stated in the question is not sufficient.”

Or, as Atkin L.J. (as he then was) put it in Att.-Gen. v. Wilts U.D. in the Court of Appeal, “in view of the historic struggle of the legislature to secure for itself the sole power to levy money upon the subject, its complete success in that struggle, the elaborate means adopted by the representative House to control the amount, the conditions and the purpose of the levy, the circumstances would be remarkable indeed whch would induce the court to believe that the legislature had sacrificed all the well-known checks and precautions, and, not in express words, but merely by implication, had entrusted a Minister of the Crown with undefined and unlimited powers of imposing charges upon the subject for purposes connected with his department.” The point is reinforced by Congreve’s case (above), where the Court of Appeal assumed that Att.-Gen. v. Wilts U.D. was an authority on the application of the Bill of Rights.

In thus unfavourably contrasting Plodder’s answer with Dilettante’s, I am not, of course, suggesting that book work is useless. As I have already said, book knowledge should always be used to provide a starting-point. Dilettante’s answer would have been better if he could have shown that the Wilts case, though apparently relevant, was not conclusive on the question. The point is that although book knowledge is in itself a good thing, it is useless and worse than useless if it deflects your attention from the question that you are being asked.

RELEVANCY

When answering a problem, never preface your answer with a general disquisition on the department of law relating to the problem. Start straight away to answer the problem. Problems are set chiefly to test your ability to apply the law you know, and the examiner will speedily tire of reading an account of the law that is not brought into direct relation to the problem. Where the problem contains several persons, say A and B as

possible plaintiffs and C and D as possible defendants, the best course is to begin your answer by writing down the heading: A. v. C. When you have dealt with this, write (say) B.C, referring back to your previous answer for any points that do not need to be repeated. Then you will deal with Av.D and B v. D.

The advice to plunge into the specific problem, on the model of counsel's opinion, applies even where the problem is divided into several parts, all of which are on the same general department of law. For instance, suppose that in criminal law a question consists of a chain of short problems on insanity numbered (i), (ii), (iii), etc. In my opinion it is not advisable to preface the answer with a discussion of McNaghten's case,18 even though McNaghten's case is relevant to each of the numbered problems. The examiner is impatient to see you answering the problems, and he may even ignore altogether anything you write before writing down figure (i). You should therefore write the figure (i) at the very beginning of your answer, and begin to tackle problem (i). In the course of doing so you can, of course, set out and discuss McNaghten's case. When you come to (ii), (iii) and the rest, it will be easy enough to put a back reference, if necessary, to your previous discussion of the case.

Although a problem is not an invitation to launch out into a general disquisition on the department of law on which the problem is set, it is important in working out the problem to state all the rules of law that are really relevant to it. A frequent blemish upon an otherwise good answer is that the relevant rule of law is not expressly stated but is left to be implied from the candidate's conclusion. Much the better practice is first to state the rule of law and then to apply it to the facts. Do not write: "D is liable on the contract because he did not communicate his revocation of his offer." It is better style to write: "An Uncommunicated revocation of an offer is ineffective. Here D's revocation did not come to the notice of the offeree, so the offeree's acceptance of the offer was valid, and D is liable on the contract." Here is another illustration of the point, from the law of tort.

Q.—A, finding B, a stranger of rough appearance, in his shed, locks the door in order to keep B there while he fetches the police. Can B sue A?

Student's answer.—"B can sue A for false imprisonment because no 'arrestable offence' has been committed by anyone."

The answer reveals some knowledge of the law, and would be correct in many cases. But the law is not fully stated (not even the important provision in the Criminal Law Act), and some facts can be imagined that would make the arrest lawful. To earn marks you must state the law and imagine variations of fact. Here is a model:

There is no power to arrest for trespass. But under the Criminal Law Act 1967 19 anyone can arrest on reasonable suspicion of an arrestable offence, save that where the arrest is by a private person (as here) he must show either (1) that the arrested person was in fact in the act of committing the offence for which he was arrested, or he reasonably suspected the arrested person to be in the act of committing it, or (2) the arrested person had in fact committed the offence, or he reasonably suspected the arrested person of having committed the offence and (in this last case) the offence had in fact been committed by someone. An arrestable offence is defined as one for which a person may by virtue of any statute be sentenced to imprisonment for at least five years, or an attempt to commit such an offence. Theft comes within the definition.

A will have the statutory power of arrest if B was in fact attempting to steal something in the shed, or if A reasonably suspected him of being in the act of attempting to steal something in the shed. A's defence on the latter ground would of course be assisted if there was something in the shed worth stealing. If there was not, A might still believe that B was looking for something to steal, which could constitute an attempt to steal under the Criminal Attempts Act 1981 notwithstanding that there was nothing there that B would have stolen.

Suppose, now, that the shed was clearly bare of everything and A's suspicions did not relate to theft in the shed. A might still suspect B of having stolen something from him elsewhere (e.g. if he has just discovered that a bunch of keys is missing from the hall table). The arrest could then be lawful if B had in fact stolen the thing in question or if A reasonably suspected B of having stolen it, provided (in the last case) that the thing had in fact been stolen by someone. If it turned out that Mrs A had gathered up the keys, the arrest would be unlawful. This is obviously a trap for private arresters.

Even if A has the power of arrest, he must ordinarily inform the person arrested that he is being arrested and the reason for it, i.e. the act for which arrest is made: Christie v. Leachinsky 20 [facts]. So A must shout to tell B that he is under arrest and why.

Not one candidate in a hundred gives an answer comparable with this; students regularly fail to consider what it is exactly that A suspects. The Vagrancy Act 1824 section 4 could also be referred to, but those taking an examination in the law of tort would not be expected to know it.

The question just considered asked: “Can B sue A?” This formula, very common in law examinations, means “Can B sue A successfully!” Examinees sometimes answer it by saying: “B can sue A but he will fail.” This displays the writer’s common sense but also his lack of knowledge of legal phraseology. It is true that there is virtually ho restriction upon the bringing of actions: for instance, I can at this moment sue the Prime Minister for assault—though I shall fail in the action. But when a lawyer asserts that A can sue B, what he means is that A can sue B, successfully; if he meant his words to be taken literally, they would not have been worth the uttering.

For much the same reason, you should never write a sentence like: “B can argue that...but the argument will fail,” or “B has committed such-and-such a crime, but he has a good defence.” The proper way to put the last sentence would be to say: “If B is charged with such-and-such a crime, he will have a good defence.”

When a problem is based on a rule—e.g. the rule in Derry v. Peek21 or Rylands v. Fletcher22—it is usually advisable to state the whole rule in a sentence or two, even though some parts of the rule are not material to the problem. No further details should be given of parts of the rule that are not material.

Where the problem turns on an exception to a rule (e.g. an exception to the rule in Rylands v. Fletcher), there is usually no need to state any exceptions other than the one that is relevant.

QUESTIONS DIVIDED INTO PARTS

Questions are frequently divided into two or more parts, and this division raises difficulties of its own for the inexpert candidate.

Sometimes the problem begins with a common opening part before branching out into its subdivisions. The following is an example:

A writes to B offering to sell him his horse Phineas for £100.

(i) B posts a letter accepting, but he misdirects it and in consequence it is a week late in being delivered to A. Meanwhile A has sold Phineas to C.

(ii) B, after posting a letter of acceptance to A, sends A a telegram cancelling “my letter now in the post.” The telegram is delivered to A before B’s letter.

Discuss.

It should be obvious that in this type of problem (i) and (ii) are alternative possibilities, to be dealt with separately; (ii) is not meant to follow upon and include the facts of (i). Yet I have known students to suppose that this is all a single problem, to be disposed of in a single breath.

Another mistake that one student made with this particular problem was to suppose that the opening sentence was itself a question, inviting a general disquisition on the legal nature of an offer. This, of course, is not so.

A different type of two-part problem is one in which the second part commences: “Would it make any difference to your answer if . . . ?” This means that the second part of the question is the same as the first part, except for the variation expressly stated. An illustration is as follows:

(i) A is firing with an air gun in his garden at a target on a tree. The shot glances off the tree and hits A’s gardener, B. Can B sue A?

(ii) Would your answer be different if the shot had been fired by A’s son, C?

Most students assume that (ii) is a question as to the liability of C. Clearly on its wording the question is the same as in (i), namely, as to the liability of A.

Sometimes a problem is so worded as to involve two successive questions, but the second question logically arises only if the first is answered in a certain way. Suppose that the student has answered the first question in the other way; is he now to answer the second? The answer is “Yes.” For the purpose of answering the second part of the question he should state that he is assuming that he is wrong in his answer to the first. An example from the law of contract:

Pickwick, who manufactures cricket bats, affixed a signboard on the boundary of the field belonging to the Dingley Dell Cricket Club, stating that if any batsman hit the signboard with a batted ball during the course of a match Pickwick would pay him the sum of £5. Podder hit the board whilst batting in a match between Dingley Dell and Muggleton, and afterwards orally requested Pickwick to pay £5 to Mrs Jingle, to whom Podder was indebted for board and lodging. Mrs Jingle demands payment of the £5 from Pickwick but is refused. Discuss the rights of the parties.

This problem involves two issues: (i) whether there is a contract between Pickwick and Podder, resulting in a debt owed by Pickwick to Podder; (ii) whether Podder has validly assigned the debt to Mrs Jingle. Issue (i) turns on the difficult distinction between consideration and the performance of a condition precedent to a gratuitous promise, or if you like on the equally difficult question of intent to contract. It may well happen that the student in considering this comes to the conclusion that there is no contract between Pickwick and Podder. If this view is correct, issue (ii) does not really arise. All the same, it should be dealt with. It may be that the examiner disagrees with the candidate in his answer to (i), and although that may not affect the candidate's marks on (i), the candidate will lose the marks on (ii) if he does not deal with it. Even if the examiner agrees with the candidate in his answer to (i), the examiner must have meant (ii)to be dealt with, or else he would not have troubled to put it in.

A fourth kind of two-part question consists of a book-work question followed by a problem. The difficulty here is often that it is not clear whether the problem is meant to bear a relation to the book-work question or not. No universal rule can be stated, because examiners differ in their practice, but nearly always there is meant to be a connection, at least if the two parts of the question are not subdivided by numbers or letters. I am conscious that this may not sound very helpful advice. But some examinees fail to search for a connection between the book-work question and the rider, thus missing the point intended by the examiner, while other examinees, finding no connection be¬tween the two (in fact there being none), avoid the question altogether. The student must be left to steer his own course between this Scylla and Charybdis.

THE OVERLAPPING OF SUBJECTS

In a problem on criminal law, make no statement as to the law of tort, unless of course the question whether a crime has been committed involves a question of tort. Similarly, in a problem on tort make no statement as to the law of crime, unless again the existence of a tort depends on the law of crime.

This mutual exclusiveness of subjects does not hold between tort and contract. Where a problem is set in a tort paper or in a contract paper involving both a possible tort and a possible breach of contract, both aspects of the matter should be discussed. This is because a tort and a breach of contract can be proceeded upon in the same action, whereas the distinction between criminal and civil law is more deeply marked. The overlap between tort and contract should be looked for particularly in problems involving the negligent carriage of passengers by rail, road or sea, and the sale (or repair) of goods or houses that turn out not to be of merchantable quality or reasonably fit and that cause physical injury to the buyer (or owner).

In problems on tort and criminal law the student is expected to enumerate and discuss all the possible torts or crimes that may have been committed on the facts given in the problem, and also all the possible defences that may be raised. In this respect the answering of an examination question differs somewhat from the giving of an opinion in legal practice. A practitioner will not argue legal points unnecessarily. He will not, for example, argue the question whether there exists a tort of offensive invasion of privacy, if his client has a clear remedy in defamation. But an examiner will usually be disappointed if, in an appropriate problem, both points are not discussed. In other words, if a point is relevant, discuss it, even though it be not necessary.

THE ANSWERING OF PROBLEMS IN CRIMINAL LAW

Always consider all the possible crimes that have been committed, by all possible persons, and all the possible defences open to them. By "possible" I mean "seemingly possible to an ignorant person." If you consider that such-and-such crime has not been committed, or that such-and-such defence is not available (though an ignorant person might think it is), do not pass it by in silence but state your opinion expressly. You should also give the reason for your opinion as shortly as the importance of the point seems to require. The reason for this advice is that quite possibly the question was set as a trap, and if you refrain from commenting upon the trap the examiner may think that you have avoided it by good luck rather than good management.

Never come to the defences until you have stated the crime for which the defendant is in your opinion being charged. Start with the responsibility of the perpetrator (principal), taking accessories afterwards.

If you think that the problem leaves open some question of fact, state the law according as the fact is present or absent.

If the outcome is clear you can say so - e.g. "D is guilty of murder." But if the application of law to fact is not clear, you need not state a definite opinion or even "submit" that the position is so-and-so. For example, the question may state that the defendant shot at a burglar when a bystander was standing dangerously close, and hit the bystander. It is not for you to say that the defendant foresaw the possibility of hitting the bystander: that is for the jury. Never assume that the defendant had a particular state of mind unless the

question states that he had it. Instead, consider whether there is any evidence for the jury (sufficient to require the judge to leave the case to the jury); if there is, explain how the judge would direct the jury, and state whether a verdict of guilty would be likely to be upheld or. upset on appeal. It is at these points in a jury trial that the legal Opinion is important: a lawyer is not directly concerned with the work of the jury.

Often the problem will be found to fall short of one of the major crimes. In such a case it will very frequently involve a lesser or lesser-known crime. The student should note these lesser or narrower crimes very carefully when they are mentioned in his book. Here is a short list of them.

An Act that falls short of :	may be:
Manslaughter	Assault and battery (O.A.P.A. 1861. s. 47). Offences under Road Traffic Act 1972 as amended: section 1. causing death by reckless driving; section 2'. reckless driving; section 3. careless driving; section 5. driving "under the influence." Excessive speed (Road Traffic Regulation Act 1967, s. 78A, inserted by Act of 1972, s. 203).
Murder	Abortion (O.A.P.A. 1861 s. 58). Child destruction (Act of 1929). Concealment of birth (O.A.P.A. 1861 s. 60). Infanticide (Act of 1938). Manslaughter (O.A.P.A. 1861 s. 5). Manslaughter on account of diminished res¬ponsibility (Homicide Act 1957 s. 2).
Attempted murder (Criminal Law Act 1981, ss 1,4)	Assault and battery. Wounding, etc.. with intent (O.A.P.A. 1861 s. 18 as amended). Malicious poisoning resulting in danger to life, etc. (O.A.P.A. 1861 s. 23). Malicious wounding, etc. (O.A.P.A. 1861 s. 20). Occasioning actual bodily harm by an assault (O.A.P.A. 1861 s. 47). Malicious poisoning with intent to injure, etc. (O.A.P.A. 1861 s. 24). Robbery (Theft Act 1968 s. 8). Offence under Prevention of Crime Act 1953 or Firearms Act 1968. Possessing an article with intent to commit an indictable offence against the person (O.A.P.A. 1861 s. 64, as amended by C.L.A. 1967 Sched. 2).
Criminal damage (Criminal damage Act 1971)	Cruelty to animals (Protection of Animals Act 1911). Theft (Theft Act 1968). Using threat (Criminal Damage Act 1971 s. 2). Having custody of article with intent (ibid. s. 3).
Theft (Theft Act 1968 s. 1)	Taking articles on public display (Theft Act 1968 s. 11). Taking motor-vehicle or other conveyance (Theft Act 1968 s. 12). Obtaining property by deception (Theft Act 1968 s. 15). Obtaining services by deception (Theft Act 1978 s. 1). Making off without paying (Theft Act 1978 s. 3). False accounting (Theft Act 1968 s. 17). Corruption (Prevention of Corruption Act 1906 as amended). Being found on private premises for an unlawful purpose (Vagrancy Act 1824 s., 4). Going equipped for stealing etc. (Theft Act 1968 s. 25).

Robbery (Theft Act 1968 s. 8)	Assault, and battery: aggravated assaults; carry¬ing weapons. Blackmail (Theft Act 1968 s. 21). Threatening letters (O.A.P.A. 1861 s. 16).
Obtaining Property by deception (Theft Act 1968 ss. 15, 16)	Obtaining services by deception (Theft Act 1978 s. 1). Deception in relation to liabilities (Theft Act 1978 s. 2). False accounting (Theft Act 1968 s. 17). Offences under Trade Descriptions Act 1968. Obtaining making of valuable security (Theft Act 1968 s. 20(2)). False document to mislead principal (Prevention of Corruption Act 1906 s. 1(1)).
Forgery Coining (Forgery and Counterfeiting Act 1981)	Theft; obtaining property by deception. False trade description (Trade Descriptions Act 1 1968 s. I).

When several crimes appear to emerge from the facts of a problem, it is best to start your answer with the gravest crime that seems clearly to have been committed. For it would be absurd to open your answer by considering some summary offence of which the defendant is guilty, and then to wind up with the conclusion that he has also committed, say, murder! The murder should come first, and the summary offence as a rather casual postscript. If the defendant is clearly guilty of a crime like wounding with intent, and only doubtfully guilty of murder, it is sensible to start with the clear crime before coming to the doubtful one.

Problems in criminal law often start with an inchoate crime—conspiracy, attempt or incitement. Even though the problem shows that the full crime was consummated, the culprits may be convicted of attempt or incitement, so that it may be relevant to mention these crimes—though normally, of course, the indictment would be for the completed crime, not for a mere attempt or incitement. If you mention the possibility of a conspiracy charge, it would be wise to add that the addition of conspiracy counts when the crime is consummated must be specially justified. As for incitement, if the crime is actually committed the inciter becomes an accessory to it. In other words, the difference between (i) incitement and (ii) being a participant in a crime as one who has counselled or procured it is that in (i) the main crime has not been (or need not have been) committed by the person so incited, and in (ii) it has.

THE ANSWERING OF PROBLEMS IN TORT

As in criminal law, look for all the possible torts that may have been committed, and consider whether their essentials have been satisfied. Draw into your net all possible defendants, and then turn round and consider all the possible defences open to them on the facts given.

There are not so many "obscure" torts as there are obscure crimes, but a considerable overlap occurs between some of the leading torts. The following are the chief examples:

Nuisance. Rylands v. Fletcher. Negligence.	Negligence. Contractual duty to use care.
	Negligence. Breach of statutory duty.
Defamation. Offensive invasion of privacy [—at present non-existent.] Slander of title. Malicious falsehood.	Conversion Trespass to goods.

In the tort of negligence, it is frequently necessary to consider the machinery as to proof of negligence—the burden of proof, functions of judge and jury, res ipsa loquitur. Questions of negligence, contributory negligence and remoteness of damage are frequently wrapped up together, and so are questions of contributory negligence and volenti non fit injuria, and of necessity and private defence.

If the problem appears to be a novel one, it may raise the theory of general liability in tort.

6. MOOTS AND MOCK TRIALS

Glanville Williams in "Moots and Mock Trials" underlines the significance of the moots and mock trials and outlines the procedure usually followed in arranging them for the students of law.

The literal meaning of the term 'moot' is subject to debate. "To moot" means to put forward for discussion. Moots are legal problems in the form of the imaginary cases which are argued by two student counsels, a leader and the junior, on each side with a bench of three judges or perhaps only one representing the court of Appeal or sometimes the House of Lords. Participation in moots helps the law students in many ways. It gives them experience in the art of persuasion and putting a case succinctly and intelligibly. Mooting not only gives practice in court procedure but helps to develop the self confidence that every advocate should possess.

ARRANGEMENT OF MOOTS

The arrangement of moots is usually the responsibility of the students' law society known as the Moot Society. A law teacher or a practising lawyer usually presides on the bench. Law students themselves also may preside on the bench. The moot should ideally have two separate points for arrangement, one each for each of the two sides. The opposing counsel must be notified of the main proposition and of all the authorities relied on by the counsel. The Master of Moots or other organizer should also be informed of the authorities to be cited, in order that he may arrange for such reports or case books which are available to be brought to the court room. Since the moot is attended by an audience it is important to confine the proceedings to a reasonable length of time between half an hour and 40 minutes.

MOOT COURT PROCEDURE

In the court hall the counsels for the appellants are seated on the left side of the judge and those for the respondents on the right side. The presiding judge calls upon the leading counsel for the appellant to argue the case first and then calls his junior and after that the two counsels for the respondent argue the case. The appellant is supposed to have a right of reply subject to the availability of time. Alternatively, the speaking order can be leading counsel for the appellant; both counsels for the respondent, junior counsel for the appellant who has the last word. Both the counsels and the judge strictly follow the procedure and conduct of the court. Counsels rise to their feet when addressing or being addressed by the court. In the course of the proceedings, interruption should be avoided as far as possible. 'Learned junior'; 'learned friend', 'Learned judge' etc are the phrases to be used to refer to the other counsel. 'My Lordship' and 'Your Lordship' are the polite ways of addressing a judge. The difference between 'My Lord' and 'Your Lordship' is that the former is used in vocative cases and the later is the mode of referring to the judge in the course of sentence (i.e) as a polite substitute for 'You'. Female judges are addressed as 'My Lady' or 'Your Ladyship'.

Another important etiquette to be followed in the proceedings is that a counsel may submit and suggest as strongly as he likes and he may state law and fact, but he should not express his own belief or opinion. As an advocate one is paid to present the client's case and not to offer a sincere opinion as a judge.

PRESENTATION OF THE CASE

Address to the court must be as brief as possible. Points must be enumerated and the part of the argument that is left to junior must be clearly stated. Once the court appears to be convinced on a particular point, argument on that point may be closed. The court may be appraised of all the important points without waste of time. Eye contact of the judge is very important in order to make sure that the argument is heard. Argument must be full of expression and reading must be avoided. Reading out the long passages from text and treatises must be avoided and authorities must be quoted with proper periods and emphasis.

CITATION OF CASES

Mooters are expected to produce authorities for the cases cited. The reports of cases or case books must be produced in the moot. While citing the cases, reference must be pronounced in full, not in abbreviated

form. The facts of the case should be read in full unless the case is relied upon only for an obiter dictum. Citation of a long list of cases is a monotonous thing and therefore the author advises the mooters to limit it to six cases on each side. The object of a moot is to provide practice in developing an argument and citing of cases is only a means to this end.

THE ROLE OF JUDGES

All moot court judges are expected to interject the counsels by questions and objections. The objections need not represent the judge's real opinion; he makes it in order to see how the student counsel responds. After counsels have concluded their argument the presiding judge may invite members of the audience to express their opinions upon the legal problem *Amicus curiae* (friends of the court). The judge may then deliver the judgment and also declare which counsel or side performed best.

MOCK TRIALS

A mock trial differs from a moot in that it is a mock jury -trial, with jury and witnesses. 'Jury' means a group of people attending on a legal case and giving a verdict on the basis evidence given in court. It is not an argument on law. It may look like court proceedings with witnesses dressing themselves up as counsels in ropes. The audience may consist of non -lawyers who often come to be entertained. Since the trial is un rehearsed, it requires forensic ability on the part of the student counsel to take part in it.

There are two ways in which the case may be conducted. It may have been enacted beforehand by the witness so that they testify as to what they have witnessed. The second method is that the organizers may simply have given to each witness a statement of his evidence which he is expected to remember. The former method is more realistic when it comes to cross examination. The actual trial is a valuable experience for budding advocates who take part in it as counsels.

The trials may be conducted in law schools. The cases may be modeled upon an actual trial case. It is advisable to keep the number of witness down to five or six. The participants must have attended real trials in order to learn how things are done. The clerk of the court must know his job.

THE GAME OF ALIBI

The game of alibi, like moots and mock trials, is arranged by the members of the students' law society. The gathering divides into groups of four, each group being composed of two prosecuting counsels and two defendants. It is assumed that the two defendants have committed some crime at a stated time and have set up an alibi. They go out of the room for not more than 10 minutes in order to prepare their story. Then they return for cross examination by the prosecution counsel. The counsel's aim is to break down the alibi by asking some unexpected questions. After the cross examinations, the two counsels put their heads together and then one of them address the jury and submits that the alibi has been broken. The jury signify their verdict by a show of hands. The opinion of the majority is. taken.

FALSE EVIDENCE

False evidence is a game somewhat similar to alibi. Three masked defendants are questioned on their day to day lives by the counsels. One of these defendants has assumed a completely false name and occupation and it is jury's-task to decide which. Each defendant must submit to counsel a week in advance a couple of hundred words summarizing his life and this enables counsels to prepare their questions. The witness is not in court during the interrogation of the defendant. The counsels try to shake the evidence and establish discrepancies between the defendant and his witness. The judge sums up briefly to the jury who consider and announces their verdict. The imposter then declares himself and it is interesting to see if the judicial process has succeeded in ascertaining the truth of the matter.

THIRD DEGREE

Third degree is yet another variant of moots and mock trials. One member of the society is selected as the defendant and he is given the outline of an alibi defence. His alibi may relate to a period between 2 and 5 pm on a day when he left for a town and joined his friend for a tea. The defendant must immediately fill in the details and amplify it under questioning. The object of the rest of the company, who questioned him for 15 minutes, is to establish a self contradiction. Leading questions may be asked. The significance of this game is that it can be played by two players only and it may help to bring out unexpected ability as an implacable interrogator.

Due Process of Law

- Lord Denning

1. Part One - Keeping the Streams of Justice clear and Pure.

1. In the face of Court
2. The Victimisation of witnesses
3. Refusing to answer questions
4. Scandalising the Court
5. Disobedience to an order of the Court
6. Prejudicing a fair trial

1. In the Face of Court

1. In my own presence

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

The most quoted case goes back to the year 1631. It was at Salisbury on the Western Circuit. A prisoner threw a brickbat at the Judge of Assize. It was originally reported in Norman-French. That was the language which was commonly in use by lawyers and reporters at that time. But put into English, the translation is given in 3 Dyer at 1881):

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

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

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

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

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

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

2. The Welsh students invade the Court

It was a dramatic case. Students of Wales were very enthusiastic about the Welsh language and they were very upset because the programmes to Wales were being broadcast in English and not in Welsh. They demonstrated to make a protest. They came up to London. They invaded the Court. I could see their point of view: for I have a special relationship with Wales. During the First World War I was a second lieutenant in the Royal Engineers. I myself am, of course, English on both-sides, from time without memory. But I was posted to the 151st Field Coy. of the Royal Engineers which was attached to the 38th (Welsh) Division. I wore on my arm-flash the Red Dragon of Wales. I served with them in France. One of my proudest records (I was just 19)

is an entry in the history of the Welsh Division recording the night of 23/24 August 1918 when we advanced across the river Ancre under heavy shell and rifle fire:

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

A simple entry of a brave occasion. But I record it now because of some comments I received after the case of the Welsh students, Morris v Crown Office.([1970] 2 QB 114).

It was the first case in which the Court of Appeal had to consider ‘contempt in the face of the Court’. Eleven young students had been sentenced to prison. Each for three months. They were all from the University of Aberystwyth. They were imbued with Welsh fervour. They had been sentenced on Wednesday, 4 February 1970. I always see that urgent cases are dealt with expeditiously. We started their appeal on Monday, 9 February and decided it on Wednesday, 11 February. I also have some say in the constitution of the Court. So I arranged for one of the Welsh Lords Justices to sit. Lord Justice Arthian Davies was well qualified. He was not only Welsh. He could speak Welsh. He sat with Lord Justice Salmon and me. We heard the argument on the Monday and Tuesday. We discussed the case on Wednesday morning and delivered judgment on the Wednesday afternoon. We had to do it so quickly that I hope you will excuse its imperfections. But these are some extracts from it.

‘Last Wednesday, just a week ago, Lawton J, a judge of the High Court here in London, was sitting to hear a case. It was a libel case between a naval officer and some publishers. He was trying it with a jury. It was no doubt an important case, but for the purposes of today it could have been the least important. It matters not. For what happened was serious indeed. A group of students, young men and young women, invaded the court. It was clearly prearranged. They had come all the way from their University of Aberystwyth. They strode into the well of the court. They flocked into the public gallery. They shouted slogans. They scattered pamphlets, They sang songs. They broke up the hearing. The judge had to adjourn. They were removed. Order was restored.

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

‘In sentencing these young people in this way the judge was exercising a jurisdiction which goes back for centuries. It was well described over 200 years ago by Wilmot J in an opinion which he prepared but never delivered. “It is a necessary incident”, he said, “to every court of justice to fine and imprison for a contempt of the court acted in the face of it”. That is R v Almon (1765) Wilm 243, 254. The phrase “contempt in the face of the court” has a quaint old- fashioned ring about it; but the importance of it is this: of all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our^ society. To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power —a power instantly to imprison a person without trial-- but it is a necessary power. So necessary, indeed, that until recently the judges exercised it without any appeal. There were previously no safeguards against a judge exercising his jurisdiction wrongly or unwisely. This was remedied in the year 1960. An appeal now lies to this court; and, in a suitable case, from this court to the House of Lords. With these safe-guards this jurisdiction can and should be maintained.

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

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

‘I hold, therefore, that a judge of the High Court still has power at common law to commit instantly to prison for criminal contempt, and this power is not affected in the least by the provisions of the Act of 1967. The powers at common law remain intact. It is a power to fine or imprison, to give an immediate sentence or to postpone it, to commit to prison pending his consideration of the sentence, to bind over to be of good behavior

and keep the peace, and to bind over to come for judgment if called upon. These powers enable the judge to give what is, in effect, a suspended sentence. I have often heard a judge say at common law, for ordinary offences, before these modern statutes were passed.

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

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

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

'But now what is to be done? The law has been vindicated by the sentences which the judge passed on Wednesday of last week. He has shown that law and order must be maintained, and will be maintained. But on this appeal, things are changed. These students here no longer defy the Jaw. They have appealed to this court and shown respect for it. They have already served a week in prison. I do not think it necessary to keep them inside it any longer. These young people are no ordinary criminals. There is no violence dishonesty or vice in them. On the contrary, there was much that we should applaud. They wish to do all they can to preserve the Welsh language. Well may they be proud of it. It is the language of the bards - of the poets and the singers — more melodious by far than our rough English tongue. On high authority, it should be equal in Wales with English. They have done wrong — very wrong — in going to the extreme they did. But, that having been shown, I think we can, and should, show mercy on them. We should permit them to go back to their studies, to their parents and continue the good course which they have so wrongly disturbed.

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

'Subject to what my brethren will say in a few moments, 1 would propose that they be released from prison today, but that they be bound over to be of good behavior, to keep the peace and to come up for judgment if called upon within the next 12 months'.

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

3. The Official Solicitor comes in with the Devil

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

Now the Official Solicitor is a most useful person. He looks after the interests of those who cannot, or will not, look after themselves. Such as infants and persons in need of care and protection. He takes a special interest in persons committed for contempt of court: because people are some times a bit obstinate. Quite often a wife gets an order against her husband for the sale of the house — he disobeys it and is committed for contempt. He would rather stay in prison indefinitely than give up the house to his wife. In such a case the Official Solicitor takes up the case for him and gets him released, as in Danchevsky v Danchevsky. Such

persons often refuse to do anything to purge their contempt. They take no steps to appeal. They sit sullenly aggrieved in their prison cells. They may sit there indefinitely unless somebody does something to bring their case before the Court. So the Official Solicitor does it.

The Official Solicitor took up the case of Mr. Balogh. He lodged notice of appeal. But who was to be respondent to the appeal? It could not be the Judge. No judge can be sued, served or summoned for anything he does as a judge. So we invited the Attorney-General to appoint a counsel as amicus curiae — that is, as a friend of the Court — to help us. That is the practice. The Attorney-General appointed the Treasury 'Devil', Mr. Gordon Slynn. A 'devil', in the eyes of the law, is an unpaid hack. When I started at the Bar, I often looked up cases and even wrote opinions for a barrister senior to me — and was not paid a penny. I 'devilled' for him. I did it to get experience. It is different now. A 'devil' is always paid for his work. The Treasury 'Devil' is the best of devils. He is the pick af the juniors at the Bar with a reversion to a judgeship. Mr. Gordon Slynn was outstanding. The best I have ever known. Hie will go far.

4. The 'laughing gas' does not escape

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

" 'There is a new Court House at St. Albans. It is air-conditioned. In May of this year the Crown Court was sitting there. A case was being tried about pornographic films and books, Stephen Balogh was there each day. He was a casual hand employed by solicitors for the defence, just as a clerk at £5 a day, knowing no law. The case dragged on and on. He got exceedingly bored. He made a plan to liven it up. He knew something about a gas called nitrous oxide (N_20). It gives an exhilarating effect when inhaled. It is called "laughing gas". He had learned all about it at Oxford. During the trial he took a half cylinder of it from the hospital car park. He carried it about with him in his brief case. His plan was to put the cylinder at the inlet to the ventilating system and to release the gas into the court. It would emerge from the outlets which were just in front of counsel's row. So the gas, he thought, would enliven their speeches. It would be diverting for the others. A relief from the tedium of pornography. So one night when it was dark he got on to the roof of the court house. He did it by going up from the public gallery. He found the ventilating ducts and decided where to put the cylinder. Next morning, soon after the court sat, at 11.15, he took his brief case, with the cylinder in it, into court no. 1. That was not the pornography court. It was the next door court. It was the only court which had a door leading up to the roof. He put the brief case on a seat at the back of the public gallery. Then he left for a little while. He was waiting for a moment when he could slip up to the roof without anyone seeing him. But the moment never came. He had been seen on the night before. The officers of the court had watched him go up to the roof. So in the morning they kept an eye on him. They saw him put down his brief case. When he left for a moment, they took it up. They were careful. There might be a bomb in it. They opened it. They took out the cylinder. They examined it and found out what it was. They got hold of Balogh. They cautioned him. He told them frankly just what he had done. They charged him with stealing a bottle of nitrous oxide. He admitted it. They kept him in custody and reported the matter to Melford Stevenson J who was presiding in court no. 1 (not the pornography court). At the end of the day's hearing, at 4.15 p.m., the judge had Balogh brought before him. The police inspector gave evidence. Balogh admitted it was all true. He meant it as a joke. practical joke. But the judge thought differently. He was not amused. To him it was no laughing matter. It was a very serious contempt of court. Balogh said:

"I am actually in the wrong court at the moment. . . . The proceedings which I intended to subvert are next door. Therefore, it is not contempt against your court for which I should be tried". The judge replied:

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

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

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

The judge gave sentence:

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

will now go to prison for six months". Balogh made an uncouth insult: "You are a humourless automaton. Why don't you self-destruct?" He was taken away to serve his sentence.

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

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

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

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

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

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

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

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

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

Conclusion

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

2. The Victimisation of witnesses

1. The trade union member is deprived of his office

Now I turn to a closely related topic. Every Court has to depend on witnesses. It is vital to the administration of justice that they should give their evidence freely and without fear. Yet everyone knows that witnesses may be suborned to commit perjury — they may be threatened with dire consequences if they tell the truth — they may be punished afterwards for telling the truth. You might think it obvious that it was a gross contempt of court for anyone to intimidate or victimise a witness. Yet it was not until 1962 that this was fully debated and considered. It was in Attorney- General v Butterworth [1963] 1 QB 696. Mr. Butterworth and others were on the Committee of the branch of a trade union. One of the members had given evidence which they disliked. He had given it before the Restrictive Practices Court. Mr. Butterworth and others determined to punish him for it. They deprived him of his office as branch delegate and treasurer. It was reported to the Attorney-General: because he has a public duty to prosecute for contempt of court. He considered that the action of Mr. Butterworth and the others was a contempt. He applied to the Restrictive Practices Court. They held it was not a contempt. The Attorney- General appealed to our Court.

Now I remember this case for a particular reason. It was argued for three days on Wednesday, Thursday and Friday, 11, 12 and 13 July 1962. It was the 'night of the long knives'. The Prime Minister, Mr. Harold Macmillan, dispensed with most of his ministers, at a minute's notice; they included the Lord Chancellor, Lord Kilmuir. That left him very sore. Now one of the duties of the Master of the Rolls is that he has to swear in any new Lord Chancellor. One day I was warned that I would have to swear in a new Lord Chancellor. I was not told who he was. But during that morning the Attorney General, Sir Reginald Manningham-Buller (who was arguing the case himself), asked to be excused for an hour or two. We guessed the reason. He was to be the new Lord Chancellor. So on one day he was arguing before us as Attorney-General. The next day he was Lord Chancellor above us. We decided in his favour — but on the merit of his argument — not because he had become Lord Chancellor. Things like that make no impact on us. As in all these cases we do not delay. We prepared our judgments over the weekend and gave them on the Monday morning. He was sworn in before us on the Tuesday. In the judgment we sought to enunciate the relevant principles [1963] 1 QB 696 at 717.

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

'I cannot agree with the decision of the Restrictive Practices Court. It may be that there is no authority to be found in the books, but if this be so, all I can say is that the sooner we make one the better. For there can be no greater contempt than to intimidate a witness before he gives his evidence or to victimise him afterwards for having given it. How can we expect a witness to give his evidence freely and frankly, as he ought to do, if he is liable, as soon as the case is over, to be punished for it by those who dislike the evidence he has given? Let us accept that he has honestly given his evidence. Is he to be liable to be dismissed from his employment, or to be expelled from his trade union, or to be deprived of his office, or to be sent to Coventry, simply because of that evidence which he has given? I decline to believe that the law of England permits him to be so treated. If this sort of thing could be done in a single case with impunity, the news of it would soon get round. Witnesses in other cases would be unwilling to come forward to give evidence, or, if they did come forward, they would hesitate to speak the truth, for fear of the consequences. To those who say

that there is no authority on the point, I would say that the authority of Lord Langdale MR in Littler v Thomson (1839) 2 Beav 129 at 131 is good enough for me:

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

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

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

'In most of the cases which I have mentioned the witness had finished his evidence but the case itself was not concluded at the time when the step was taken against him. Nevertheless the principle was laid down, as I have shown, in terms wide enough to cover cases where the proceedings were concluded. And I must say that I can see no sense in limiting this species of contempt to punishment inflicted on a witness while the case is still going on. Victimisation is as great an interference with justice when it is done after a witness gets home as before he gets there. No such distinction is drawn in the case of interference with a juror. Nor should it be drawn in the case of a witness. In R v Martin (1848) 5 Cox CC 356. the jury convicted one John Martin; the foreman of the Jury had scarcely reached home and gone upstairs when the prisoner's brother, James Martin, called and challenged the foreman to mortal combat for having bullied the jury. This was held by the court in Ireland to be a contempt of court, as indeed it surely was. It does not matter whether the challenge was before or after he got home. Nor could it matter in the case of a judge. Nor in the case of a witness.

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

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

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

2. The tenant is evicted from his home

Now there is an important point which arises when a witness is victimised — and suffers loss on account of it. The contemner can be punished by the Courts by fine or imprisonment. But can the sufferer sue the contemner for damages? I should have thought he could, or at least, should be able to do so. The victimisation is not only a criminal offence. It is, to my mind, a civil wrong — a tort as lawyers call it. This point was much discussed a few months later: and I regret to say that I found myself in a minority. It was to my mind a shocking case. A house was let out by a landlord in tenement flats. The landlord forcibly evicted one tenant called Harrand. That tenant sued the landlord for damages for wrongful eviction. Chapman, the next-floor tenant, had seen what had happened. Then these were the facts reported Chapman v Honig [1963) 2 QB 502 at 504.

'. . . Chapman had been tenant since 1959. He had seen something of what happened on the second floor, and Harrand wanted him to give evidence in his action against the landlord described above. Chapman, fearing what might befall him if he gave evidence against his landlord, did not go voluntarily to the court. He was subpoenaed to do so, and only gave evidence in obedience to the subpoena. He gave evidence on 22 June 1962, at the hearing before Judge Baxter. On the very next day, 23 June 1962, the landlord served on Chapman notice to quit his first-floor flat on 28 July 1962. The reason he did that was simply because Chapman had given evidence for Harrand. The object of the landlord was, the judge found, "to punish or victimise Mr. Chapman for having given evidence".

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

'. . . . On the judge's findings the landlord gave this notice to quit and attempted to evict the tenant vindictively in order to punish Chapman for having given evidence against him. That is in itself a contempt of court — a criminal offence — and punishable accordingly (see Attorney-General v Butterworth) ([1963] 1 QB 696, [1963] LR 3 RP 327, [1962] 3 All ER 326, [1962] 3 WLR 819 CA) and, being done by father and son in a combination to injure, it may also have been a conspiracy: see Crofter Hand Woven Harris Tweed Co Ltd v Veitch [1942] AC 435, [1942] 1 All ER 142, 58 TLR 125, HL. It was in any case unlawful. My brother Pearson L J has, however, some doubt about it. He thinks that the victimisation of a witness is not a contempt of court in itself. It is only a contempt if other people are likely to get to know of it and be deterred from giving evidence in other actions. If that is right, it would mean this, that if the tenant proclaims his grievance upon the housetops, telling everyone about it, the landlord is guilty of contempt. But if the tenant should keep his suffering to himself, without telling his neighbors why he is evicted, the landlord does no wrong. That cannot be right. . . .

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

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

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

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

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

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

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

3. Refusing to answer questions

1. Two journalists are sent to prison

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

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

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

A preliminary point arose as to the relevancy of the question. A witness is only bound to answer a relevant question, not an irrelevant one. The cases, heard together, were Attomey-General, v Mulholland; Attorney-General v Foster. [1963] 2 QB 477 at 487 I dealt with the point in this way:

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

The question of privilege (Ibid at 489)

'But then it is said (and this is the second point) that however relevant these questions were and however proper to be answered for the purpose of the inquiry, a journalist has a privilege by law entitling him to refuse to give his sources of information. The journalist puts forward as his justification the pursuit of truth. It is in the public interest, he says, that he should obtain information in confidence and publish it to the world at large, for by so doing he brings to the public notice that which they should know. He can expose wrongdoing and neglect of duty which would otherwise go un-remedied. He cannot get this information, he says, unless he keeps the source of it secret. The mouths of his informants will be closed to him if it is known that their identity will be disclosed. So he claims to be entitled to publish all his information without ever being under any obligation, even when directed by the court or a judge, to disclose whence he got it. It seems to me that the journalists put the matter much too high. The only profession that I know which is given a privilege from disclosing information to a court of law is the legal profession, and then it is not the privilege of the lawyer but of his client. Take the clergyman, the banker or the medical man. None of these is entitled to refuse to answer when directed to by a judge. Let me not be mistaken. The judge will respect the confidences which each member of these honourable professions receives in the course of it, and will not direct him to answer unless not only it is relevant but also it is a proper and, indeed, necessary question in the course of justice to be put and answered. A judge is the person entrusted, on behalf of the community, to weigh these conflicting interests — to weigh on the one hand the respect due to confidence in the profession and on the other hand the ultimate interest o f the community in justice being done or, in the case of a tribunal such as this, in a proper investigation being made into these serious allegations, if the judge determines that the journalist must answer, then no privilege will avail him to refuse.

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

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

2. The New Statesman is angry

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

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

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

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

The possibility is laughably remote.

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

Thanks be to the Daily Mirror !

4. Scandalising the Court

1. Lord Mansfield is criticised

When the Judges of a Court are criticised or defamed — or as it is put ‘scandalised’ — they can punish the offender. They do it, they say, not to protect themselves as individuals but to preserve the authority of the Court. It was so stated in one of the most eloquent passages in our law books — in a judgment which was prepared but never delivered. The Judge who was criticised was one of our greatest. It was Lord Mansfield himself in 1765. He had made an amendment to an information against John Wilkes. Now Mr. Almon had a shop in Piccadilly. He published a pamphlet entitled ‘A Letter concerning Libels, Warrants, Seizure of Papers, & c.’. He sold it in his shop for Is 6d. In it he said that Lord Mansfield had made the amendment ‘officiously, arbitrarily, and illegally’. Nowadays we are used to criticisms of that kind but in those days the Attorney-General moved to commit Mr. Almon for contempt of court. The case was argued and Mr. Justice Wilmot prepared a judgment of 28 pages in length ready to punish Mr. Almon. But Mr. Almon apologised. The Attorney- General resigned. The proceedings were dropped. So Mr. Justice Wilmot’s judgment was never delivered. Forty years later it was published in a volume of Wilmot’s cases under the title R v Almon (1765) wilm 243-271. In it he said (at page 259):

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

2. Mr. Justice Avory comes under fire

We have travelled far since that time. In the 1920’s the offence of ‘scandalising the Court’ was regarded as virtually obsolete. But it was revived in a case in 1928 when I was four years called to the Bar. I was in chambers at No. 4 Brick Court. I had few briefs. I spent much of my time editing — or helping edit — a new edition of Smith’s Leading Cases. But I did find time to go across the Strand to listen to this cause célèbre. The New Statesman had published an article criticising Mr. Justice Avory. Now he was a Judge held by the

profession with respect, almost with awe. He was a small man but resolute and stern. It showed in his face with his firm mouth and piercing grey eyes. He had tried a libel action with a jury. They had awarded £200 damages against Dr. Marie Stopes, the advocate of birth control - then much frowned upon — see Sutherland v Stopes [1925] AC 47. The New States-man denounced the case and added these words:

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

Proceedings were taken against the editor of the New Statesman for contempt of court. They are reported in R v New Statesman (1928) 44 TLR 301. On the one side was the Attorney-General,

Sir Douglas Hogg KC. On the other, Mr. William Jowitt KC. Each was a brilliant advocate. Each was afterwards Lord Chancellor. But how different. Jowitt — tall, handsome and distinguished with a resonant voice and clear diction. Hogg looked like Mr. Pickwick and spoke like Demosthenes. Jowitt put it well for the New Statesman. He quoted a judgment by a strong Board of the Privy Council in 1899 saying:

‘Committals for contempt of Court by scandalising the Court itself have become obsolete in this country. Courts are contented to leave to public opinion attacks or comments derogatory or scandalous to them’ (McLeod v St. Aubyn) [1899] AC 549 at 561.

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

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

3, We ourselves are told to be silent

Oddly enough, the last case on this subject concerned Sir Douglas Hogg’s son, Mr. Quintin Hogg, as he then was. In his full title, the Rt. Hon. Quintin Hogg QC, MP. Now Lord Hailsham of St. Marylebone, the Lord Chancellor, he is the most gifted man of our time. Statesman, Orator, Philosopher —he has no compare. Whilst out of office, he is by turns author, journalist, and television personality. In his exub¬erance he wrote for Punch and in 1968 found himself brought up by Mr. Raymond Blackburn on the charge that he was guilty of contempt of court. He criticised the Court of Appeal in words which were quite as strong as those in which Mr. Almon criticised Lord Mansfield. His words are set out fully in the report of the case, R v Commissioner of Police of the Metropolis [1968] 2 QB 150 at 154, He said:

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

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

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

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

‘It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that,

from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

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

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

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

5. Disobedience to an order of the Court

1. Strict proof

One of the most important powers of a court of law is its power to give orders. Very often it has to make an order commanding a person to do something — or restraining him in some way. If he disobeys, the Court has one weapon in its armoury which it can use. It can punish him for contempt of court. Either by fine or by imprisonment. This kind of contempt has the characteristics which are common to all contempt of court. It is a criminal offence. It must be proved beyond reasonable doubt. We laid that down in Re Bramblevale Ltd (1970) 1 Ch 128. But in addition the Court insists on several requirements being strictly observed.

2, The three dockers

This strictness was very much in evidence in the case oft|ie three dockers, Churchman v Shop Stewards [1972] 1 WLR 1094. It arose out of the Industrial Relations Act 1971 which set up a new court, the industrial Relations Court. It was bitterly opposed by the trade unions and their members. So much so that they refused to recognise the new court: or to obey the orders issued by it. A crisis arose when the dockers in the East End of London picketed a depot. The Court issued an order comm an ding them to stop the picketing. The dockers did not appear before the Court nor were they represented. They continued the picketing. The Industrial Relations Court gave judgment on Wednesday, 14 June 1972 (which is quoted at page 1097):

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

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

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

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

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

Everyone asked at once: Who is the Official Solicitor? Who put him up to this? What right had he to represent the men when they wished for no representation and what right had he to come to the Court and ask for the committal order to be quashed? On what ground was it quashed? I gave the reasons in my judgment on the fateful Friday (at page 1097):

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

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

I went on:

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

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

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

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

3. The five dockers

Just over five weeks later, 26 July 1972, that story almost repeated itself. But this time it was five dockers, not three. They picketed the container depot. The industrial court ordered that they were to be imprisoned for contempt. Again there was the threat of a general strike. Again we were ready to hear an immediate appeal by the Official Solicitor. But he was told by someone to hold his hand. The reason was because the House of Lords rushed through a decision which was said to affect the matter. It was Heaton's Case [1973] AC 15. They were busy amending their drafts - in typescript - right up to the last moment. Their decision was telephoned at once to the President of the Industrial Court. It gave him sufficient reason to revoke the order for committal. He revoked it. The general strike was averted. Another emergency was over. The lesson to be learned from the dockers' cases is that the weapon of imprisonment should never be used - for contempt of court — in the case of industrial disputes. Some better means must be found. Can anyone suggest one ?

4 . The ward of court

Under this head of disobedience there are cases where a newspaper publishes a report of proceedings which are held in private. Most cases are — and are bound to be — heard in public and there is no bar to a fair and accurate report of them. But some cases are held in private: and a newspaper is guilty of a contempt of court if it publishes a report of what took place. Particularly is this the case in wardship proceedings which are usually held in private. The point arose in 1976 in a case reported as Re F [1977] Fam 58. A girl of 15 ran away with a man of 28. He gave her drugs and had sexual intercourse with her, knowing that she was only 15. Her parents were so worried that they applied for her to be made a ward of court. The girl was placed in a hostel. A social worker advised that the man of 28 should be allowed to visit her there. The Daily Telegraph got to know of this and published an article headed, 'Jailed lover "should visit hostel girl, 16"

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

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

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

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

‘On principle, it seems to me that, in order to be found guilty the accused must have had a guilty mind — some guilty knowledge or intent — mens rea, as it is called. This question of mens rea often comes up. Much depends on the nature. “The mental elements of different crimes differ widely”: ....

What then is the mental element here? In considering it, it must be remembered that the offence is not restricted to newspaper editors or reporters. Anyone who publishes information relating to wardship proceedings may be found guilty. The girl herself, or her parents, or the lawyers in the case, may find themselves charged with the offence. Even if they only tell the story by word of mouth to a friend, they may be guilty of an offence: for that would be a publication of it. Seeing that the offence is of such wide scope, it seems to me that a person is only to be found guilty of it if he has published information relating to wardship proceedings in circumstances in which he knows that publication is prohibited by law, or recklessly in circumstances in which he knows that the publication may be prohibited by law, but never the-less goes on and publishes it, not caring whether it is prohibited, or not. As if he said: “I don’t care whether it is forbidden, or not. I am not going to make any inquiries. I am going to publish it”. Proof of this state of mind must be up to the standard required by the criminal law. It must be such as to leave no reasonable doubt outstanding.

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

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

6. Prejudicing a fair trial

1. 'Vampire Arrested'

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

'VAMPIRE ARRESTED'

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

Lord Goddard was the Chief Justice. He said: 'There has been no more scandalous case. It is worthy of condign punishment'. He fined the newspaper £10,000. He sent the editor to prison for three months. He added: 'Let the directors beware. If this sort of thing should happen again, they may find that the arm of the law is strong enough to reach them too'.

2. The Thalidomide case

By far the most important case in recent years is the Thalid-omide case. It is reported in the Court of Appeal in AG v Times Newspapers Ltd [1973] 1 QB 710 and in the House of Lords in [1974] AC 273. "Mothers when pregnant had taken the drug thalidomide. Their children has been born deformed. That was in 1962. Actions were started at once for damages. Distillers, who distributed the drug, tried to settle the actions. All parents agreed to a settlement except five. An application was made to our Court to remove those five parents — as next friends — so as to get the children represented by the Official Solicitor. It was known that he would agree to a settlement. If that move had succeeded, all the cases would have been settled. There would have been no reported case anywhere. But we refused to remove those five parents. Our refusal is reported in Re Taylor's Application [1972] 2 QB 369. It was the turning point of the case. The rest is best told by what I said in the Court of Appeal [1973] 1 QB 710. (at page 736):

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

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

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

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

'But in so stating the law, I would emphasise that it applies only "when litigation is pending and is actively in suit before the court". To which I would add that there must appear to be "a real and substantial danger of prejudice" to the trial of the case or to the settlement of it. And when considering the question, it must always be remembered that besides the interest of the parties in a fair trial or a fair settlement of the case there is another important interest to be considered. It is the interest of the public in matters of national concern, and the freedom of the press to make fair comment on such matters. The one interest must be balanced against the other.

There may be cases where the subject matter is such that the public interest counterbalances the private interest of the parties. In such cases the public interest prevails. Fair comment is to be allowed. It has been so stated in Australia in regard to the courts of law: see Ex parte Bread Manufacturers Ltd (1937) 37 SR (NSW) 242 and Ex parte Dawson [1961] SR (NSW) 573. It was so recommended by a committee presided over by Lord Salmon on The Law of Contempt in Relation to Tribunals of Inquiry: see (1969) Cmnd. 4078, para 26.

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

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

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

Our decision was reversed by the House of Lords. I hope that I will be forgiven for not quoting from their judgements. They stated a new principle. It was that newspapers should not publish comments or articles which 'prejudged the issue in pending proceedings'. This new principle was criticised by the Committee over which our dear friend Lord Justice Phillimore presided (1974) Cmnd. 5794. It was a very good Committee. 'Harry' Phillimore as we knew him affectionately, devoted his last years to it. They heard much evidence and disposed of the House of Lords by saying (at page 48):

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

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

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

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

3. A 'gagging writ'

Let us hope too that the public interest will prevail so as to stop what has been called a 'gagging writ'. There was a company director called Wallersteiner. He tried to stop criticism of him at a shareholders' meeting. He issued a writ against the complaining shareholder: and then sought to shut him up by saying the matter was 'sub judice'. I dealt with this once and for all, I hope, in Wallersteiner v Moir [1974] 1 WLR991 at 1004-1005.

'I know that it is commonly supposed that once a writ is issued, it puts a stop to discussion. If anyone wishes to canvass the matter in the press or in public, it cannot be permitted. It is said to be "sub judice". I venture to suggest that is a complete misconception. The sooner it is corrected, the better. If it is a matter of public interest, it can be discussed at large without fear of thereby being in contempt of court. Criticisms can continue to be made and can be repeated. Fair comment does not prejudice a fair trial. That was well pointed out by Salmon J in Thomson v Times Newspapers Ltd [1969] 1 WLR 1236, 1239-1240. The law says — and says emphatically — that the issue of a writ is not to be used so as to be a muzzle to prevent discussion. Jacob Factor tried to suppress the "Daily Mail" on that score, but failed: see R v Daily Mail (EditorJ, ex parte Factor (1928) 44 TLR 303. And Lord Reid has said that a "gagging writ" ought to have no effect: see Attorney-General v Times Newspapers Ltd [1974] AC 273, 301. Matters of public interest should be, and are, open to discussion, not with standing the issue of a writ.

'So here I would hold that a discussion of company affairs at a company meeting is not a contempt of court. Even if a writ has been issued and those affairs are the subject of litigation, the discussion of them cannot be stopped by the magic words "sub judice". It may be there are newspaper reporters present — so that the words will be published at large next day. Nevertheless, the shareholders can discuss the company affairs quite freely without fear of offending the court. The reason is simple. Such discussion does not prejudice fair trial of the action. No judge is likely to read the newspaper reports, let alone be influenced by them. Nor are the members of a jury, if there should be a jury. They do not read the reports of company meetings. In any case, they would not remember them by the time of the trial. Mr. Lincoln suggested that someone at the meeting might use words such as to bring improper pressure to bear on the litigants or on witnesses. If that were so, I have no doubt the court could intervene. But that suggestion cannot be admitted as an excuse for stifling discussion. And Lord Reid said in Attorney-General v Times Newspapers Ltd [1974] AC 273, 296: "there must be a balancing of relevant considerations". The most weighty consideration is the public interest. The shareholders of a public company should be free to discuss the company affairs at the company meetings, if a shareholder feels that there have been, or may be, abuses by those in control of the company, he should be at liberty to give voice to them.

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

4. The Exclusive Brethren

There remains one last point. Which are the courts to be- protected by the law of contempt? Hitherto the question has arisen in regard to the superior courts. But do the same principles apply to the inferior courts? We had to consider it recently when a case was pending in a local valuation court about rates. It is Attorney-General v British Broadcasting Corporation [1979] 3 WLR 312 at 319. A religious sect sought to stop a television 'broadcast which was disparaging of them. It all depended if the Local Valuation Court was a 'court' which the law would protect. My colleagues thought it was. I thought it was not. I ventured to summaries the principles in these words:

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

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

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

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

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

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

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

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

Conclusion

Looking at it broadly, the process of Contempt of Court is designed to secure that every person has a fair trial; or, to put it in other words, it is a procedure by which the Court condemns any conduct which tends to prejudice a fair trial. The Courts will restrain it by injunction beforehand or by punishment afterwards. The present tendency is to say that the process should be left in the hands of the Attorney- General: that he is the person who should decide whether it should be invoiced or not. It is no doubt proper for any complaint to be laid before the Attorney-General so that he may, if he thinks fit, institute proceedings for contempt. But it should not be exclusively in his hands. Some cases wear a political complexion. The Attorney-General may be reluctant to take proceedings for fear of repercussions affecting his party. So the Courts should be able to take steps at the instance of anyone who has a sufficient interest in the matter.

2. Part two - Inquiries into conduct

1. Into the Conduct of Judges
2. Into the Conduct of Ministers
3. Into the Conduct of Directors
4. Into the Conduct of Gaming Clubs
5. Into the Conduct of Aliens
6. Into the delays of Lawyers

1. Into the conduct of judges

1. The judge who talked too much

Once upon a time there was a judge who talked too much. He asked too many questions. One after another in quick succession. Of witnesses in the box. Of counsel in their submissions. So much so that they counted up the number. His exceeded all the rest put together. Both counsel made it a ground of appeal.

He was The Honourable Sir Hugh Imbert Periam Hallett whose initials gave him the nickname 'Hippy* Hallett. He had been a judge for 17 years. He earned a big reputation as a junior at the bar: and in silk for his knowledge of the law. He used to appear in the Privy Council where Lord Maugham appreciated his talents and appointed him a judge in 1939. He started his judicial career quietly enough but — as often happens — as his experience grew so did his loquacity. He got so interested in every case that he dived deep into every detail of it. He became a byword.

The climax came in an ordinary sort of case. It is Jones_v National Coal Board [1957] 2 QB 55. The roof of a coal-mine had fallen in. A miner had been buried by it and died. The widow claimed damages. The case was tried by Hallett J at Chester. He rejected the widow's claim. She appealed on the ground, among others, that the Judge's interruptions had made it impossible for her counsel to put her case properly. The Board put in a cross-appeal including among others that the Judge's interruptions had prevented the Board from having a fair trial. The appeal was argued before us by Mr. Gerald Gardiner QC (afterwards Lord Chancellor) for the widow. He was the most able advocate I have known. On the other side side Mr. Edmund Davies QC (afterwards Lord Edmund- Davies). He was the most resourceful. We usually in such a case give judgment straightaway at the end of the argument. But on this occasion we reserved it for just over three weeks. We realised that it might lead to the end of the Judge's career; as it did. So we took special care. This is what I said, speaking for the whole Court. Ibid. at 61.

'We much regret that it has fallen to our lot to consider such a complaint against one of Her Majesty's judges: but consider it we must, because we can only do justice between these parties if we are satisfied that the primary facts have been properly found by the judge on a fair trial between the parties. Once we have the primary facts fairly found, we are in as good a position as the judge to draw inferences or conclusions from those facts, but we cannot embark on this task unless the foundation of primary facts is secure.

'No one can doubt that the judge, in intervening as he did, was actuated by the best motives. He was anxious to understand the details of this complicated case, and asked questions to get them clear in his mind. He was anxious that the witnesses should not be harassed unduly in cross- examination, and intervened to protect them when he thought necessary. He was anxious to investigate all the various criticisms that had been made against the board, and to see whether they were well founded or not. Hence, he took them up himself with the witnesses from time to time. He was anxious that the case should not be dragged on too long, and intimated clearly when he thought that a point had been sufficiently explored. All those are worthy motives on which judges daily intervene in the conduct of cases, and have done for centuries.

'Nevertheless, we are quite clear that the interventions, taken together, were far more than they should have been. In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries. Even in England, however, a judge is not a mere umpire to answer the question "How's that?" His object, above all, is to find out the truth, and to do justice according to law; and in the daily pursuit of it the advocate plays an honourable and necessary role. Was it not Lord Eldon LC who said in a notable passage that "truth is best discovered by powerful statements on both sides of the question"?: see. Ex parte Lloyd (1822) Mont 70 at 72n. And Lord Greene MR who ^explained that justice is best done by a judge who holds the balance between the contending parties without himself taking part in

their disputations? If a judge, said Lord Greene, should himself conduct the examination of witnesses, “he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of conflict”: see Yuill v Yuill [1945] P 15 at 20, [1945] 1 All ER 183, 61 TLR 176.

‘Yes, he must keep his vision unclouded. It is all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth: and the less dust there is about the better. Let the advocates one after the other put the weights into the scales — the “nicely calculated less or more” — but the judge at the end decides which way the balance tilts, be it ever so slightly. So firmly is all this established in our law that the judge is not allowed in a civil dispute to call a witness whom he thinks might throw some light on the facts. He must rest content with the witnesses called by the parties: see In re Enoch & Zaretzky, Bock & Co.,[1910] 1 KB 327. So also it is for the advocates, each in his turn, to examine the witnesses, and not for the judge to take it / on himself lest by so doing he appear to favour one side or ;

the other: see R v Cain, (1936) 25 Cr App Rep 204. R v Bateman (1946) 31 Cr App Rep 106. and Harris v Harris (1952), Times, 9 April; Judgments of the Court of Appeal, 1952, No. 148, by Birkett LJ especially. And it is for the advocate to state his case as fairly and strongly as he can, without undue interruption, lest the sequence of his argument be lost: see R V Clewer (1953) 37 Cr App Rep 37. The judge’s part in all this is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure; to see that the advocates behave themselves seemly and keep to the rules laid down by law; to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well. Lord Chancellor Bacon spoke right when he said that Essays or Counsels Civil and Moral: ‘Of Judicature’.’Patience and gravity of hearing is an essential part of justice; and an over-speaking judge is no well-tuned cymbal”.

‘Such are our standards. They are set so high that we cannot hope to attain them all the time. In the very pursuit of justice, our keenness may outrun our sureness, and we may trip and fall. That is what has happened here. A judge of acute perception, acknowledged learning, and actuated by the best of motives, has nevertheless himself intervened so much in the conduct of the case that one of the parties — nay, each of them — has come away complaining that he was not able properly to put his case; and these complaints are, we think, justified.

‘In these circumstances, we think we must grant the widow a new trial. There is one thing to which everyone in this country is entitled, and that is a fair trial at which he can put his case properly before the judge. The widow and the National Coal Board stand in this respect on the level. No cause is lost until the judge has found it so; and he cannot find it without a fair trial, nor can we affirm it’.

At that time Lord Kilmuir was Lord Chancellor. Of course he did not speak to me of the case beforehand, but afterwards he told me that he was grateful to us. He sent for the Judge. It was arranged that he should continue to sit for a little while and then resign. That he did at the end of the summer term. It was a poignant case; for he was able and intelligent — but he asked too many questions.

After that case, there were several appeals which came before us — from other judges — on similar grounds. The lawyers used to get the shorthand notes, count up the number of questions asked by the judge and by counsel, and then ask for a new trial. But I do not remember any appeal that succeeded on that ground. ‘Hippy’ Hallett stands in isolation. Let others take heed.

2. The judge who made a mistake

In that case the mistake of the judge gave rise to a new trial and caused much expense to the parties. No one would dream of making the judge personally liable for such an innocent mistake. But suppose a judge makes a mistake owing to a misunderstanding; and as a result a man is wrongly detained in prison. Can the judge be made liable in damages? The point arose in Sirros v Moore [1974] 3 WLR 459.

Sirros was a Turk. He was given leave to come into England as a visitor. He overstayed his leave. The magistrate recommended him for deportation and meanwhile directed that he be not detained. Sirros appealed to the Crown Court against the recommendation for deportation. His appeal was heard by a circuit judge and two magistrates. Sirros went into the Appeal Court a free man. He had a solicitor’s clerk with him. He asked that the recommendation be reversed. The judge dismissed his appeal. So in due course Sirros would be deported; but pending deportation, he was not to be detained. He was still entitled to go free. But the judge cannot have realised this. He must have thought that Sirros was already in custody. Then this happened (page 464):

'. . . . The judge then announced his decision: "The appeal is dismissed". Thereupon Sirros and the solicitor's clerk got up from their seats and made their way out of the court. The case was to all appearances over. After a little while, the judge looked up. He saw Sirros leaving the court: or rather he saw the back of his head disappearing. A minute or two later the judge called out "Stop him". Police officers hurried out after him. But he had gone. He went out of the court building in St. James's Square. He got as far as Jermyn Street: but then Sergeant Moore and other police officers caught him and brought him back. He was put in the cells. The judge meanwhile had gone to lunch.

'On the judge's return, counsel submitted that Sirros should not be detained, and he asked for bail. He called witnesses as to his character. It took about an hour. The judge refused to grant bail. So Sirros was taken away in custody.

'On the very next day, Sirros's counsel applied for a writ of habeas corpus....

'The Divisional Court ordered that a writ of habeas corpus was to be issued. So he went free. Ashworth J said:

"On one matter I have no doubt whatever, and that is that the detention of this applicant was wholly unauthorised. .

'Ten days later, Sirros issued a writ against the judge and the police officers claiming damages for assault and false' imprisonment. He specified two things against the judge: (1) the order to "stop him" in the morning; (2) the order in the afternoon when the judge refused to grant bail, thus continuing the detention. He claimed against the police officers as acting on the judge's orders'.

Those facts raised distinctly the question whether a judge could be made liable for making a mistake — which he ought not to have made if he had been taking proper care. No such case had arisen for 100 years or more. Sirros's case was taken up by one of our new law centres for helping the poor. It was the North Kensington Law Centre; and they instructed Lord Gifford. His great-grandfather was Master of the Rolls 155 years ago but he is still a junior who takes up cases for the poor. The judge was represented by the Treasury Devil, Mr. Gordon Slynn. As you might expect, it was well argued on both sides. Then we sought to state the modern position (page 467):

'Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action. The remedy of the party aggrieved is to appeal to a Court of Appeal or to apply for habeas corpus, or a writ of error or certiorari, or take some such step to reverse his ruling. Of course, if the judge has accepted bribes or been in the least degree corrupt, or has perverted the course of justice, he can be punished in the criminal courts. That apart, however, a judge is not liable to an action for damages. The reason is not because the judge has any privilege to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear. It was well stated by Lord Tenterden CJ in Garnett v Ferrand (1827) 6 B & C 611, 625: "This freedom from action and question at the suit of an individual is given by the law to the judges, not so much. for their own sake as for the sake of the public, and for the advancement of justice, that being free from actions, they may be free in thought and independent in judgment, as all who are to administer justice ought to be".

'Those words apply not only to judges of the superior courts, but to judges of all ranks, high or low. . . .

'In the old days, as I have said, there was a sharp distinction between the inferior courts and the superior courts. Whatever may have been the reason for this distinction, it is no longer valid. There has been no case on the subject for the last one hundred years at least. And during this time our judicial system has changed out of all knowledge. So great is this change that it is now appropriate for us to reconsider the principles which should be applied to judicial acts. In this new age I would take my stand on this: as a matter of principle the judges of superior courts have no greater claim to immunity than the judges of the lower courts. Every judge of the courts of this land — from the highest to the lowest — should be protected to the same degree, and liable to the same degree. If the reason underlying this immunity is to ensure "that they may be free in thought and independent in judgment", it applies to every judge, whatever his rank. Each should be protected from liability to damages when he is acting judicially. Each should be able to do his work in complete independence and free from fear. He should not have to turn the pages of his books with trembling fingers, asking himself: "if I do this, shall I be liable in damages?" So long as he does his work in the honest belief that it is within his

jurisdiction, then he is not liable to an action. He may be mistaken in fact. He may be ignorant in law. What he does may be outside his jurisdiction — in fact or in law — but so long as he honestly believes it to be within his jurisdiction, he should not be liable. Once he honestly entertains this belief, nothing else will make him liable. He is not to be plagued with allegations of malice or ill-will or bias or anything of the kind. Actions based on such allegations have been struck out and will continue to be struck out. Nothing will make him liable except it be shown that he was not acting judicially, knowing that he had no jurisdiction to do it.

'This principle should cover the justices of the peace also. They should no longer be subject to "strokes of the rodde or spur". Aided by their clerks, they do their work with the highest degree of responsibility and competence — to the satisfaction of the entire community. They should have the same protection as the other judges.

'The judge had no jurisdiction to detain Sirros in custody. The Divisional Court were right to release him on habeas corpus. Though the judge was mistaken, yet he acted judicially and for that reason no action will lie against him. Likewise, no action will lie against the police officers. They are protected in respect of anything they did at his direction, not knowing it was wrong: ..'.

2. Into the conduct of ministers

So much for a judge when he is acting as a judge. But there are times when a judge is invited by the Government of the day to undertake an inquiry or to chair a committee. He has then no special privilege or immunity. So it behoves him to act with circumspection. The Government usually asks a judge to do such a task when it is in a quandary. There is public unease: and the only person who can be trusted to be impartial is a judge. He is independent of the executive: and thus can speak his mind.

Thus I was called upon in June 1963. The Government was indeed in a quandary. The Secretary of State for War, The Rt. Hon. John Profumo, OBE, had resigned during the Whitsun recess. The Sunday Mirror had published a photographic copy of his letter to Christine Keeler. It started 'Darling' and ended 'Love J'. The newspaper had paid her for it. Rumours spread like wildfire. Not only about Mr. Profumo and the Russian Naval Attache. But many other ministers also. Their morale was shaken to the core. The security of the realm was said to be endangered. Nothing like it has been seen since Titus Oates spread his lies in 1678 when Macaulay tells us 'the capital and the whole nation was mad with hatred and fear'. The members of the House of Commons held a debate on Monday, 17 June 1963. On the Friday, 21 June 1963, the Prime Minister (Mr. Harold Macmillan) asked me to inquire into the security situation. Some have since said that, as a judge, I should not have accepted the task — because of its political overtones. But I felt, and still feel, that when the security of the State was involved, it was my duty to do what I was asked. I still have a copy of my reply on 24 June 1963:

'Dear Prime Minister,

It is a great responsibility with which you have entrusted me — and I feel very apprehensive of my ability to carry it out. All I can say is that I will do my very best faithfully to perform the task.

Yours sincerely,

Denning'.

As it was so urgent and important, I put everything else aside. I did it alone. Just two secretaries and two shorthand- writers. I had a room in the Treasury in Whitehall. There I saw Ministers of the Crown, the Security Service, rumour- mongers and prostitutes. They all came in by back doors and along corridors secretly so that the newspapers should not spot them. Some of the evidence I heard was so disgusting — even to my sophisticated mind — that I sent the lady shorthand-writers out and had no note of it taken. On one occasion the photographers were allowed in to see me at work. I kept them at a far distance so that they should not see what I was writing. Afterwards they blew up the photograph and published me writing a letter 'Dear Minister'. They accused me — the guardian of security — of lack of proper care in security. 'Quis custodiet ipsos custodes' — who will guard the guards themselves? (Afterwards they were rebuked by the Press Council.) One young lady, Mandy Rice- Davies, said to the newspapers, 'Quite the nicest Judge I have ever met'.

Every weekend I went home and worked there on the papers. Invariably the journalists arrived with photographers. On the day when I made my report, a score or more of them were on our country station. They took photographs showing the chickens on the platform. They travelled up in the same train. Independent television made a film about me with the refrain running through, 'Onward, Christian soldiers'.

If you are interested in the story itself, you can read it all in .r y Report of 16 September 1963. It was a best-seller. The Daily Telegraph published it in full as a supplement to their paper. There were queues at the

Stationery Office wanting to buy it. Right up till midnight. It became a common joke that ‘B.C.’ and ‘A.D.’ stood for ‘Before Christine’ and ‘After Denning’.

But, for those of the new generation who will not have read the Report, I will set out the principles on which I conducted the inquiry. Cmnd. 2 1 5 2 , paras. 5 — 9 .

‘It has been much debated what is the best way to deal with matters such as those referred to me. The appointment of a tribunal under the Tribunal of Inquiries Act 1921 is an elaborate and costly machine, equipped with all the engines of the law — counsel, solicitors, witnesses on oath, absolute privilege, openness to the public (so far as possible) and committal for contempt — but it suffers from the invincible drawback, in doing justice, that there is no prosecution, no charge, and no defence. The appointment of a Select Committee of one or both Houses of Parliament is a very representative body, but it is said to suffer from the drawback (to some eyes) that the inquisitors are too many and may be influenced in their, often divergent, views by political considerations, so that there may be too much dissent to carry authority. Now there is this inquiry which I have been entrusted with alone. It has the advantage that there can be no dissent, but it has two great disadvantages: first, being in secret, it has not the appearance of justice; second, in carrying out the inquiry, I have had to be detective, inquisitor, advocate and judge, and it has been difficult to combine them. But I have come to see that it has three considerable advantages. First, inasmuch as it has been held in private and in strict confidence, the witnesses were, I am sure, much more frank than they would otherwise have been. Secondly, I was able to check the evidence of one witness against that of another more freely. Thirdly^ and most important, aspersions cast by witnesses against others (who are not able to defend themselves) do not achieve the publicity which is inevitable in a Court of Law or Tribunal of Inquiry.

‘You were good enough to say that, if I needed further powers, I was to ask for them. I have not felt the need. Every witness whom I asked to come, has come, without being subpoenaed. Every witness has answered the questions I put to him, without being threatened with contempt. I have been told as much truth without an oath as if it were on oath. It was not the lack of powers which handicapped me. It was the very nature of the inquiry with which I was entrusted.

‘At every stage of this inquiry [have been faced with this great anxiety: How far should I go into matters which seem to show that someone or other has been guilty of a criminal offence, or of professional misconduct, or moral turpitude, or even incompetence? My inquiry is not a suitable body to determine guilt or innocence. I have not the means at my disposal. No witness has given evidence on oath. None has been cross examined. No charge has been preferred. No opportunity to defend has been open. It poses for me an inescapable dilemma: On the one hand, if I refrain from going into such matters, my inquiry will be thwarted. Questions that have been asked in the public interest will not be answered. Suspicions that have already fallen heavily on innocent persons may not be removed. Yet, on the other hand, if I do go into these matters I may well place persons under a cloud when it is undeserved: and I may impute to them offences or misconduct which they have never had the chance to rebut. Above all I have to remember that the information that I have been given has been given in confidence. In order to enable every witness to speak frankly and truly to me, I have assured each one that what they tell me is in strict confidence and will be used only for the purposes of my inquiry and report. This means that, whatever I say in this report, it should not be used for any other purpose: in particular none of it should be used for the purposes of any prosecution or proceeding against anyone. But I cannot, of course, prevent anyone from seeking evidence aligned and acting on it.

‘Such being the inescapable difficulties inherent in this form of inquiry, I have come to the conclusion that all I can do is this:

‘When the facts are clear beyond controversy, I will state them as objectively as I can, irrespective of the consequences to individuals: and I will draw any inference that is manifest from those facts. But when the facts are in issue, I must always remember the cardinal principle of justice that no man is to be condemned on suspicion. There must be evidence which proves his guilt before he is pronounced to be so. I will therefore take the facts in his favour rather than do an injustice which is without remedy. For from my findings there is no appeal.

‘To those who in consequence will reproach me for “white-washing”, I would make this answer: While the public interest demands that the facts should be ascertained as completely as possible, there is a yet higher public interest to be considered, namely, the interest of justice to the individual which overrides all other. At any rate, speaking as a Judge, I put justice first’.

Next I will set out one sentence in which I reached my conclusion, adverse, I fear, to the Prime Minister and his colleagues (para. 286):

'. ... It was the responsibility of the Prime Minister and his colleagues, and of them only, to deal with this situation: and they did not succeed in doing so'.

Finally, in my conclusion I dealt with the rumours which had caused so much disturbance in the country (paras. 339— 343):

'I know that Ministers and others have felt so aggrieved by the rumours about them that they have contemplated bringing actions for libel or slander in respect of them. I know, too, that they have refrained from doing so pending my inquiry. I hope, however, that they will not feel that honour requires them to pursue these matters further. My findings will, I trust, be accepted by them as a full and sufficient vindication of their good names. It is, I believe, better for the country that these rumours should be buried and that this unfortunate episode should be closed.

'Equally I trust that all others will now cease to repeat these rumours which have been proved so unfounded and untrue: and that newspapers and others will not seek to put names to those whom I have deliberately left anonymous. For I fear that, if names are given, human nature being what it is, people will say "there's no smoke without fire" — a proposition which in this instance is demonstrably untrue.

'This brings me to the end. It might be thought — indeed it has been thought — by some that these rumours are a symptom of a decline in the integrity of public life in this country. I do not believe this to be true. There has been no lowering of standards. But there is this difference today. Public men are more vulnerable than they were: and it behoves them, even more than ever, to give no cause for scandal. For if they do, they have to reckon with a growing hazard which has been disclosed in the evidence I have heard. Scandalous information about well-known people has become a marketable commodity. True or false, actual or invented, it can be sold. The greater the scandal the higher the price it commands. If supported by photographs or letters, real or imaginary, all the better. Often enough the sellers profess to have been themselves participants in the discreditable conduct which they seek to exploit. Intermediaries move in, ready to assist the sale and ensure the highest prices. The story improves with the telling. It is offered to those newspapers — there are only a few of them — who deal in this commodity. They vie with one another to buy it. Each is afraid the other will get it first. So they buy it on chance that it will turn out profitable. Sometimes it is no use to them. It is palpably false. At other times it is credible. But even so, they dare not publish the whole of the information. The law of libel and the rules of contempt of court exert an effective restraint. They publish what they can, but there remains a substantial part which is not fit for publication. This unpublished part goes round by word of mouth. It does not stop in Fleet Street. It goes to West minister. It crosses the Channel, even the Atlantic and back again, swelling all the time. Yet without the original purchase, it might never have got started on its way.

'When such deplorable consequences are seen to ensue, the one thing that is clear is that something should be done to stop the trafficking in scandal for reward. The machinery is ready to hand. There is a new Press Council already in being.

'Although I have felt it necessary to draw attention to this matter, I would like to say that I have had the greatest cooperation and assistance from the newspapers and all concerned with them; and not least from those whose practices I hold to be open to criticism'.

Following the Report, Mr. Harold Macmillan fell ill; and resigned. Sir Alec Douglas-Home became Prime Minister. There was a debate on 16 December 1963 in the House of Commons on 'Security and the Denning Report'. In the course of it Mr. Harold Macmillan said 686 HC Official Report (5th Series), col. 911 (16 December 1963).

'This debate takes place in circumstances very different, as far as I personally am concerned, from what I had envisaged up to two months ago, ... I wished to express publicly what I have, of course, expressed, privately, my gratitude to Lord Denning for undertaking the delicate and difficult task which I asked him to perform. I am sure that is the universal view in the House and in the country'.

Later on it was made clear that there ought never to be an inquiry like it again. A Royal Commission on Tribunals of Inquiry under the Chairmanship of Lord Justice Salmon, reporting in 1966, made this comment.

'Lord Denning's Report was generally accepted by the public. But this was only because of Lord Denning's rare qualities and high reputation. Even so, the public acceptance of the Report may be regarded as a brilliant exception to what would normally occur when an inquiry is carried out under such conditions'.

3. Into the conduct of directors

1. Behind the curtain

Our system of company law has only been in existence for some 120 years. It is the universal medium of business. Most merchants and most traders are now limited liability companies. Not only in England but also in countries overseas. The law, however, has let down a curtain which conceals the goings on of the directors and managers of a company. Beneath this curtain all sorts of fraud can be perpetrated — on customers, on creditors and on shareholders. In many cases in the Court of Law, I have myself sought to pull aside the curtain: but the majority view is against it. The only machinery so far provided by Parliament is for the Department of Trade to appoint inspectors to hold an inquiry. The inspectors are usually an eminent Queen's Counsel — all Queen's Counsel are by definition 'eminent' — and a distinguished chartered accountant — equally all are 'distinguished'. They have a very unenviable task. They have to investigate all that the directors and managers have done and to report upon it. These inquiries have been known to take years. They involve great expense. And at the end — as often as not — the inspectors are criticised. It is said that they acted unfairly: and that their report should be ignored. The matter is of such importance that we have endeavoured to lay down the principles on which inspectors should act.

2. The Pergamon Press

The issues were raised acutely when there was an inquiry into the affairs of Pergamon Press Ltd. It was held by two good men. Mr. Owen Stable QC - a son of Mr. Justice Stable —and himself of judicial calibre: and Mr. Ronald Leach CBE, (now Sir Ronald Leach, GBE), the senior partner of Peat Marwick. You could not find a better pair anywhere. They had trouble with Mr. Robert Maxwell from the very start. When he came to give evidence, this is what happened (see Re Pergamon Press Ltd [1971] Ch 388 at 398):

'A little later the inspectors called on the directors to give evidence. Each of them refused. Typical was the attitude of Mr. Robert Maxwell himself. He came with his solicitor, Mr. Freeman, to the place where the inspectors were meeting. He gave his name and address and said that he was the holder of the Military Cross and a member of Parliament. Then Mr. Stable, a Queen's Counsel, one of the inspectors, asked him this simple question. "When did you first become associated with Pergamon Press Ltd?" to which Mr. Maxwell replied: "Mr. Stable, in view of the submissions made on my behalf by Mr. Freeman, I respectfully refuse to answer any further questions unless I am ordered to do so by the court". This attitude left the inspectors with no alternative but to report the refusal to the court'.

This is how we concluded (at page 401):

'They had promised full co operation, yet when asked the simple question: "When did you first become associated with Pergamon Press Ltd?" each of them refused to answer. No wonder the inspectors certified their refusal to the court. No wonder the court held their refusal to be unjustified. The judge was merciful to them. I le did no more than order them to pay the costs of the application. If they should seek to take again such unwarranted points, they can expect no mercy. They will be treated in like manner as if they had been guilty of contempt of court'.

Afterwards the inspectors proceeded with their inquiry and made an interim report Mr. Maxwell made complaint about it. He asked for an injunction to restrain the inspectors going on with the inquiry. There was a difference between the two Judges about the Iegal position. This I sought to solve in this way (see Maxwell v Department of Trade [1974] QB 523 at 533):

'In view of this difference between the judges, I will try to state the considerations which are to be borne in mind in respect of an inquiry under the Companies Act 1948. First and foremost: when a matter is referred to an inspector for investigation and report, it is a very special kind of inquiry. It must not be confused with other inquiries which we have had to consider. Remember what it is not. It is not a trial of anyone, nor anything like it. There is no accused person. There is no prosecutor. There is no charge. It is not like a disciplinary proceeding before a professional body. Nor is it like an application to expel a man from a trade union or a club, or anything of that kind. It is not even like a committee which considers whether there is a prima facie case against a person. It is simply an investigation, without anyone being accused.

'Second: there is no one to present a case to the inspector. There is no "counsel for the commission". The inspector has to do it all himself. He has himself to seek out the relevant documents and to gather the witnesses. He has himself to study the documents, to examine the witnesses and to have their evidence recorded. He has himself to direct the witnesses to the relevant matters. He has himself to cross- examine them to test their accuracy or their veracity. No one else is there to cross examine them. Even if a witness says things prejudicial to someone else, that other does not hear it and is not there to cross examine him.

‘Third: the investigation is in private. This is necessary because witnesses may say something defamatory of someone else, and it would be quite wrong for it to be published without the party affected being able to challenge it. The only persons present are the inspectors and their staff, the shorthand writer, the witness and his lawyers, if he desires them.

‘Fourth: the inspectors have to make their report. They should state their findings on the evidence and their opinions on the matters referred to them. If their report is to be of value, they should make it with courage and frankness, keeping nothing back. The public interest demands it. It may on occasion be necessary for them to condemn or criticise a man. Before doing so, they must act fairly by him. . . .

‘. ... It must be remembered that the inspectors are doing a public duty in the public interest. They must do what is fair to the best of their ability. They will, of course, put to a witness the points of substance which occur to them — so as to give him the chance to explain or correct any relevant statement which is prejudicial to him. They may even recall him to do so. But they are not to be criticised because they may on occasion overlook something or other. Even the most skilled advocate, expert in cross examination, forgets now and again to put this or that point to a witness. And we all excuse him, knowing how difficult it is to remember everything. The inspector is entitled to at least as much consideration as the advocate. To borrow from Shakespeare, he is not to have “all his faults observed, set in a notebook, learned, and conn’d by rote”, to make a lawyer’s holiday. His task is burdensome and thankless enough as it is. It would be intolerable if he were liable to be pilloried afterwards for doing it. No one of standing would ever be found to undertake it. The public interest demands that, so long as he acts honestly and does what is fair to the best of his ability, his report is not to be impugned in the courts of law.

‘In conclusion, I would say this: I have studied all the points of detail which have been put to us. And I have read the judgment of Wien J upon them. I would like to express my appreciation of it and endorse all that he said. This is nothing more nor less than an attempt by Mr. Maxwell to appeal from the findings of the inspectors to the courts. But Parliament has given no appeal. So Mr. Maxwell has tried to get round it by attacking’ the conduct of the inspectors themselves. In this he has failed utterly. To my mind the inspectors did their work with conspicuous fairness. They investigated all the matters with the greatest care. They went meticulously into the details of these complicated transactions. They put to Mr. Maxwell ail the points which appeared to call for an explanation or an answer. They gave him every opportunity of dealing with them. If there were one or two points which they overlooked, these were as nothing in relation to the wide field which they covered. I regret that, having done their work so well, they should now be harassed by this attack upon them. It has never been done before in all the many inquiries under the Companies Acts. And I hope it will never happen again. .

3. Can the directors stop it?

In the next case the company hit out at an early stage. They tried to stop the inspectors from starting an inquiry at all. They said that the Secretary of State had done wrong in appointing them. It was in Norwest Holst v Secretary of State for Trade [1978] Ch 201 at 223. This is how we dealt with it:

‘It is important to know the background of the legislation. It ? sometimes happens that public companies are conducted in a way which is beyond the control of the ordinary shareholders. The majority of the shares are in the hands of two or three individuals. These have control of the company’s affairs. The other shareholders know little and are told little. They receive the glossy annual reports. Most of them throw them into the wastepaper basket. There is an annual general meeting but few of the shareholders attend. The whole management and control is in the hands of the directors. They are a self-perpetuating oligarchy: and are virtually unaccountable. Seeing that the directors are the guardians of the company, the question is asked: “Quis custodiet ipsos custodes” -- Who will guard the guards themselves?

‘It is because companies are beyond the reach of ordinary individuals that this legislation has been passed so as to enable the Department of Trade to appoint inspectors to investigate the affairs of a company. . . .

‘. . . . There are many cases where an inquiry is held — not as a judicial or quasi-judicial inquiry — but simply as a matter of good administration. In these circumstances there is no need to give preliminary notice of any charge, or anything of that sort. Take the case where a police officer is suspected of misconduct. The practice is to suspend him pending inquiries. He is not given notice of any charge at that stage, nor any opportunity of being heard. The rules of natural justice do not apply unless and until it is decided to take proceedings. Other instances can be given in other fields. For instance, The Stock Exchange may suspend dealings in a company’s shares. They go by what they know, without warning the company beforehand.

‘We know that, when these inquiries are held, those persons who are the subject of them often complain about them. They say that the machinery operates unfairly against them. Such complaints are usually unfounded. They are made so as to delay the inquiry, or to lessen the effect of the report of the inspectors. But, whether well founded or unfounded, it is no reason for abandoning this machinery. It is the only means given to the public by which the conduct of companies can be investigated. Parliament has clearly enacted that there should be power — under the control of the Board of Trade, on behalf of the public at large — for an inquiry to be made into the conduct of the affairs of a company, if there are circumstances which appear to the minister to suggest “fraud, misfeasance or other misconduct”. I do not think we should encourage or support any attempt to delay or hold up the inquiry. To my mind the action is without foundation. The judge was quite right to strike it out’.

4. A useful weapon

Parliament has, however, given a weapon which may be useful sometimes to detect fraud. It is something akin to a search warrant. It is given by section 441 of the Companies Act 1948. It enables a judge to make an order for the inspection of a company’s books — in cases where it is suspected that there has been an offence in connection with the management of a company’s affairs.

It came to our notice when a company contracted to do work on the terms that it should be paid on ‘cost plus’ terms: that is, it should be paid the amount it had paid to its subcontractor, plus a profit of 20 per cent for itself. Instead of making out this account honestly, they entered into their books a higher sum as ‘cost’ than they had actually paid the subcontractor. Whilst this fraudulent method was being perpetrated, they took on a new employee in their accounts department. He discovered the fraud. He told the management they ought not to do it. He was dismissed. He told the police. They told the Director of Public Prosecutions. He could do nothing unless he could see the company’s books of account — to see what they paid the subcontractor and so forth. If the company were warned beforehand, the evidence might soon disappear. So the Director of Public Prosecutions took advantage of section 441 of the Companies Act 1948. He went to a High Court judge and applied ex parte for an order authorising his officers to inspect the books and requiring the Secretary to produce them. The judge felt that the statute should be construed narrowly and refused to make any such order.

The Director of Public Prosecutions wanted to appeal to us. He gave notice and we were all ready to hear it. Then to our surprise we were told the appeal would not be effective. It would only be put into the list ‘to be mentioned’ and then withdrawn. When it was mentioned, counsel got up and told us the reason. It was because there was a clause in section 441 which said: ‘The decision of a judge of the High Court on an application under this Section shall not be appealable’. We exploded at once. We could not allow such a clause to prevent us hearing an appeal — if the judge had gone wrong in his law. That only applied if he had gone wrong on the facts. So we h id it put into the list for a full hearing. We had the assistance of the Official Solicitor who instructed counsel. As it was urgent, we heard it on the last day of the summer term. We allowed the appeal and authorised the Director of Public Prosecutions to go ahead. He was empowered to inspect the books and require the Secretary to produce them. The case is entitled Re a Company. (1979) 123 Sol Jo 584, CA.

4. Into the conduct of gaming clubs

In most inquiries, the rules of natural justice apply. If the conduct of a person is under investigation he is entitled to know what is said against him so that he can answer it. But there are exceptions: especially where information is given by ‘informers’. Their names may have to be kept secret — else the source of information would dry up. Even the information itself may have to be limited. It is a nice question which came up for discussion in the case of JR v Gaming Board (1970) 2 WLR 1009.

Crockford’s is one of the most famous gaming clubs in London. It has premises of distinction at 16 Carlton House Terrace, They play there the familiar games: chemin-de-fer, baccarat, roulette, blackjack and craps. (Some years after this case I went there myself — not to play any game whatever: but to open a display of Magna Carta: and to have a good dinner). By the Gaming Act 1968 all these gaming clubs had to have a licence and for this purpose they had to apply to the Gaming Board for a ‘certificate of consent’. Crockford’s duly applied, but the Gaming Board refused it. They said that those who ran the club were associated ‘with certain persons of unacceptable background and reputation’.

The Board refused to disclose some confidential information which they had. Thereupon Crockford’s instructed that redoubtable advocate, Mr. Quintin Hogg QC (as he then was). The Board instructed a first-class opponent, Mr. Raymond Kidwell QC. We had on that occasion Lord Wilber force with us. On very rare

occasions if the House can spare us a Law Lord, he comes to help us. It was an infinite advantage to have Lord Wilberforce — the best judicial mind of the day. There were several points in the case but on this matter of disclosure of the source of information, this is what I said (at page 1017):

'I do not think they need tell the applicant the source of their information, if that would put their informant in peril or otherwise be contrary to the public interest. Even in a criminal trial, a witness cannot be asked who is his informer. The reason was well given by Lord Eyre CJ in Hardy's case [R v Hardy] 24 State Trials 199, 808:

". . . . there is a rule which has universally obtained on account of its importance to the public for the detection of crimes, that those persons who are the channel by means of which that detection is made, should not be unnecessarily disclosed".

'And Buller J added, at p.818: ". . . . if you call for the name of the informer in such cases, no man will make a discovery, and public justice will be defeated" .... That reasoning applies with equal force to the inquiries made by the Gaming Board. That board was set up by Parliament to cope with disreputable gaming clubs and to bring them under control. By bitter experience it was learned that these clubs had a close connection with organised crime, often violent crime, with protection rackets and with strong-arm methods. If the Gaming Board were bound to disclose their sources of information, no one would "tell" on those clubs, for fear of reprisals. Likewise with the details of the information. If the board were bound to disclose every detail, that might itself give the informer away and put him in peril. But, without disclosing every detail, I should have thought that the board ought in every case to be able to give to the applicant sufficient indication of the objections raised against him such as to enable him to answer them. That is only fair. And the board must at all costs be fair. If they are not, these courts will not hesitate to interfere.

'Accepting that the board ought to do all this when they come to give their decision, the question arises, are they bound to give their reasons? I think not. Magistrates are not bound to give reasons for their decisions: see R v North umber land Compensation Appeal Tribunal,ex parte Shaw [1952] 1 KB 338 at 352. Nor should the Gaming Board be bound. After all, f the only thing that they have to give is their opinion as to the capability and diligence of the applicant. If they were asked by the applicant to give their reasons, they could answer quite sufficiently: "In our opinion, you are not likely to be capable of or diligent in the respects required of you". Their opinion would be an end of the matter.

'Tested by those rules, applying them to this case, I think that the Gaming Board acted with complete fairness. . .'.x

That ruling came up for consideration by the House of Lords two years later. Henry Rogers wanted to manage bingo halls. He applied to the Gaming Board for consent. They refused. It appears that they had asked the Chief Constable of Sussex for a report about Rogers. The Chief Constable had given the Gaming Board information which was highly defamatory of Rogers. The Board had this report before them but did not show it to Rogers. Afterwards, someone in some way — very devious, no doubt — abstracted it from the file and gave a copy of it to Rogers. Rogers sought to take proceedings for libel. He failed. The case went as far as the House of Lords. It is R v Lewes JJ [1973] AC 388 at 402. in which Lord Reid approved our decision, saying:

'Natural justice requires that the board should act in good faith and that they should, as far as possible, tell him the gist of any grounds on which they propose to refuse his application so that he may show it to be unfounded in fact. But the board must be trusted to do that: we have been referred to their practice in the matter and I see nothing wrong with it'.

5. Into the conduct of aliens

Now there is one type of inquiry in which natural justice is excluded. It is when it is necessary in the interests of national security. There is some information which is so secret that it cannot be disclosed — except to a very few. This country, like all others, has its own intelligence service. It has its own spies or agents, just as others have. Their very lives may be endangered if there is the slightest hint of what they are doing. In one case (of which the public know nothing) many of our agents disappeared. They were lost beyond trace. They were 'eliminated' by a foreign power. The information is known to the Security Service but to no one outside.

It is information of this kind which was hinted at — no more than hinted at — in the case of Mark Hosenball, R Home Secretary, ex parte Hosenball [1977] 1 WLR 766. We did not compel disclosure of it — and for it we have been criticised in many quarters. So I would like to explain it.

Mark Hosenball was an American journalist. He came here when he was only 18 and took part in investigative journalism. He had permission from the Home Office to be here. His permit had four weeks to go when (page 777):

'. . . he received a letter from the Home Office. It told him that he could no longer stay because the Secretary of State had decided to deport him. The reason was because it was in the interests of national security. I will read the statement / which was enclosed with the letter. ...

'That statement is couched in official language: but translated into plain English it means that the Secretary of State believes that Mr. Hosenball is a danger to this country. So much so that his presence here is unwelcome and he can no longer be permitted to stay. This belief is founded on confidential information which has been placed before the Home Secretary. It is to the effect that Mr. Hosenball is one of a group of people who are trying to obtain information of a very sensitive character about our security arrangements. Their intention is to publish it, or some of it, in a way which will imperil the lives of the men in our secret service. The crucial charge against him is that he has "information prejudicial to the safety of the servants of the Crown" and is proposing to publish it. If that charge be true, he should certainly be deported. We cannot allow our men's lives to be endangered by foreigners.

'Now I would like to say at once that if this were a case in which the ordinary rules of natural justice were to be observed, some criticism could be directed upon it. For one thing the Home Secretary himself, and I expect the advisory panel also, had a good deal of confidential information before them of which Mr. Hosenball knew nothing and was told nothing: and which he had no opportunity of correcting or contradicting, or of testing by cross examination. In addition, he was not given sufficient information of the charges against him so as to be able effectively to deal with them or answer them. All this could be urged as a ground for upsetting any ordinary decision of a court of law or of any tribunal, statutory or domestic. . . .

'But this is no ordinary case. It is a case in which national security is involved: and our history shows that, when the state itself is endangered, our cherished freedoms may have to take second place. Even natural justice itself may suffer a set-back. Time after time Parliament has so enacted and the courts have loyally followed. In the first world war in R v Halliday [1917] AC 260 at 270. Lord Fin lay LC said: "The danger of espionage and of damage by secret agents .... had to be guarded against". In the second world war in Liversidge v Sir John Anderson [1942] AC 206 at 219. Lord Maugham said:

. . . there may be certain persons against whom no offence is proved nor any charge formulated, but as regards whom it may be expedient to authorise the Secretary of State to make an order for detention".

'That was said in time of war. But times of peace hold their dangers too. Spies, subverters and saboteurs may be mingling amongst us, putting on a most innocent exterior. They may be endangering the lives of the men in our secret service, as Mr. Hosenball is said to do.

'If they are British subjects, we must deal with them here. If they are foreigners, they can be deported. The rules of natural justice have to be modified in regard to foreigners here who prove themselves unwelcome and ought to be deported.

'The information supplied to the Home Secretary by the Security Service is, and must be, highly confidential. The public interest in the security of the realm is so great that the sources of the information must not be disclosed — nor should the nature of the information itself be disclosed — if there is any risk that it would lead to the sources being discovered. The reason is because, in this very secretive field, our enemies might try to eliminate the sources of information. So the sources must not be disclosed. Not even to the House of Commons. Nor to any tribunal or court of inquiry or body of advisers, statutory or non-statutory. Save to the extent that the Home Secretary thinks safe. Great as is the public interest in the freedom of the individual and the doing of justice to him, nevertheless in the last resort it must take second place to the security of the country itself. So much so that arrests have not been made, nor proceedings instituted, for fear that it may give away information which must be kept secret. This is in keeping with all our recent cases about confidential information. When the public interest requires that information be kept confidential, it may outweigh even the public interest in the administration of justice. . . .

'There is a conflict here between the interests of national security on the one hand and the freedom of the individual on the other. The balance between these two is not for a court of law. It is for the Home Secretary. He is the person entrusted by Parliament with the task. In some parts of the world national security has on occasions been used as an excuse for all sorts of infringements of individual liberty. But not in England. Both during the wars and after them, successive ministers have discharged their duties to the complete satisfaction of the people at large. They have set up advisory committees to help them, usually with a chairman who

has done everything he can to ensure that justice is done. They have never interfered with the liberty or the freedom of movement of any individual except where it is absolutely necessary for the safety of the state. In this case we are assured that the Home Secretary himself gave it his personal consideration, and I have no reason whatever to doubt the care with which he considered the whole matter. He is answerable to Parliament as to the way in which he did it and not to the courts here'.

6. Into the delays of lawyers

1. Into the Courts of Law

Ever since lawyers have been going, the layman has complained of their delays: and for just so long, the lawyers have been making excuses. The most common excuse is their busyness. You will remember that some 600 years ago Chaucer said of the Sergeant of the Lawe:

'No-wher so bisy a man as he ther nas,

And yet he semed bisier than he was'.

It is, I know, a common ploy among barristers to 'seme bisier' than they are. If you are busy, you are successful: if you are not busy, you are a failure. So it is important to 'seme bisy'. I well remember when I was young at the bar — and expecting a client — I would set out on my table the briefs and cases for opinion, all tied up in red tape, so as to seem busy. But most of them would be 'dead'. They had been finished and done with long before. It was only after ten years or so that my table would be crowded out with 'live* instructions piling one on another.

The real reason for the delays of lawyers is not slackness or dilatoriness. They are as a class the most hardworking of all professional men. It often lies in their choice of priorities. Each case is important and must be dealt with. Each letter must be answered the same day or at any rate the next. A sudden call puts something else out of mind. Sometimes it is that he is a slow worker. More often that he is too meticulous. Sometimes it is that he does not know enough, and has to look it all up. Sometimes that he is short of staff or someone falls ill. All these are excuses which may avail him before the Almighty. But none of them avail him before the individual client. Nor before us. The courts expect each client's case to be dealt with expeditiously. At any rate they have so expected since our great case of Allen v Mc Alpine [1968] 2 QB 229, [1968] 2 WLR 366. I describe it as a 'great case' because we reserved it over the Christmas vacation: and at the time Lord Justice Diplock remarked to me that it was the most important we had done.

Let me explain first that, in a civil case, the pace is set by the plaintiff who is making the claim. It is he who has to issue the writ and to serve it. It is he who has to put in the statement of claim and to serve it. It is he who can call upon the defendant to put in a defence or else suffer the consequences. If the plaintiff himself takes a long time over the things he has to do, the case may drag on indefinitely. And so it used to be before Allen v Mc Alpine. The Rules laid down a timetable with which the plaintiff was supposed to comply: but he never suffered for his non-compliance. He always got an extension of time for the asking. I cannot do better than set out the opening pages of our judgment [1968] 2 WLR 366 at 369-371.

'In these three cases the law's delays have been intolerable. They have lasted so long as to turn justice sour. I will give details later, but in outline they stand thus. In the first case a widow lost her husband nearly nine years ago. He was killed at his work. She had a good claim to compensation from his employers for herself and her two small children. Her case has not yet been set down for trial. In the second case, a nurse complained that she strained her back over nine years ago whilst lifting a patient. It meant a year off work. If her story is true, she was entitled to compensation from the hospital authorities. They have not even yet put in a defence to the claim. In the third case, a man of business bought shares nearly fourteen years ago for £20,000. He brought an action complaining that he was deceived in the deal, and that his company was let down by the solicitors. The man who sold the shares has since died. His estate cannot be administered whilst this suit is hanging over it. His widow cannot receive the money he bequeathed to her. Yet the suit has not yet been entered for trial.

'In none of the three cases has the party himself been at fault. The widow, the nurse and the man of business, each one of them wanted to get on. The fault, I regret to say, has been with the legal advisers. It is not that they wilfully neglected the cases. But they have put them on one side, sometimes for months, and even for years, because of the pressure of other work or of other claims on their time. Hence these ills. And these are not the only examples. A few months ago we had a couple of cases of like sort. One was on 9 March 1967, Reggentin v Beecholme Bakeries Ltd (1967) 111 Sol Jo 216. The other was on 17 March 1967, Fitzpatrick v Batger & Co Ltd [1967] 2 All ER 657, [196-?] 1 WLR 706, CA. We said (1967) 111 Sol Jo

216, CA. “Delay in these cases is much to be deplored. It is the duty of the plaintiff’s advisers to get on with the case. Every year that passes prejudices the fair trial”. We struck out those cases for want of prosecution. This meant that the injured plaintiffs could not recover their compensation from the defendants. But they could recover it from their own negligent solicitors. These cases have brought home to lawyers that they must get on. A note in the Supreme Court Practice (1967) 2nd supp., p.4, para. 25/1/3, says that: “These emphatic decisions of the Court of Appeal, which lay down a more stringent practice than was formerly followed, have injected a new element of expedition in the conduct and preparation of cases before trial, especially in relation to ‘accident’ cases. Plaintiffs’ solicitors who do not ‘get on’ with their cases will be at risk of having the plaintiff’s action dismissed for want of prosecution and themselves rendered liable for negligence to the plaintiff as their own former client”.

‘Following those decisions, several other cases have been struck out for delay. These three are among them. The plaintiffs appeal to this court. I say “the plaintiffs” appeal, but we cannot shut our eyes to the fact that the plaintiffs’ solicitors and their insurers are very much concerned in the appeals lest they be held liable for negligence. The Law Society too are concerned, for counsel appeared for them and asked to be heard. We permitted him as amicus curiae to address us on the issues of public policy involved.

‘It was urged that we ought not to strike out a man’s action without trial because it meant depriving him of his right to come to the Queen’s Courts. Magna Carta was invoked against us as if we were in some way breaking its provisions. To this there is a short answer. The delay of justice is a denial of justice. Magna Carta will have none of it. “To no one will we deny or delay right or justice” Magna Carta, ch. 40.

‘All through the years men have protested at the law’s delay and counted it as a grievous wrong, hard to bear. Shakespeare ranks it among the whips and scorns of time Hamlet, Act III, sc. 1. Dickens tells how it exhausts finances, patience, courage, hope Bleak House, ch. 1. To put right this wrong, we will in this court do all in our power to enforce expedition: and, if need be, we will strike out actions when there has been excessive delay. This is a stern measure. But it is within the inherent jurisdiction of the court. And the Rules of Court expressly permit it. It is the only effective sanction they contain. If a plaintiff fails within the specified time to deliver a statement of claim, or to take out a summons for directions, or to set down the action for trial, the defendant can apply for the action to be dismissed, see R.S.C. (Rev. 1965), Ord. 19, r. 1; Ord. 25, r. 1; Ord. 34, r. 2. It was argued before us that the court should never, on the first application, dismiss the action. Even if there was long delay, the court should always give the dilatory solicitor one more chance. The order should be that the action should be dismissed “unless” he takes the next step within a stated time. Such has been the practice, it was said, for a great many years. It was confirmed by Sir George Jessel MR in Eaton v Storer (1882) 22 Ch D 91 at 92. and it should not be changed without prior notice. I cannot accept this suggestion. If there were such a practice, there would be no sanction whatever against delay. The plaintiff’s solicitor could put a case on one side as long as he pleased without fear of the consequences.

‘If you read Eaton v Storer (1882) 22 Ch D 91. carefully, you will see that the practice described by Sir George Jessel applies only to moderate delays of two or three months. It does not apply when “there is some special circumstance such as excessive delay Ibid. at 92. The principle upon which we go is clear: When the delay is prolonged and inexcusable, and is such as to do grave injustice to one side or the other or to both, the court may in its discretion dismiss the action straightaway, leaving the plaintiff to his remedy against his own solicitor who has brought him to this plight. Whenever a solicitor, by his inexcusable delay, deprives a client of his cause of action, the client can claim damages against him; as, for instance, when a solicitor does not issue a writ in time, or serve it in time, or does not renew it properly. We have seen, I regret to say, several such cases lately. Not a few are legally aided. In all of them the solicitors have, I believe, been quick to compensate the suffering client; or at least their insurers have. So the wrong done by the delay has been remedied as much as can be. I hope this will always be done’.

But it was not my judgment which carried the day. It was perhaps too general. It was the judgments of Lord Justice Diplock and Lord Justice Salmon. They spent it out more precisely. In order to dismiss an action for want of prosecution there must have been inordinate and inexcusable delay which was such as to cause serious prejudice to the defendant. We did not realise it at the time but this formulation gave rise to great difficulties in regard to the Statutes of Limitation.

In cases of personal injury the plaintiff had to issue his writ within three years of the accident and serve it within a further one year. If the plaintiff took the whole of that time —four years — before he served his writ, the defendant would have suffered an immense prejudice by that delay. Now this is the point which divided the Court of Appeal:

In one division of the Court, presided over by Russell LJ, It was said that the plaintiff had a right to take those four years: and that delay and prejudice in that time did not matter much. That was in Parker v Hann [1972] 1 WLR 1583. But in the division presided over by me, we rejected that view. In Sweeney v Sir Robert Me Alpine & Sons [1974] 1 WLR 200 at 205. I said:

. . . The plaintiff has no such right. He is not entitled to delay at all. It is his duty to make his claim and bring his proceedings with all expedition at all stages. If he is guilty of inordinate and inexcusable delay — finishing up with a failure to observe the Rules of Court as to time — he is liable to have his action dismissed for want of prosecution, if the total delay is such as seriously to prejudice the defendants. .

That view became accepted generally. It was applied by the Court of Appeal in Birkett v James [1978] AC 297 at 301. but afterwards, I regret to say, it was reversed by the House of Lords. The story is so illuminating that I will tell it. The plaintiff, Mr. Birkett, alleged that the defendant, Mr. James, agreed orally in November 1969 to pay him ,£1,000,000 on 1 April 1970. That very allegation makes it look a doubtful case. Nothing in writing to support an agreement for ;£ 1,000,000! The plaintiff did not show much confidence in it himself. He did nothing for over two years. Then in July 1972 the plaintiff got legal aid and issued a writ claiming the £ 1,000,000. But he or his then solicitor delayed for many, many months to pursue the claim. So much so that in July 1975 the defendant issued a summons to dismiss it for want of prosecution. The Judge did dismiss it. So did the Court of Appeal. They held that the delay was altogether inordinate and inexcusable and that the defendant was seriously prejudiced by it. They refused leave to appeal. Now I pause here to say that, in cases of this kind, being what we call into locutory matters, the view of the Court of Appeal is usually regarded as final. But in this case the plaintiff, with the help of legal aid, went to the House of Lords, got leave to appeal, did appeal, and succeeded in his appeal. The House were much influenced by the fact that, in cases of breach of contract, the period of limitation is six years. So that, although more than five years had elapsed since 1 April 1970, the plaintiff could issue another writ. In those circumstances the House allowed the stale action to continue. They made the defendant pay all the costs. The action went for trial.

The rest of the tale is not told in the Law Reports. At the trial the plaintiff’s claim was held to be hopeless. I believe that it was dismissed without even calling upon the defendant. It shows that much injustice can be done when the House grants leave to appeal. It meant that the defendant had to pay the very great expense of appeal to the Lords without getting a penny back from the plaintiff who had sued him without any real foundation for his claim.

Since that time the Court of Appeal has done all it can to mitigate the effect of Birkett v James. Notably in Biss v Lambeth Health Authority [1978] 1 WLR 382. and Mahon v Concrete (Southern) Ltd (1979) 6 July (not yet reported). But its unfortunate influence was most marked in Tolley v Morris [1979] 1 WLR 592. There, in May 1964 a little girl of $2^{1/2}$ was injured in an accident by a motorcar. Three years later a writ was issued on her behalf, by her father as her next friend- It was served within another year. That was in March 1968. But, then nothing more was done for nine years — until July 1977. That is 13 years after the accident. By that time the witnesses had disappeared — all memory had gone — the police record files had been destroyed—a fair trial was impossible. It was clearly a case where it would have been dismissed for want of prosecution — but for Birkett v James. Yet because the little girl was still under 18 — and so the period of limitation had not expired — the action Was allowed to continue. But it was only by a majority of 3 to 2 in the House of Lords. Lord Wilberforce and Lord Dilhorne dissented. Many would have thought that their view should have prevailed.

I have often thought that the argument — that the plaintiff can issue another writ — is fallacious. If the first action should be dismissed, then let it be dismissed. The plaintiff may not have the hardihood to start another: nor should he get legal aid for it. Even if he should start a second action, he ought to pay the defendant all the costs incurred in the first.

Since the Limitation Act 1975, the period of three years is not an absolute bar. The Court has a discretion to extend the time but still in exercising its discretion, the delay of the plaintiff or his solicitors is the most important consideration in deciding whether or not the action should be allowed to continue. It may be that the ruling in Birkett v James can be discarded and the principles of the Court of Appeal applied in their full force.

2. Can anything be done about arbitration?

Thus far I have spoken about delays in litigation before the Courts. If a plaintiff is guilty of inordinate and inexcusable delay, his action can be dismissed for want of prosecution. But many disputes are referred to arbitration. In commerce and industry today, most contracts of any magnitude contain provisions for arbitration. Disputes about ships or building works all go to arbitration. Huge sums are in issue. Some awarded. Some rejected.

Suppose now that a claimant in an arbitration is guilty of inordinate and inexcusable delay — and that the delay is so serious that a fair hearing is impossible — has the other side any remedy? Until recently it was thought that there was none. In Crawford v Prowting Ltd [1973] QB 1. Bridge J held that an arbitrator had no power to dismiss a claim for want of prosecution. An arbitrator was bound to allow the claimant — no matter how long his delay — more time to get on with his case. The Commercial Court Committee took the same view. They thought that it was a great deficiency that there was no sanction against delay in arbitrations. One or other side could drag its feet and put off the day of judgment — or rather of the award — indefinitely. Mr. Justice Donaldson was the Chairman of that Committee. (He was at one time Chairman of the Industrial Relations Court and did it splendidly - though much abused in some quarters.) Yet it was he who recently held there was a remedy available in respect of delay in arbitration. It was in two cases just reported in Brenier Vulkan v South India Shipping [1979] 3 WLR 471. He declined to follow the previous decision of Bridge J. He held that arbitrators had the same power as a Court to dismiss for want of prosecution; and further that where the claimant had been guilty of inordinate and inexcusable delay, the other side could apply to the Court for an injunction: and that the Court could order the claimant to desist from proceeding further with the arbitration. In the two cases he granted injunctions stopping the arbitrations. That was in April 1979. His decision was followed a few weeks later by Lloyd J in The Splendid Sun.(1979) 4 May (not yet reported).

We must reserve our views on the correctness of these decisions: because they are under appeal to the Court of Appeal. They are, as Donaldson J said, of fundamental importance to English arbitration. To some extent the Legislature has already gone along the same road as Donaldson J. By Section 5 of the Arbitration Act 1979 an arbitrator may in future have like power as a Court to dismiss for want of prosecution. So progress is being made.

LINGUISTICS

1. PHONETICS

In English there are 26 letters of alphabet but 44 sounds (phonemes). The phonemes are given below. These are in accordance with International Phonetic Alphabet (IPA). Classification of vowels and consonants are based on the sound and not alphabet.

Received Pronunciation (R.P.) - This is in accordance with the phonetic style used by the people living around the twin cities of Oxford and Cambridge.

Classification of Sounds (Phonemes)

Speech sounds are classified into two: Vowels and Consonants

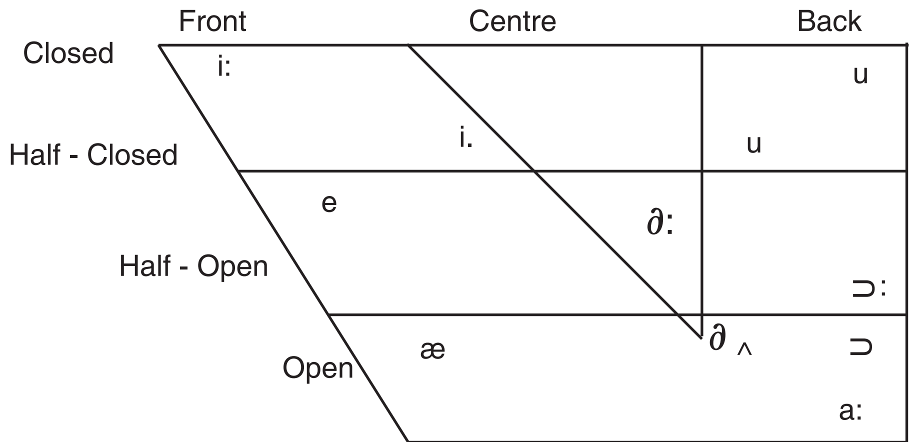
Vowels :

Daniel Jones defines a vowel "as a voiced sound in forming which the air issues in a continuous stream through the pharynx and mouth, there being no obstruction and no narrowing such as would cause audible friction". A complete list of vowels is as follows"

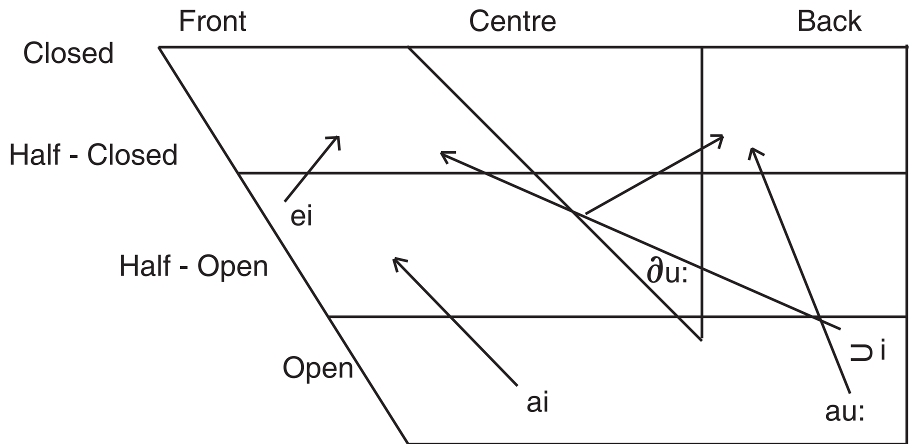
1. /i:/ as in seat
2. /i/ as in sit
3. /e/ as in set
4. /æ/ as in sat
5. /⊃/ as in hot
6. /⊃:/ as in all
7. /a:/ as in card
8. /U/ as in book
9. /U:/ as in soon
10. /^/ as in cup
11. / ∂:/ as in girl
12. /∂/ as in about
13. /ei/ as in play
14. /∂U/ as in go
15. /ai/ as in buy
16. /aU/ as in cow
17. /⊃ i/ as in boy
18. /i∂/ as in here
19. /∑∂/ as in there
20. /U∂/ as in poor.

The first twelve are called pure vowels because in their production the point of articulation does not change. The remaining eight are called diphthongs, because in their production the tongue glides from one point of articulation to another. These are further classified as closing diphthongs and centering diphthongs.

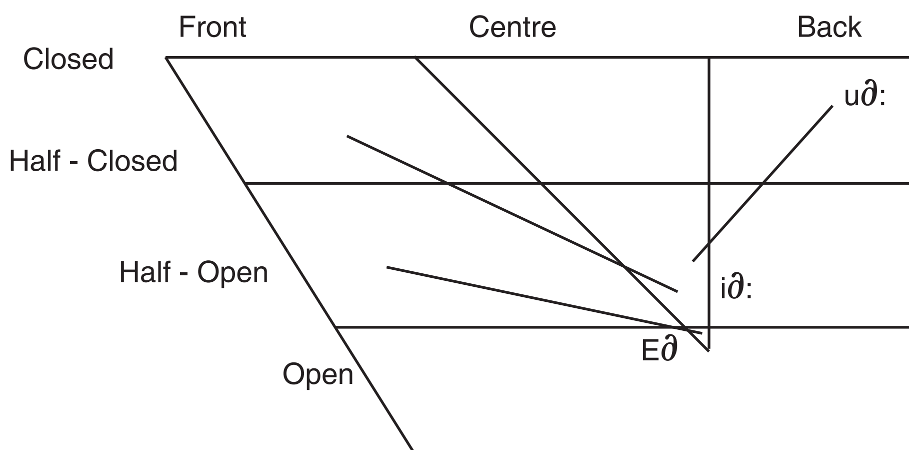
PURE VOWELS



CLOSING DIPHTHONGS



CENTERING DIPHTONGS



Diphthongs are also called double vowels. Due to the fact that there are two vowel sounds in each diphthong.

Semi Vowels:

These are two consonant sounds which are called semi vowels. They are j and w.

When we articulate the two consonant sounds they are produced not by full contraction, friction or modification. Hence there are no explosive or friction sounds produced.

These two sounds are produced in the way of the vowels but the difference in contraction in some part of the mouth and lips has made them classifiable under consonants.

Consonants :

Sounds which are not vowels are called consonants. In their production there is an audible friction or modification at some place in the mouth. Consonants are classified on the basis of (a) the place of articulation and (b) the manner of articulation.

The place of articulation :

a) Bilabial: articulated by the two lips.
b) Labiodental: articulated by the lower lip against the upper teeth.
c) Dental: articulated by the tip of the tongue and the back of the upper teeth.
d) Alveolar: articulated by the lip or the blade of the tongue against the teeth ridge.
e) Palato - alveolar : articulated by raising the main body of the tongue and touching the teeth ridge with the blade of the tongue.
f) Palatal: articulated by the front of the tongue against the hard palate,
g) Velar: articulated by the back of the tongue against the soft palate,
h) Glottal: articulated in the glottis.

CLASSIFICATION OF CONSONANTS

	Bilabid	Labio-dental	Dental	Alveolar	Post-alveobar	Palato alveobar	Palatal	Velar	Glottal
i) Plasive									
Unvoiced	P			t				k	
Voiced	b			d				g	
ii) Affricate									
Unvoiced						tf			
Voiced						d_3			
iii) Fricative									
Unvoiced		f	0	s		f			h
Voiced		V	X	z		3			
iv) Nasal	m			n				n	
v) Lateral				1					
vi) Semi- Vowel	w						j		
vii) Frictionless Continuant					r				

Sounds of English

VOWELS

ɪ	ʊ	ʌ	ɒ	ə	e	æ		'short'
iː	uː	ɑː	ɔː	ɜː				'long'
ɪə	ʊə	aɪ	ɔɪ	əʊ	eə	aʊ	eɪ	diphthongs

CONSONANTS

p	t	ʧ	k	f	θ	s	ʃ	voiceless
b	d	ʤ	g	v	ð	z	ʒ	voiced
m	n	ŋ	h	l	r	w	j	

Questions are asked as given below :

1. Identify the vowels -10 Marks.

   eat - i:

   mat - a∂.

2. Transcription Exercises - 10 Marks.

   eat - i: t

   mat - m æ t

   about - ∂bout

TABLE OF CONTENTS

The pronunciation of the alphabet The pronunciation table: vowel and consonant sounds

1) PAN/PAI N The sounds / æ / and / ei /
2) BEST/PEST The sounds / b / and / P /
3) SUE/ZOO The sounds / s / and / z /
4) DOWN/TOWN The sounds / d / and / t /
5) SEAT/SET The sounds / i: / and / e /
6) CARROT/CABBAGE The sounds /ə / and / I /
7) FEW/VIEW/WINE The sounds / f / / v / and / w /
8) CAP/GAP/HAT The sounds / k / / g / and / h /
9) YEAR The sound / j /
10) PHONETIC TEST recap
11) TIME/TJM The sounds / aI / and / I /
12) SHEEP/JEEP/CHEAP The sounds / ʃ / / dʒ / and / tʃ /
13) COLLECT^CORRECT The sounds / l / and / r /
14) BARS/BAR The sounds /ɑ : / and / eə /
15) SOME/SUN/SUNG The sounds / m / / n / and / ђ /
16) COAT/COT The sounds / əʊ/ and / D /
17) BREATHE/BREATH The sounds / Õ / and / Θ /
18) BUN/BULL/BOON The sounds / ^ / / ʊ / and / u: /
19) SHtRT/SHORT The sounds / 3: / and / ⊃: /
20) COY/COW The sounds / ⊃I / and / aʊ /

English phonetic symbols

Short vowels

1.	[ɪ]	e.g. big, Britain, busy
2.	[e]	e.g. desk, friend, weather
3.	[æ]	e.g. cat, language, exactly
4.	[ɒ]	e.g. hot, across, continent
5.	[ʊ]	e.g. book, woman, full
6.	[ʌ]	e.g. cut, butter, colourful
7.	[ə]	e.g. afraid, London, breakfast

Long vowels

1.	[iː]	e.g. tree, people, police
2.	[ɑː]	e.g. basket, ask, photograph
3.	[ɔː]	e.g. ball, blackboard, daughter
4.	[uː]	e.g. blue, school, afternoon
5.	[ɜː]	e.g. burn, girl, prefer

Diphthongs

1.	[ei]	e.g. day, afraid, great
2.	[ɑi]	e.g. July, decide, buy
3.	[ɔi]	e.g. boy, voice, enjoy
4.	[əʊ]	e.g. close, know, moment
5.	[ɑʊ]	e.g. town, flower, mountain
6.	[iə]	e.g. hear, here, appear
7.	[eə]	e.g. hair, wear, parents
8.	[ʊə]	e.g. sure, January

Some special consonants

1.	[ʃ]	e.g. ship, English, musician
2.	[tʃ]	e.g. lunch, chair, teacher
3.	[ʒ]	e.g. television, pleasure
4.	[dʒ]	e.g. John, language, large
5.	[θ]	e.g. tooth, think, birthday
6.	[ð]	e.g. this, weather, with
7.	[ŋ]	e.g. bring, long, building

2. Language Acquistion

The author Justice David Annoussamy has attempted to assess, review and explore improvements relating to the acquisition of knowledge of a language, need for knowledge of languages other than the mother tongue, importance of the mother tongue, the medium of instruction, language planning and the necessary teaching aids. His essays that bring to light the need for solving the problem of language planning is relevant where the learning population is not homogenous. The language planning policy shall be susceptible to periodical assessment, review and attunement. The language riddle should be solved with the help of the scientific knowledge available.

Anatomy of Language

The structure of the language is based on the different registers of language. Registers are modes of expression which differ from person to person based on the different social status of the persons. Formalism and colloquialism are the different registers and one has to adopt the appropriate.

1. Acquisition of Language by Children

a) Universality' of acquisition

The largest group of those involved in the process of acquisition of language consists of children. It is common know ledge that no human being fails in learning spontaneously a language with the exception of two categories: the deaf and the dumb. So universal is the phenomenon all over the world, whatever the language, that one tends to believe that the ability to speak is innate. It is only apparently so; language is actually acquired. Children without any exposure to language, for instance, those who are brought up by animals or in total isolation, do not have any language. Acquisition of a language by children is achieved within a relatively short period between the ages of 1 and 3 in spite of the complexity of the task. Those who get on best are those who are exposed well to good language; however, there is an optimum exposure for each age and for each child. When the child is exposed to too much of language there may be adverse reaction. Language is acquired successfully regardless of the level of general intelligence. Children who later fail in other spheres like arithmetic, swimming, and gymnastics acquire the mother tongue with the same ease like others and continue to improve their skill in language.

The result is remarkable for its perfection. When learning is almost complete, there is not much difference among illiterate people, whatever be their social rank or avocation. Only a faulty pronunciation of some words is occasionally noticed due to physiological defects in the vocal organs. Some children having psychological problems develop stammering. In spite of the generality of success, one might have noticed that there is variation indeed in volubility' or extent of vocabulary. In fact each one has got a ceiling in respect of expression. But there is no such variation as regards the knowledge of the main features of the language and its sentence patterns. So in respect of understanding, all are almost at the same level. Of course, children do not acquire the skills in written language without teaching. The level of performance is subject to great differences in that skill.

b) No teaching

Since the acquisition of mother tongue by children is a universal success, il is of utmost interest to analyse how' such acquisition takes place in order to devise methods of teaching other languages in the classroom Acquisition of language by children does not get explained by learning theories. Of course, parents are impatient to hear their child speak, especially they are looking eagerly for his first word.

However, they do not proceed to teach the language and if any teaching were imparted it would be of no avail. They want their child to understand what they say to him and they use for the purpose a simplified language known as caretaker's speech. To help the child understand, they use profusely extra-linguistic support like facial expressions, tone of the voice, and gestures. Regarding the subject dealt with, they confine themselves to what is necessary at the moment, following the "here and now" principle. The language used by parents is also syntactically simple. It becomes more and more complex as the linguistic maturity of the child increases. The progression in the parents' language is unconscious and very' slow. The child picks up language simply by listening attentively to the language spoken to him or around him. In the first stage he is interested only in what is spoken to him. Later he shows interest in the talk going about him. Similarly, in the beginning, he is interested only in communicating with members of the family'. Later the circle of communication widens. When the child gets out of the cocoon of the family and discovers other forms of expression, his interest to learn is triggered. The impulse of the child to communicate is so strong that acquisition is almost an uninterrupted process for him. Through such communication, acquisition takes place without any teaching.

c) Understanding precedes expression

The child, before he knows the meaning of words, even before he realizes that they could have a meaning, is interested in the sound combination of words. Each word has for him its features, which he is able to recognise and words have life for the children. This special relation of the child with words explains his interest in poetry which is sought to be satisfied by lullabies, rhymes and various sorts of traditional poetical compositions accompanying children's plays. However, in most of the children the enjoyment of sounds vanishes slowly as they start perceiving the meanings of words and become more and more interested in them. This is subject to individual variations. Those having a poetical bent of mind do not completely lose the phonal aspect of words and if they happen to start writing poetry, they try to recapture their first sensations, to enjoy again those first flavours. It is often said that poets are like children or that children are poets. This is true not only in their global vision of the world, but also in respect of their common enjoyment of sounds.

The language heard is stored and remains latent in the brain and it takes some time to put to actual use, first for understanding. This starts from the 12th month or even earlier; the child is able to recognise a known voice or familiar sounds indicating certain facts concerning him like the preparation of his food. His hearing system gets sharper even,- day. During 12-18 months the child is able to follow simple commands and he responds to interdictions; 90% of the comprehension ability is attained at the age of 3.

Though parents are aware that the child understands what he is told or what is going on around him, they do not press him to speak except on rare occasions like greeting visitors or thanking them for the present offered, or when the child weeps and the parents are anxious to know the reason in order to console him effectively. When pressed to speak, the child remains resolutely silent; the parents impute obstination to him but the truth is otherwise. Either he is too afflicted to be able to speak,or speech, especially among children, being a spontaneous act cannot be obtained by external solicitation which causes only inhibition. One can sometimes come across children who understand everything, but do not speak at all. It has also been reported that, very rarely, children are able to read newspapers although they do not speak.

Understanding is possible without speaking, but not the reverse. Understanding is a less active process than speaking. The latter requires a better know ledge of the language. Understanding amounts only to guessing the meaning of what is stated. Speaking requires the mental framing of a sentence and its utterance in clear and accepted sounds, which is a more complex operation. It is to be borne in mind that speaking takes place only several months after understanding.

d) Phases in expression

Speaking requires in the first place the preparation of the vocal organs and the acquisition of full command thereof. Preliminary exercises take place in a phased manner. They start at birth with crying. Between 4 and 6 months the baby cooes or laughs in a broken manner to express his inner feeling. Between 6 and 9 months he babbles and emits distinct common sounds. This oral exercise,which is by far more developed in human babes, appears to be the response or rather the imperfect imitation of the linguistic rhythm they are exposed

to. This constant phonal activity mixed with pleasure prepares the organs concerned for the language purpose. At the age of 3 the child is in possession of the phonological requirements of his mother tongue.

While engaged in this preparatory' exercise the child starts communicating with people around. The first exteriorisation of his feelings takes place without speaking. He cries, he pushes what is not desired, he gesticulates with anger, he smiles and laughs. He responds to familiar sounds and noises like the knocking at the door, the sound of the clock, etc..

At about one year, first words are uttered, sometimes modified to suit his pronouncing capability. The words do not usually carry the meaning which adults attribute to them. The child speaks to himself profusely a language of his own. When the child wants to communicate with others, he starts using the same word for several things. Then single words, with their actual meaning, appear. When he attempts sentences, he shortens them according to his cognitive attainment. First, two-word sentences appear: dog comes, daddy's pen, etc.. Then sentences with more words are used. Even then the adult language is modified according to his age, his mental and linguistic development. It is worth noting that whilst the utterance of words precedes the knowledge of corresponding concepts, the utterance of sentences follows the conception of corresponding ideas. At about the age of 3, he is able to use about 1000 words following the syntactic rules.

e) Process of acquisition

It would be interesting and useful to investigate further how the acquisition as described above takes place. It is not mere soaking up a language as one would be tempted to think. Unconsciously and without any deliberate action, there is a concomitant storing and organisation of the raw material. Between the age of 2 and 3 while storing the language, the child has at its command an innate hypothesis - forming faculty which enables him to devise grammatical rules unconsciously in respect of the language. This explains the discontinuity in learning which is observed.

In the process of learning there are certain backward steps. The child who initially was saying 'did', "told', all of a sudden starts saying 'doed', 'telled', but reverts after a certain time to the correct forms. The learning of a language by the child is not like the addition of bricks. Each time there is a structuration of the language by the child with the help of memory and logic, placing reliance on one or the other. Logic, being more economical in terms of effort than memorising, the child starts placing reliance on it as soon as he acquires this second faculty. When he discovers that verbs end with 'ed' in the preterite, he makes use of the logic. Afterwards, when he finds that logic lias failed in some cases, he takes note of the exceptions and stores them with the help of memory.

Before attaining perfection, the language of the child, though it comes out only after sufficient maturation, is faulty as compared to the standard language, in pronunciation as well as sentence patterns. Except by some perverted parents, the child is not scolded nor is he laughed at. The product of the child is very much appreciated. Out of affection and for the novelty it brings to the language, some of his modifications become part of the language of the family; especially the surnames of elder children remain as modified by the younger ones. Though parents do not correct the faulty language immediately, the}' instinctively repeat in the correct way what the child has said. It is thus found that the child in his attempt to learn a language resorts to the trial and error method, the error being inevitable in the process and ultimately, in course of time, errors disappear and the learning of language by the child is always a success.

f) Effort involved

On account of the apparent ease with which the child acquires a language, one is tempted to think that there is no effort. In reality, it is otherwise. With some attention one can perceive the amount of effort spent by the child in uttering the first words, the first sentences, and even thereafter in saying certain unusual words. The apparent ease gets explained by the total involvement of the child in the process. Speaking is vital for him to satisfy- all his needs which are varied, including the urge to participate in the family life, to understand it, to be a full partner and play his role. His whole energy is harnessed. It is accompanied by the pleasure arising out of the success in his new experience of expression. So, effort is there, but it is not manifest on account of those factors. Language learning without effort by the child is nothing but a myth due to lack of close observation.

g) Simultaneous acquisition of more than a language

A child can pick up more than a language at a time, if placed in a multi-lingual environment. Only two conditions are required: the child should be normal and a particular person should always speak the same language. A child who is very' eager to get what he wants uses different registers of language according to the nature of his links with the person concerned, even when only one language is practised. When he has to

communicate with persons speaking different languages, he acquires all of them. Between 3 and 4 the child is able to speak to each of his interlocutors the language of the latter. When a word is not known, the child does not use the w ord of another language, he resorts instead to a periphrasis in the language of the interlocutor, so keen is he to get understood. He acquires in the process a very high skill of distinguishing languages. He is even able to serve occasionally as an interpreter.

If exposure to two languages is equal, the progress achieved is also equal and the child has two mother tongues. But rarely exposure is equal. Even if each of the parents speaks a different language to the child, they have usually a common language between them, which would be one of the two languages. The influence of the language of the other members of the family, servants, media, children in the street and parks may also tilt the balance in favour of one language which therefore takes the lead. But the other can override it if circumstances change This often happens when the language of the school is the other one.

People sometimes wonder whether it is not harmful to expose the child to more than a language. The observations so far made have not indicated any harmful effect except in the case of children having mental defects or linguistic difficulties. Such children should not be subjected to such an effort. If the child is normal or above normal, the fact of learning simultaneously two languages entails a better development of his mind. Parents cannot transmit to their children their knowledge, but they can transmit easily a language, which, even if it is not very useful in his life, will render easy the acquisition of any other language later.

Though the process of learning by children is laborious, they all succeed in learning one or more languages. The process is therefore worth emulating, or at least lessons may be drawn therefrom.

2. Picking up Another Language

a) When does it operate?

Acquisition of more than one language at a time by children is the proof, if need be, that human brain is programmed to learn more than one language. Picking up a new language by a person knowing already one or more languages by mere exposure without any teaching or study is more and more prevalent. It happens mostly in the case of migrants and transferred officers and also their children and servants. This way of learning has proved successful for persons of all ages. Language, though most intimately linked to a group and being its most important characteristic, can be acquired by an outsider fairly well.

b) Conditions of acquisition

Such a result is not attained by all. Acquisition depends first on the duration of exposure to the language. Below a certain minimum, there is no acquisition worth the name. If the contact is lost, the language acquired is progressively forgotten. Secondly, the target language should be the only possible vehicle of communication with some of the persons with whom one has to communicate. If the need to communicate is absent, or if communication can be achieved through another language or through an interpreter, there is no learning. Thirdly, the result depends also on the extent of involvement in the activities and the social life in the new language. The urge is greater among youngsters, for playing or for spending time in a pleasant manner. The result depends finally on the degree of motivation to learn. There should be eagerness to learn the language and to learn it perfectly. One has to get immersed in the language, to be interested in storing words and sentences the usefulness of which he has noticed in actual life, to listen attentively, and to catch the correct way of expression in the place of his tentative one.

These above factors and others explain the differences in the level attained in picking up a language. Some, though compelled to learn a language to survive, are unable to learn it correctly. Among them, there are two categories. The first one consists of those who do not have a good hearing ability; their pronunciation remains defective. The second one consists of those who continue to commit the same mistakes and use the same defective sentence patterns.

It appears that a ceiling is reached and there is no further progress possible. Either they are at least vaguely conscious of their defective speech, but are not motivated enough to acquire the correct forms, or they are unable to identify- some patterns of expression unknown in their mother tongue and they short-circuit them while listening as well as speaking. There are also people who, though exposed continuously to a language, succeed in remaining impervious. They do not listen to what is being spoken around them. They are not interested in learning it.

c) Comparison with acquisition of first language by the child

The process of picking up languages is more or less the same as the acquisition of mother tongue by the child. There are however some noticeable differences. Usually, people around speak to the learner normally,

not like parents to a child with a desire that he learns; they do not repeat. There is no caretaker's speech except in circumstances when one wants to get absolutely understood. Secondly, the need to communicate, however important it may be, is not as vital as for the child.

A third difference which is fundamental but often not clearly perceived is that the learner knows already a language. This has some advantages. There is no need of acquisition of new concepts Cognitive development is complete. One is accustomed to express what he wants to say. The hearing and vocal apparatuses are already fully developed . In that way the task is easy but this situation also has its disadvantages. The mother tongue acts as a screen. The vocal organs do not have the same flexibility for the new' sounds. The hearing system stands less awakened. There is a tendency to assimilate the sounds of the new language with the nearest ones in the mother tongue. There is also an unconscious resentment to have to make an effort to acquire a new' code of communication when that is imposed by necessity. But when one has occasion to pick up a language, he should not miss it. What is required is only wholehearted acceptance.

3. Learning in Nursery School

A nursery school catering for learning a second language has to provide for acquisition of only oral language. The process then is very similar to picking up a language. It is an organised picking up. In such a school, the typical school exercises would not have a place. There will be no written language at all. Everything should be oral. Children are engaged in playful activities with the target language as the medium; simple crafts, organised play, drawing, singing, recitation of some poems, commented observation of things, simple scientific experiments explained, reading of picture books, telling stories, films, etc. Questioning can start when pupils have sufficiently developed the skill of expression; however, questions should require at the beginning only simple answers. There will be no teaching of language as such.

If the nursery school is programmed in that way, the acquisition of a new language is fairly successful. Only 10 - 15 per cent of the children have been found not to be able to pick up a second language in this way. Trained kindergarten teachers are able to spot such children within a period of one month. It is not useful and it may even prove dangerous to continue the experience for such children. They should be put in the kindergarten in the mother tongue and they will learn the second language later. Thus they will make satisfactory progress in their studies. If, on the contrary, they are left in the same foreign language kindergarten with the feeling of failure from the start, they will not go far in their studies.

Learning a language in a nursery school is a good proposition, but it should be nurtured later properly.

4. Learning through Language Teaching

a) Not a successful enterprise

Acquisition of a language by the child without any teaching has _ proved to be a universal and perfect success. Picking up is fairly successful. So also is learning in the nursery school. But acquisition through teaching has been found to be an immense failure in all countries including ours. The result is worse than in the general education, because language learning is a very delicate process. After many years of toil, the student is not even able to read a newspaper in the language. Orally he is able to say only a few salutations. One can easily' come across educated Indians saying apologetically: "I studied French (or German) for my Intermediate, (or B.A.) but I cannot speak". There is a resentment for the waste of time caused to them. What is more distressing is that failure in English entails failure in the general examination as well, undue importance being given to English at a wrong place.

b) Reasons for failure

For the purpose of teaching, a foreign language is being considered as a subject like others, ignoring the peculiar nature of language learning. Language cannot be learnt in the usual sense of the word like other subjects. Learning theories are irrelevant for language. However, the words 'learning' and learners' are here used for the purpose of convenience. Language is always acquired. In other subjects, one is asked to understand, to memorize, and to use the knowledge stocked as and when required. The whole process takes place through the medium of a known language which is a tool. Language is not a matter of knowledge. It is a matter of skill, a very complex one.

In considering the language as a subject, teaching ignores the natural process of acquisition of language. In the natural process, acquisition follows the flow of circumstances in actual life. The language learner chooses what is of interest to him whereas in teaching, the choice is not that of the learner but that of the teacher. Exposure to natural language as such is too meagre. Language is rather presented as a set of formal elements to be apprehended outside any communicative context and without real communicative

purpose, in the form of model sentences arranged in a rational progression. The focus is on die grammatical rules rather than on vocabulary.

But in actual life, rules never precede performance. They are useful to control the correctness of performance; they cannot effectively help in learning the language. Students are subjected to drills which do not produce the expected results, because they are mechanical without communicative value. Reeling off conjugations does not help much in learning the language. Language is presented as an artificial construction, something different from the mother tongue. Students are not made to react authentically to the real language. So there is a low intake and only fragments of language are learnt. The focus being on the form of language rather than on its communicative interest, what is learnt cannot be put to use for communication, especially for oral communication.

When language is taught, learning of both oral and written languages is simultaneously attempted,which is against the natural course of language learning. This complicates the process. Though it is now possible to teach only oral language with the help of audiovisual equipment, this takes place only in specialized institutions which remain islands in the ocean of language teaching. Usually, written language takes the pride of place. The teacher finds it easier. Grown up pupils and adults are also keen on having the written support. Oral language alone appears to them somewhat evanescent. They want something which they could grapple immediately. Written language has got that advantage in their eyes. Thus teaching slips easily in traditional school exercises which can help only in learning written language and more especially reading. No wonder that the other skills arc not acquired.

A fundamental defect in classroom teaching is that it does not allow time for maturation, so essential in the process of language acquisition. The fact that there is a big gap between understanding and expression and that a good span of time should be allowed between them is lost sight of. Students are compelled to speak and write prematurely, which has a disastrous and paralysing effect. Such an obnoxious practice is the result of assimilating the teaching of language to the teaching of other subjects, where interrogation on the next day on the previous lesson is a common feature.

Language teaching should diverge from the teaching of other subjects and imitate as far as possible the process of picking up. There is always a shortfall between teaching and learning in all subjects. In the matter of language, learning through teaching has proved so far an immense failure altogether. But better success can be achieved in that way of learning as well, if teaching is modified, drawing lessons from the way the language is picked up and from the analysis of the reasons for the failure in the present way of teaching. The lessons drawn lead us to enunciate some principles to be followed, which are called here Maws' to underline their importance. Any language learner with or without the help of a should bear them in mind and follow them to achieve success.

Language Register

Registers of Language

A person using his mother tongue resorts to the proper register of language instinctively. In fact, there are different ways of expression of the same thing by persons of different social status or by the same person in different settings and in different circumstances of life. The drawing room conversation is not like the market place bargain. The workshop instructions do not resemble Government orders. Conversation between persons of the same sex does not resemble the conversation between persons of opposite sexes.

To illustrate better these different modes of expression, called registers of language, let us take an example and show how the same thing would be expressed by persons of different social status:

Formal prayer : Give us this day our daily bread.
Common man : Please give us bread everyday.
Beggar : Some bread please, I am hungry.
Militant : Bread daily ! Bread !
Politician : The priority of priorities is food for all.
Poet : Let this world perish if food is not assured for all.
Moralist : Your daily bread is the fruit of your daily work.
Pious lady in the drawing room : From my heart of hearts I implore the divine munificence for the whole mankind perennially.

The Political Science Professor	:	Among the various duties of a Welfare State there is one which, 1 should say, is paramount, that is to ensure food to each and every citizen without interruption.
Laywer	:	We respectfully request you and pray that due and adequate provision be made this day and all the days to follow, for the satisfying of the petitioner's maintenance, that the aforesaid provision be quantified and that the opposite party be ordained to supply uninterruptedly the provision so quantified.

Usually one does not become conscious of these different registers of language in the mother tongue though one uses them daily. Thus written language is not the transcription of the oral language. Conversely, oral language is not something like the reading of written language, except on some occasions like lectures, speeches. Even then, one can perceive the difference between a speech delivered with or without notes (compromise between written and oral language) and a speech consisting of reading a fully written text. Written language reproduced orally generally causes boredom, the vividness expected in oral language being missing. The word groups, the way in which the idea units are reproduced, are not the same in the written and oral language. Intonation, repetition of words, pauses, and all other ways of giving full expression for the emotion and sentiment which are available in oral language cannot be found in the written language. So even in the mother tongue, some are better in written language; some others in oral language. Even children become unconsciously aware of the difference in registers at a relatively young age. First graders do not use the same register while speaking with their parents, their teachers, and their playmates.

If use of the appropriate register of language is something naturally acquired in the mother tongue, one has to pay attention to it while learning and using a second language. Between persons of different countries, the register will ordinarily be more formal than between natives of the same country. The foreigner is therefore expected to start learning and speaking the standard language. Too colloquial a language in the mouth of a foreigner arouses surprise. But when one is speaking in the foreign language to a close friend, he has to give up the standard language and adopt the appropriate register. Similarly, when one talks to his cook in the foreign language, he should speak in the corresponding register. Therefore, in the process of communication in the second language as well, one has to respect the register of language.

Language varieties

Da history of da word pigeon is Ii'dis- Wen da French- speaking Normans wen conquer England in da year ten-six-six, dey wen bring along wit dem da word pigeon, for da type of bird it was. Da resident Anglo-Saxons used da word dove, or D-u-f-e, as dey used to spell'um, to mean da same bird. It just so happened dat terms in Norman-French wen blend wit Old English sentence structure, to form what we know as Middle English. In da process, da French word became da one dat referred to da pigeon as food. Today in England, if you look for dem, you can find recipes for pigeon pie.

Food for taught, eh-Even back den, da word pigeon wen blend with pigeon for get some moa pigeon.

So now days get pigeon by da zoo-get pigeon on da beach-get pigeon in town-get pigeon in coups-and no madda wat anybody try do, dey cannot get rid of pigeon-I guess wit such a wide blue sky, everything deserves to fly.

Joseph Balaz (1988)

In many of the preceding chapters, we have treated languages, such as English, as if all speakers of the particular language used that language in a uniform way. That is, we have largely ignored the fact that every language will have more than one variety, especially in the way in which it is spoken. Yet this variation in speech is an important and well-recognized aspect of our daily lives as language-users in different regional and social communities. In this chapter we shall consider the type of variation which has been investigated via a form of 'linguistic geography', concentrating on regional varieties,and in the following chapter we shall consider the factors involved in social variation in language use. First, we should identify that particular variety which is normally meant when the general terms English, Italian, Japanese,Spanish,and so on are used.

The Standard Language

When we described the sounds, words and sentence of English,we were in fact, concentrating on the features of only one variety,usually labeled Standard English. This is the variety which forms the basis of printed English in newspapers and books, which is used in the mass media and which is taught in schools. It is the variety we normally try to teach to those who want to learn English as a second language. It is clearly associated with education and broadcasting in public contexts and is more easily described in terms of the written language (i.e. vocabulary spelling, grammar) than the spoken language.

If we are thinking of that general variety the used in public broadcasting in the United States, we can refer more specifically to Standard American English or, in Britain, to Standard British English. There is no reason why other national varieties such as Standard Australian English. Standard Canadian English should not be recognized also.

Accent and dialect

Whether or not you think you speak a standard variety of English, you will certainly speak with an accent. It is a myth that some speakers have accents while others do not some speakers have distinct or easily recognized types of accent while others do not, but every language-user speaks with an accent. The term accent,when used technically,is restricted to the term description of aspects of pronunciation which identify where an individual speaker is from, regionally or socially. It is to be distinguished from the term dialect which describes features of grammar and vocabulary, as well as aspects of pronunciation. For example, the sentence You don't know what you 're talking about will generally 'look' the same whether spoken with an American or Scottish accent. Both speakers will be using Standard English forms,but have different pronunciations. However,this next sentence - Ye dinnaee ken whit yer haveerin' aboot- has same meaning as the first,but has been written out in an approximation of what a person who speakes one dialect of Scottish English might say. There are,of course,different in pronunciation(e. g. whit,aboot)but there are also examples of different vocabulary (ken,haverin') and a different grammatical form (dinnae)

While differences in vocabulary are often easily recognized,dialect variations in the meaning of grammatical constructions are less frequently documented. Here is an example, quoted in Trudgill (1983), of an exchange between two British English speakers (B and C), and a speaker from Ireland (A), which took place in Donegal, Ireland:

A : How long are youse here?

B : Till after Easter.

(Speaker A looks puzzled)

C : We came on Sunday.

A : Ah. Youse 're here a while then.

It seems that the construction How long are youse here?, in speaker A's dialect, is used with a meaning close to the structure How long have you been here?, rather than with the future interpretation (How long are you going to he here?) made by speaker B.

Despite occasional difficulties of this sort, there is a general impression of mutual intelligibility among many speakers of different dialects, or varieties, of English. The important point to remember is that, from a linguistic point of view, no one variety is 'better' than another. They are simply different. From a social point of view, however, some varieties do become more prestigious. In fact, the variety which develops as the Standard Language has usually been one socially prestigious dialect, originally connected with a political or cultural center (e.g. London for British English, and Paris for French). Yet, there always continue to be other varieties of a language, spoken in different regions.

Regional dialects

The existence of different regional dialects is widely recognized and often the source of some humor for those living in different regions. Thus, in the United States, someone from Brooklyn may joke about the Southerner's definition of sex by telling you that sex is fo'less than tin, in his best imitation of someone from the Southern states. The Southerner can, in return, wonder what a tree guy is in Brooklyn, since he has heard Brooklyn speakers refer to doze tree guys. Some regional dialects clearly have stereotyped pronunciations associated with them.

Those involved in the serious investigation of regional dialects are fairly uninterested in such stereotypes, however, and have devoted a lot of research to the identification of consistent features of speech found in one

geographical area rather than another. These dialect surveys often involved painstaking attention to detail and tended to operate with very specific criteria in identifying acceptable informants. After all,it is important to know if the person whose speech you are tape-recording really is a typical representative of the region's dialect. Consequently, the informants in many dialect surveys tended to he NORMS, or non-mobile, older, rural, male speakers. Such speakers were selected because it was believed that they were less likely to have influences from outside the region in their speech. One unfortunate consequence of using such criteria is that the dialect description which results is probably more accurate of a period well before the time of investigation. Nevertheless, the detailed information obtained has provided the basis for a number of Linguistic Atlases of whole countries (e.g. England) or of regions (e.g. the New England area of the United States).

Isoglosses and dialect boundaries

Let us take a look at some examples of regional variation found in one survey, that which resulted in the Linguistic Atlas of the Upper Midwest of the United States. One of the aims of such a survey is to find a number of significant differences in the speech of those living in different areas and to be able to chart where the boundaries are,in dialect terms, between those areas. If it is found, for example, that the vast majority of informants in one area say they take their groceries home in a *paper bag* while the majority in another area say they use a *paper sack*, then it is usually possible to draw a line across a map separating the two areas, as shown on the accompanying illustration. This line is called an isogloss and represents a boundary between the areas with regard to that one particular linguistic item. If a very similar distribution is found for another two items, such as a preference for pail to the north and for bucket to the south, then another isogloss, probably overlapping, can be drawn in. When a number of isoglosses come together in this way. a more solid line indicating a dialect boundary,can be drawn.

In the accompanying illustration, the small circles indicate where *paper bag* was used and the plus sign (+) shows where *paper sack* was used. The broken line between the two areas represents an isogloss. Using this dialect boundary information, we find that in the Upper Midwest of the USA, there is a Northern dialect area which includes Minnesota, North Dakota, most of South Dakota, and Northern Iowa. The rest of Iowa and Nebraska show characteristics of the Midland dialect. Some of the noticeable pronunciation differences,and some vocabulary differences, are illustrated here:

	('taught')	('roof')	('creek')	('greasy')	
Northern:	[c]	[]	[I]	[s]	
Midland:	[a]	[u]	[i]	[z]	
Northern:	*paper bag*	*pail*	*kerosene*	*slippery*	*get sick*
Midland:	*paper sack*	*bucket*	*coal oil*	*slick*	*take sick*

So, if an American English speaker pronounces the word *greasy as* [grizi] and takes groceries home in a *paper sack*, then he is not likely to have grown up and lived most of his life in Minnesota. It is worth noting that the characteristic forms listed here are not used by everyone living in the region. They are used by a significantly large percentage of the people interviewed in the dialect survey.

The dialect continuum

Another note of caution is required. The drawing of isoglosses and dialect boundaries is quite useful in establishing a broad view of regional dialects, but it tends to obscure the fact that, at most dialect boundary areas, one variety merges into another. Keeping this in mind, we can view regional variation as existing along a continuum, and not as having sharp breaks from one region to the next. A very similar type of continuum can occur with related languages existing on either side of a political border. As you travel from Holland into Germany, you will find concentrations of Dutch speakers giving way to areas near the border where the Dutch dialects and the German dialects are less clearly differentiated; then, as you travel into Germany, greater concentrations of distinctly German speakers occur.

Speakers who move back and forth across this border, using different varieties with some ease, may be described as bidialectal (i.e.'speaking two dialects'). Most of us grow up with some form of bidialectalism, speaking one dialect 'in the street' and having to learn another dialect 'in the school'. However, if we want to talk about people knowing two distinct languages, we have to describe them as being bilingual.

Bilingualism

In many countries, regional variation is not simply a matter of two dialects of a single language, but a matter of two quite distinct and different language, Canada, for example, is an officially bilingual country, with both French and English as official languages. This recognition of the linguistic rights of the country's

French speakers, largely in Quebec, did not come about without a lot of political upheaval For most of its history, Canada was essentially an English-speaking country, with a French-speaking minority group. In such a situation, bilingualism, at the individual level, tends to be a feature of the minority group. In this form of bilingualism, a member of a minority group grows up in one linguistic community, primarily speaking one language, such as Welsh in Wales, Gaelic in Scotland or Spanish in the United States, but learns another language, such as English, in order to take park in the larger dominant linguistic community.

Indeed, many members of linguistic minorities can live out their entire lives without ever seeing their native language appear in the public domain. Sometimes political activism can change that. It was only after English notices and signs were frequently defaced or replaced by scribbled Welsh- language versions that bilingual (English-Welsh) signs came into wide-spread use in Wales. One suspects that many *henoed* never expected to see their first language on public signs like this one, photographed recently in Wales. (But why,you might ask,are we being 'warned' about them?)

Individual bilingualism, however, doesn't have to be the result of political dominance by a group using a different language. It can simply be the result of having two parents who speak different language. If a child simultaneously acquires the French spoken by her mother and the English spoken by her father, then the distinction between the two languages may not even be noticed,There will simply be two ways of talking according to the person being talked to. However, even in this type of bilingualism, one language tends eventually to become the dominant one, with the other in a subordinate role.

Language planning

Perhaps because bilingualism in Europe and North America tends to be found only among minority groups, a country like the United States is often assumed to be a single homogeneous speech community where everyone speaks English and all radio and television broadcasts and all newspapers use Standard English. It appears to be a monolingual country. This is a mistaken view. It ignores the existence of large communities for whom English is not the first language of the home. As one example, the majority of the population in San Antonio,Texas, are more likely to listen to radio broadcasts in Spanish than in English. This simple fact has quite large repercussions in terms of the organization of local representative government and the educational system. Should elementary school teaching take place in English or Spanish?

Consider a similar question in the context of Guatemala where, in addition to Spanish, there are twenty-six Mayan languages spoken. If, in this situation, Spanish is selected as the language of education, are all those Mayan speakers put at an early educational disadvantage within the society? Questions of this type require answers on the basis of some type of language planning. Government, legal and educational bodies in many countries have to plan which varieties of the languages spoken in the country are to be used for official business. In Israel,despite the fact that Hebrew was not the most widely used language among the population, it was chosen as the official government language. In India, the choice was Hindi, yet. In many non- Hindi-speaking regions, there were riots against this decision.

The process of language planning may be seen in a better light when the full series of stages is implemented over a number of years. A good modern example has been provided by the adoption of Swahili as the national language of Tanzania in East Africa. There still exist a large number of tribal languages as well as the colonial vestiges of English, but the educational, legal and government systems have gradually introduced Swahili as the official language. The process of 'selection' (choosing an official language) is followed by 'codification' in which basic grammars, dictionaries and written models are used to establish the Standard variety. The process of 'elaboration' follows, with the Standard variety being developed for use in all aspects of social life and the appearance of a body of literary work written in the Standard. The process of 'implementation' is largely a matter of government attempts to encourage use of the Standard, and 'acceptance is the final stage when a substantial majority of the population have come to use the Standard and to think of it as the national language, playing a part in not only social, but also national, identity.

Pidgins and Creoles

In some areas, the Standard chosen may be a variety which originally had no native speakers. For example, in Papua New Guinea, most official business is conducted in- Tok Pisin, a language sometimes described as Melanesian Pidgin. This language is now used by over a million people, but it began as a kind of 'contact' language called a Pidgin. A Pidgin is a variety of a language (e.g. English) which developed for some practical purpose, such as trading among groups of people who had a lot of contact, but who did not know each other's languages. As such, it would have no native speaker. The origin of the term 'Pidgin' is thought to be from a Chinese Pidgin version of the English word 'business'.

There are several English Pidgins still used today. They are characterized by an absence of any complex grammatical morphology and a limited vocabulary. Inflectional suffixes such as -*s*(plural)and -'*s* (possessive) on nouns in Standard English are rare in Pidgins, while structures like *tu buk* ('two books') and *di gyal pleis* ('the girl's place') are common. Functional morphemes often take the place of inflectional morphemes found in the source language. For example, instead of changing the form of *you* to *your,* as in the English phrase *your book*, English-based Pidgins use a form like *bilong*,and change the word order to produce phrases like *buk bilong yu*.

The origin of many words in Pidgins can be phrases from other languages, such as one word used for 'ruin, destroy' which is *bagarimap* (derived from the English phrase "bugger him up"), or for 'lift' which is *haisimap* (from "hoist him up"), or for 'us' which is *yumi* (from "you" plus "me"). Original borrowings can be used creatively to take on new meanings such as the word *ars* which is used for 'cause- or 'source', as well as 'bottom', and originated in the English word *arse*.

The syntax of Pidgins can be quite unlike the languages from which terms were borrowed and modified, as can be seen in this example from an earlier stage of Tok Pisin:

Baimbai	*hed*	*bilongyu*	*i-arrait*	*gain*
(by and by)	(head)	(belong you)	(he-alright)	(again)

'Your head will soon get well again'

There are considered to be between six and twelve million people still using Pidgin language and between ten and seventeen million using descendants from Pidgins called Creoles.When a Pidgin develops beyond its role as a trade language and becomes the first language of a social community, it is described as a Creoie. Tok Pisin. for example, would more accurately be described nowadays as a Creole. Although still locally called 'pidgin', the language spoken by large numbers of people in Hawai'i is also a Creole, A Creole develops as the first language of the children of Pidgin speakers. Thus, unlike Pidgins, Creoles have large numbers of native speakers and are not restricted at all in their uses. A French-based Creole is spoken by the majority of the population in Haiti and English-based Creoles are used in Jamaica and Sierra Leone.

The separate vocabulary elements of a Pidgin can become grammatical elements in a Creole. The form *baimbai yu go* ('by and by you go') in early Tok Pisin gradually shortened to *bai yu go*, then t*o yu baigo*, and finally *to yu bigo*, with a grammatical structure not unlike that of its English translation equivalent,*you will go.*

The Post-Creole continuum

In many contemporary situations where Creoles evolved, there is usually evidence of another process at work. Just as there was development from a Pidgin to a Creole, known as 'cv reolization', there is now often a retreat from the use of the Creole by those who have greater contact with a standard variety of the language. Where education and greater social prestige are associated with a 'higher' variety, used as a model (e.g. British English in Jamaica), many speakers will tend to use fewer Creole forms and structures. The process, known as 'decreolization', leads, at one extreme, to a variety that is closer to the external standard model and leaves, at the other extreme, a basic variety with more local Creole features. The more basic variety is called the basilect and the variety closer to the external model is called the acrolect. Between these two extremes may be a range of slightly different varieties, some with many and some with fewer Creole features, known as mesolects. This range of varieties, evolving after (= 'post') the Creole has been created, is called the Post-Creole continuum.

Thus, in Jamaica, one speaker may say a *fi mi bttk dat* (basilect), another may put it as *iz mi buk* (mesolect) or yet another may choose *it's my book* (acrolect). It is also common for speakers to be able to use a range of features associated with different varieties and appropriate to different situations.

It is predictable that these differences will be tied very much to social values and identity. In the course of discussing language varieties in terms of regional differences, we have excluded, in a rather artificial way, the complex social factors which are also at work in determining language variation. In the final chapter, we shall go on to consider the influence of a number of these social variables.

Language, society and culture

When the anchorwoman Connie Chung was asked a fairly insensitive question by a new co-worker about the relationship between her position as an Asian-American woman and her rapid rise in the field, her response was both pointed and humorous: "I pointed to the senior vice president and announced, 'Bill likes the way I do his shirts.'"

Regina Barreca(1991)

We have already noted that the way you speak may provide clues, in terms of regional accent or dialect, to where you spent most of your early life. However, your speech may also contain a number of features which are unrelated to regional variation. Two people growing up in the same geographical area, at the same time, may speak differently because of a number of social factors. It is important not to overlook this social aspect of language because, in many ways, speech is a form of social identity and is used, consciously or unconsciously, to indicate membership of different social groups or different speech communities. A speech community is a group of people who share a set of norms, rules and expectations regarding the use of language. Investigating language from this perspective is known as Sociolinguistics.

Sociolinguistics

In general terms,sociolinguistics deals with the inter-relationships between language and society. It has strong connections to anthropology, through the investigation of language and culture, and to sociology, through the crucial role that language plays in the organization of social groups and institutions. It is also tied to social psychology, particularly with regard to how attitudes and perceptions arc expressed and how in-group and out-group behaviors are identified. All these connections are needed if we are to make sense of what might be described as'social dialects'.

Social dialects

In modern studies of language variation, a great deal of care is taken to document, usually via questionnaires, certain details of the social backgrounds of speakers. It is as a result of taking such details into account that we have been able to make a study of social dialects, which are varieties of language used by groups defined according to class, education, age, sex, and a number of other social parameters.

Before exploring these factors in detail, it is important to draw attention to one particular interaction between social values and language use. The concept of 'prestige', as found in discussions about language in use, is typically understood in terms of overt prestige, that is, the generally recognized 'better' or positively valued ways of speaking in social communities. There is, however, an important phenomenon called covert prestige. This 'hidden' type of positive value is often attached to non-standard forms and expressions by certain sub-groups. Members of these sub-groups may place much higher value on the use of certain non-standard forms as markers of social solidarity. For example, schoolboys everywhere seem to attach covert prestige to forms of 'bad' language (swearing and 'tough' talk) that are not similarly valued in the larger community. It is nevertheless, within the larger community that norms and expectations are typically established.

Social class and education

Two obvious factors in the investigation of social dialect are social class and education. In some dialect surveys, it has been found that, among those leaving the educational system at an early age, there is a greater tendency to use forms which are relatively infrequent in the speech of those who go on to college. Expressions such as those contained in *Them boys throwed* some-thin' are much more common in the speech of the former group than the latter. It seems to be the case that a person who spends a long time going through college or university will tend to have spoken language features which derive from a lot of time spent working with the written language. The complaint that some professor "talks like a book" is possibly a recognition of an extreme form of this influence.

The social classes also sound different. A famous study by Labov (1972) combined elements from place of occupation and socioeconomic status by looking at pronunciation differences among salespeople in three New York City department stores, Saks (high status), Macy's (middle status) and Klein's (low status). Labov asked salespeople questions that elicited the expression *fourth floor.* He was interested in the pronunciation (or not) of the [r] sound after vowels. There was a regular pattern: the higher the socioeconomic status the more [r] sounds, and the lower the socio-economic status, the fewer [r] sounds were produced. So, the difference in a single consonant could mark higher versus lowah social class. That was in New York.

In Reading, England,Trudgill (1974) found that the same variable (i.e. [r] after a vowel) had the opposite social value. Upper middle class speakers in that area tended to pronounce fewer [r] sounds than lower/ working class speakers. You may have encountered individuals who seem to have no [r] sound in 'Isn't that mahvellous. dahling!"

Actually, a more stable indication of lower class and less education, throughout the English-speaking world, is the occurrence of [n] rather than [r] at the end of words like *walking and going.* Pronunciations represented by sittin' and drinkin' arc associated with lower social class.

Another social marker is [h]-dropping, which results in ‘ouse and ’ello. In contemporary English, this is associated with lower social class and less education. For Charles Dickens, writing in the middle of the nineteenth- century. it was one way of marking a character’s lower status, as in this example from Uriah Heep (in David Copperfield).

‘lam well aware that I am the umblest person going’, said Uriah Heep, modestly; ‘... My mother is likewise avery umble person. We live in numble abode, Master Copperfield, but we have much to be thankful for. My father’s former calling was umble.’

Age and gender

Even within groups of the same social class, however,other differences can be found which seem to correlate with factors such as the age or gender of speakers. Many younger speakers living in a particular region often look at the results of a dialect survey of their area (conducted mainly with older informants) and claim that their grandparents may use those terms, but they do not. Variation according to age is most noticeable across the grand- parent-grandchild time span.

Grandfather may still talk about the *icebox* and the *wireless.* He’s unlikely to know what rules, what *sucks*, or what’s *totally stoked*, and he doesn’t use like to introduce reported speech, as his granddaughter might do: *We’re getting ready, and he’s like, Let’s go, and I’m like, No way I’m not ready, and he splits anyway, the creep!*

Variation according to the gender of the speaker has been the subject of a lot of recent research. One general conclusion from dialect surveys is that female speakers tend to use more prestigious forms than male speakers with the same general social background. That is, forms such as *I done it, it growed and he ain’t* can be found more often in the speech of males, and *I did it, it grew and he isn ’t* in the speech of females.

In some cultures, there are much more marked differences between male and female speech. Quite different pronunciations of certain words in male and female speech have been documented in some North American Indian languages such as Gros Venire and Koasati. Indeed, when Europeans first encountered the different vocabularies of male and female speech among the Carib Indians, they reported that the different sexes used different languages. What had in fact, been found was an extreme version of variation according to the gender of the speaker.

In contemporary English, there are many reported differences in the talk of males and females. In same gender pairs having conversations, women generally discuss their personal feelings more than men. Men appear to prefer non-personal topics such as sport and news. Men tend to respond to an expression of feelings or problems by giving advice on solutions, while women are more likely to mention personal experiences that match or connect with the other woman’s. There is a pattern documented in American English social contexts of women co-operating and seeking connection via language, whereas men are more competitive and concerned with power via language. In mixed-gender pairs having conversations, the rate of men interrupting women is substantially greater than the reverse. Women are reported to use more expressions associated with tentativeness, such as ‘hedges’ (*sort of, kind of*) and ‘tags’ (*isn’t it?, don’t you?*), when expressing an opinion: *Well, em, I think that golf is kind of boring, don ’t you?*

There have been noticeable changes in English vocabulary (e.g. spokesperson, mail carrier instead of spokesman, mailman) as part of an attempt to eliminate gender bias in general terms, but the dilemma of the singular pronoun persists. Is a friend to be referred to as *he* or *she*, *s/he*, or even *they* in sentences like: *Bring a friend if.................can come.* In some contexts it appears that *they* is emerging as the preferred term (but you can be sure that somebody will complain that they don’t like it!).

Ethnic background

In the quote that introduces this chapter, both the gender and the ethnicity of an individual are alluded to. The humorous response plays on the stereotyped image of how a female member of one ethnic minority might succeed in society. In a more serious way, we can observe that, within any society, differences in speech may come about because of different ethnic backgrounds. In very obvious ways, the speech of recent immigrants, and often of their children, will contain identifying features. In some areas, where there is strong language loyally to the original language of the group, a large number of features are carried over into the new language.

More generally, the speech of many African-Americans, technically known as Black English Vernacular (BEY), is a widespread social dialect, often cutting across regional differences. When a group within a society undergoes some form of social isolation, such as the discrimination or segregation experienced historically by

African-Americans, then social dialect differences become more marked. The accompanying problem, from a social point of view, is that the resulting variety of speech may be stigmatized as “bad speech”. One example is the frequent absence of the copula (forms of the verb ‘to be’) in BEV, as in expressions like *They mine* or *You crazy*. Standard English requires that the verb form *are* be used in such expressions. However, many other English dialects do not use the copula in such structures and a very large number of languages (e.g. Arabic, Russian) , have similar structures without the copula. BEV, in this respect, cannot be “bad” any more than Russian is “bad” or Arabic is “bad”. As a dialect, it simply has features which are consistently different from the Standard.

Another aspect of BEV which has been criticized, sometimes by educators, is the use of double negative constructions as in *He don’t know nothing*. or *I ain’t afraid of no ghosts*. The criticism is usually that such structures are ‘illogical’. If that is so, then French, which typically employs a two-part negative form, as exemplified by il NE sait RIEN (‘he doesn’t know anything’), and Old English, also with a double negative, as in lc NAHT singan NE cude (‘I didn’t know how to sing’), must be viewed as equally ‘illogical’. In fact, far from being illogical, this type of structure provides a very effective means of emphasizing the negative part of a message in this dialect. It is basically a dialect feature, present in one social dialect of English, sometimes found in other dialects,but not in the Standard Language.

Idiolect

Of course, aspects of all these elements of social and regional dialect variation are combined, in one form or another, in the speech of each individual. The term idiolect is used for the personal dialect of each individual speaker of a language. There are other factors, such as voice quality and physical state, which contribute to the identifying features in an individual’s speech, but many of the social factors we have described determine each person’s idiolect. From the perspective of the social study of language, you are, in many respects, what you say.

STYLE, REGISTER AND JARGON

All of the social factors we have considered so far are related to variation according to the user of the language. Another source of variation in an individual’s speech is occasioned by the situation of use. There is a gradation of style of speech, from the very formal to the very informal.Going for a job interview, you may say to a secretary *Excuse me*. *Is the manager in his office? I have an appointment.* Alternatively, speaking to a friend about another friend, you may produce a much less formal version of the message: *Hey,is that lazy dog still in bed? I gotta see him about something.*

This type of variation is more formally encoded income languages than others. In Japanese, for example, there are different terms used for the person you are speaking to depending on the amount of respect or deference required. French has two pronouns (*tu* and *vons*) corresponding to singular you with the first reserved for close friends and family. Similar distinctions are seen in the you forms in German (*du* and *Sic*) and in Spanish (*tu* and *usted*).

(Differences in style can also be found in written language, with business letters(e.g. I am writing to inform you ...) versus letters to friends (Just wanted to let you know...) as good illustrations. The general pattern,however, is that a written form of a message will inevitably be more formal in style than its spoken equivalent. If you see someone on the local bus, eating, drinking and playing a radio, you can say that what he’s doing isn’t allowed and tha‘ he should wait until he gets off the bus. Alternatively,you can draw his attention to the more formal language of the printed notice which reads:

The city has recently passed an ordinance that expressly prohibits the following while aboard public conveyances, Eating or Drinking. The Playing of Electronic Devices.

The formality of expressions such as expressly prohibit, the following, and electronic devices is more extreme than is likely to occur in the spoken language.

Variation according to use in specific situations is also studied in terms of register. There is religious register in which we expect to find expressions not found elsewhere, as in Ye shall be blessed by Him in times of tribulation. In another register you will encounter sentences such as. The plaintiff is ready to take the witness stand. The legal register, however, is unlikely to incorporate some of the expressions you are becoming familiar with from the linguistics register,such as The morphology of this dialect contains fewer inflectional suffixes.

It is obvious that one of the key features of a register is the use of special jargon, which can be defined as technical vocabulary associated with a special activity or group. In social terms, jargon helps to connect those who see themselves as 'insiders' in some way and to exclude 'outsiders'. If you arc familiar with surfing talk, you'll know whether the following answer to an interview question was 'yes' or 'no'.

Q: *Would you ride a bodyboard if a shark bit off your legs?*

A: *Hey, if you can get tubed, nobody's bumming.*

The answer means,'Yes,of course!'. Even when dictionaries are created for certain activities, the entries often explain jargon with other jargon, as in this example from The New Hacker's Dictionary (Raymond,1991) compiled from the expressions used by those who spend a lot of time with computers.

juggling eggs. Keeping a lot of state in your head while modifying a program."Don't bother me now, I 'm juggling eggs", means that an interrupt is likely to result in the program's being scrambled.

You may actually feel that this idiom could apply equally well on many occasions in your daily life!'

Diglossia

Taking all the preceding social factors into account, we might imagine that managing to say the right thing to the right person at the right time is a monumental social accomplishment. It is. It is a major skill which language-users must acquire over and above other linguistic skills such as pronunciation and grammar. In some societies, however, the choice of appropriate linguistic forms is made a little more straightforward because of diglossia. This term is used to describe a situation in which two very different varieties of language coexist in a speech community, each with a distinct range of social functions. There is normally a 'High' variety, for formal or serious matters, and a 'Low' variety, for conversation and other informal uses)

A form of diglossia exists in most Arabic-speaking countries where the high, or classical, variety is used in lectures, religious speech and formal political talk, while the low variety is the local dialect of colloquial Arabic. In Greek, there is also a high and a low (or 'demotic') variety. In some situations, the high variety may be a quite separate language. Through long periods of Western European history, a diglossic situation existed with Latin as the high variety and local languages such as French and English as the low variety.

Language and culture

Many of the factors which give rise to linguistic variation are sometimes discussed in terms of culti' al differences. It is not unusual to find linguistic features quoted as identifiable aspects of 'working class culture' or African- American culture', for example. In many respects, this view has been influenced by the work of anthropologists who tend to treat language as one element among others, such as beliefs, within the definition of culture as 'socially acquired knowledge'. Given the process of cultural transmission by which languages are acquired, it makes a lot of sense to emphasize the fact that(linguistic variation is tied very much to the existence of different cultures)

In the study of the world's cultures, it has become clear that different groups not only have different languages, they have different world views which are reflected in their languages. In very simple terms, the Aztecs not only did not have a figure in their culture like Santa Claus, they did not have a word for this figure either. In the sense that language reflects culture, this is a very important observation and the existence of different world views should not be ignored when different languages or language varieties are studied. However, one quite influential theory of the connection between language and world view proposes a much more deterministic relationship.

Linguistic determinism

If two languages appear to have very different ways of describing the way the world is, then it may be that as you learn one of those languages,the way your language is organized will determine how you perceive the world being organized. That is your language will give you a ready-made system of categorizing what you perceive, and as a consequence, you will be led to perceive the world around you only in those categories. Stated in this way, you have a theory of language which has been called linguistic determinism and which, in its strongest version, holds that "language determines thought"In short, you can only think in the categories which your language allows you to think in.

A much quoted example used to support this view is based on the (claimed) number of words the Eskimos have for what, in English, is described as snow. When you, as an English speaker, look at wintry scenes, you may see a single white entity called snow. The Eskimo, viewing similar scenes, may see a large number of different entities, and he does so, it is claimed, because his language allows him to categorize what he sees differently from the English speaker. We shall return to this example.

The Sapir-Whorf hypothesis

The general idea we are considering is part of what has become known as the Sapir-Wherf hypothesis. Edward Sapir and Benjamin Whorf produced arguments, in the 1930s, that the language of American Indians, for example, led them to view the world differently from those who spoke European languages. Let us look at an example of this reasoning. Whorf claimed that the Hopi Indians of Arizona perceived the world differently from other tribes (e.g. the English-speaking tribe) because their language led them to do so. In the grammar of Hopi, there is a distinction between 'animate' and 'inanimate', and among the set of entities categorized as 'animate' were clouds and stones. Whorf concluded that the Hopi believe that clouds and stones are animate (living) entities and that it is their language which leads them to believe this. Now, English does not mark in its grammar that clouds and stones are animate,so English speakers do not see the world in the same way as the Hopi. In Whorf's words(“We dissect nature along lines laid down by our native languages)

A number of arguments have been presented against this view. Here is one from Sampson (1980). Imagine a tribe which has a language in which differences in sex are marked grammatically, so that the terms used for females have special markings in the language. Now, you find that these 'female markings' are also used with the terms for stone and door. We may then conclude that this tribe believes that stones and doors are female entities in the same way as girls and women. This tribe is probably not unfamiliar to you. They use the terms la femme ('woman'), la pierre ('stone') and la porte ('door'). It is the tribe which lives in France. Do you think that the French believe that stones and doors are 'female' in the same way as women?

The problem with the conclusions in both these examples is that there is a confusion between linguistic categories ('animate','feminine') and biological categories ('living', 'female'). Of course, there is frequently a correspondence in languages between these categories, but there does not have to be. Moreover, the linguistic categories do not force you to ignore biological categories. While the Hopi language has a particular linguistic category for 'stone', it does not mean that a Hopi truck driver thinks he has killed a living creature when he runs over a stone with his truck.

Returning to the Eskimos and 'snow', we realize that English does not have a large number of single terms for different kinds of snow. However, English speakers can create expressions, by manipulating their language, to refer to wet .mow, powdery snow, spring snow, and so on. The average English speaker probably does life a very different view of 'snow' from the average Eskimo speaker. That is a reflection of their different experiences in different cultural environments. The languages they have learned reflect the different cultures. In Tuvaluan (spoken in some central Pacific islands), they have many different words for types of coconut. In another Pacific culture, that of Hawai'i, the traditional language had a very large number of words for different kinds of rain. Our languages reflect our concerns.

The notion that language determines thought may be partially correct, in some extremely limited way, but it fails to take into account the fact that users of a language do not inherit a fixed set of patterns to use. They inherit the ability to manipulate and create with a language, in order to express their perceptions. If thinking and perception were totally determined by language, then the concept of language change would be impossible. If a young Hopi boy had no word in his language for the object known to us as a computer, would he fail to perceive the object? Would he be unable to think about it? What the Hopi does when he encounters a new entity is to change his language to accommodate the need to refer to the new entity. The human manipulates the language, not the other way around.

Language universals

While many linguists have recognized the extent to which languages are subject to variation, they have also noted the extent to which all languages have certain common properties. Those common properties, called language universals, can be described, from one point of view, as those definitive features of language which we investigated in Chapter 3.

Specifically, every human language can be learned by children, employs an arbitrary symbol system, and can be used to send and receive messages by its users. From another point of view, every language has nounlike and verblike components which are organized within a limited set of patterns to produce complex utterances. At the moment, much of what is known about the general character of languages is in the form of certain established relationships. For example, if a language uses fricative sounds, It invariably also uses stops. If a language places objects after verbs, it will also use prepositions. By discovering universal patterns of this type, it may be possible one day to describe, not just the grammars of all languages, but the single grammar of human language.

3. LOGIC

Definitions of Logic

It is the power to reason which makes man different from all other living beings. In many ways man and animals behave similarly, but the difference between their ways of behaviour lies in the fact that man can judge whether his actions are right or wrong, and his ideas are true or false, while animals cannot. It is this ability that gives man the right to be called the crown of all creation. This power to reason is dependent on the power to gain knowledge. Man not only perceives things and objects, but thinks about them, analyses them, finds out their peculiar characteristics. This is knowledge. Man acquires knowledge by using his thinking powers. Thinking is the tool that man makes use of to arrive at knowledge. So, in order to know what is knowledge, we must first know what thinking is. Man's behaviour consists of thinking, feeling and willing. What we refer to as the mind of man is made up of these three functions. Whenever we are trying to find a solution to a problem, we are thinking. When we appreciate beauty of different kinds, whether it be a painting, a piece of music, or nature, we are feeling. When we are faced with a moral crisis, we decide upon a particular course of action which seems to be right, and this is the function of willing. But it is not enough if we merely think, feel and will. As rational beings we should think, feel and will rightly. The enquiry into right thinking is logic which is the science of thought. The study of right feeling is known as aesthetics or the science of emotions. And the study of what is right willing is ethics or the science of conduct.

As students of logic, we have to study the science of thought. It is by thinking that we arrived at knowledge. But what is knowledge ? Knowledge is a system of ideas, which we again as a result of thinking. For example, we look at an object which is brown in colour, has a certain length, breadth, height and weight. It is used for certain purposes such as for writing or to place things on. So we have a system of ideas which jointly refers to the object and that object has the name 'table'. This is knowledge. It is reached as a result of our own intellectual activity. We know something only when we think about it and relate it to the rest of our experience. Therefore, while considering knowledge, we have to distinguish between knowledge which we get as a result of our thinking and a mere report or hearsay. We usually say 'I heard that A is dishonest, but I do not rally know it'. Here, the dishonesty of A is something that someone else has told us. We have not experienced it ourselves. Such knowledge which is acquired by hearsay is not considered true knowledge, because it may be found to be false in actual experience. True knowledge is that which is arrived at as a result of our own thinking activity. Logic is the science of thought and studies those processes of thinking whose aim is to attain truth.

As the science the logic must be concerned with the nature and conditions of truth. Hence the research for truth. Logic lays down certain standards which when followed, lead the individual to truth. Such standards are known as norms. There is a great deal of difference between things as they are actually and things as they ought to be. Between the actual and the ideal there is a vast difference. For example, the ideal, as everyone knows it, is that we thought to tell the truth always. But very often we do not do so. Therefore, Logic also lays down standards or norms for thinking. Logic tells us how we ought to think, if our thought processes are going to give us truth.

It gives us the ideal form which thinking ought to take; and other forms are judged by comparing them with this ideal form. Since Logic gives us these norms for thinking, it is defined as the normative science of thought or a systematic enquiry into the principles which govern correct thinking.

Logic and Psychology

Logic is not the only science whose subject-matter is thinking. There are other sciences like Psychology which also study thought. Both Logic and Psychology are interested in the mental process known as thinking. But there is an important difference in their approach to the subject-matter. We have already seen how Logic as a normative science is interested in studying the ideal or to their attainment. Positive sciences are those which study things as they describe them. All natural sciences like Physics, Chemistry, Botany etc., are positive sciences. Normative sciences are those which study things as they ought to be with reference to an ideal. Therefore, it follows, that the interest of Psychology is only in the processes of thought whereas the interest of Logic lies in the product of thought. To the former what is important is the nature of thought and the meaning. It is with this meaning side of thought that Logic is concerned.

Logic differs from Psychology in another way also. The subject matter of Logic is thinking alone. It has not direct concern with the other aspects of the mind. But Psychology, which is the science of behaviour, is interested not only in thinking but also in feeling and willing. Psychology describes pleasure and pain, acts of

will, as well as logical thinking. All these are studied for their own sake, whereas Logic studies thinking alone, and that too with a definite ideal, viz., the attainment of truth Hence there is a twofold difference between Logic and Psychology. In method Logic is normative and Psychology is positive, and with regard to subject-matter Logic deals with thinking alone, whereas Psychology has to cover the entire behaviour.

Logic and Ethics

If Logic deals with thinking from a normative standpoint, ethics deals with the willed activity of man from a normative standpoint. Man's actions are judged to be right or wrong, by referring them to a standard of goodness. Just as in Logic, the reasonings of man are judged to be true or false by referring them to a standard form of reasoning, so also in Ethics, we judge man's willed behaviour to be good or bad by referring it to the ideal of goodness. Ethics gives us the norm for willing and Logic gives us the norm for thinking. Both are concerned with what ought to be. Both Logic and Ethics agree in method, but the subject-matter is different.

Logic, as a normative science of thought, has set for itself a difficult problem. It has to think about thought and discover laws which govern thought in its search for truth. But how is this done ? Whose thoughts are we to take as the pattern for logical study ? We cannot, definitely, take our own thoughts as the subject-matter of Logic. Because it is difficult to observe thought when it is actually being thought. Also, we cannot take our own thinking as an example of all thinking. It is also not possible for us know exactly and correctly the thoughts of others through direct observation.

It may be asked : What is the practical use of a study of Logic? People have been thinking correctly throughout the ages without logical training. Also those who have received logical training may go wrong in their thinking. Even then, it is useful to study Logic, for it will help its student in recognizing his mistakes in thought and grading himself against them in the future. Thus logic is indirectly and negatively useful. And, positively, Logic gives its student intellectual discipline and helps him to think correctly. The most important characteristic of man is his thinking power and a study of the principles of correct thinking must be of great importance to him.

The Principle of Thinking and the Syllogism

The word 'Logic' is derived from the Greek word 'logos' which means 'thought' and 'word as expression of thought'. From this the definition of Logic may be understood the science of thought expressed in language. That is, thought, as such in the abstract, can never be studied. We have to deal with the results of thinking, rather than with the thought-processes themselves. The ideas and thoughts that are already there must be combined in such a way that their result leads to certainty. This is known as reasoning. In reasoning we have certain basic facts given to us, and from these we derive a knowledge which follows from them. Reasoning is always from what is given to something that is not given. At every stage of our experience, we are explaining things in terms of ideas and meanings. Sometimes we change old ideas into new meanings. To know a thing means, then, to transform it into ideas and meaning which connect that thing with other things either positively or negatively. We say an object belongs to one class of things or is different form another class of things or is different from another class. So in every reasoning we have these three parts : (i) A given statement, fact or idea; (ii) A statement, fact or idea which follows from the given idea; (iii) The basis or ground on which we draw (ii) from (i).

Such thinking is done in the form of judgements. Judgement is the way in which the mind interprets the facts supplied to it by sensations. It is one single act of thought. When we look at the 'rose' and understand the colour 'red' as belonging to the object 'rose', we are making a judgement in terms of ideas and meanings about an external object 'rose'. This is purely mental. But ideas, as we have already stated, cannot be known in the abstract unless we think in languages. Reasoning has always to be done in language. Aristotle, the famous Greek Logician, said that a statement in which something is said either positively or negatively about something else, is a proposition. Taking this as a simple and preliminary definition of a proposition we find that statements like 'a rose is red', 'crows are not white' are propositions. We affirm or deny some quality of some object. In reasoning we make use of such propositions to arrive at knowledge. We affirm or deny some quality of some object. In reasoning we make use of such proposition from one or more given proposition, the reasoning process is known as inference. To draw a conclusion from the given statement, there must be something that is common between the conclusion and the given statements. For example, I am inferring a conclusion because of the universal fact that my body is similar to all the other bodies which are mortal. The common element or the ground of inference is the physiological similarity of all mortal beings. Therefore, without such a universal ground, inference is impossible.

There are two types of inference. If one proposition is all that is given and from that if we draw a conclusion, the inference is known as immediate inference. For example, if we say 'A' is B because B is A', it is a case of immediate inference. By this we mean that because 'B is A', the conclusion 'A is B' must follow. On the other hand, if the given propositions are more than one which lead to a conclusion, the inference is called mediate inference. In immediate inference the conclusion is reached directly, whereas in mediate inference the conclusion is reached after some comparison with a common factor is done. So the conclusion is reached mediately or indirectly. For example, if we argue 'S is P because M is P and S is M', it is a case of mediate inference. Here the relation between S and P is determined because each of them is related to a third term M. A typical example of such a mediate inference is made up of three propositions. The third proposition is derived from the first and the second proposition. Aristotle called this type of mediate inference syllogism. This word means thinking two propositions together. But every pair of propositions do not lead to a third proposition as conclusion. For example, from the statements 'dogs are animals', and 'men are rational' no conclusion can be drawn, because they have nothing in common. There must be something that is to be drawn from them. In the following argument :

'All men are mortal

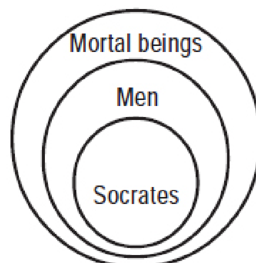
Socrates is a man

Socrates is mortal'

There is a passage from the facts given in the first two propositions to the third. In this example 'man' is the basis on which it is maintained that Socrates is mortal. So we think together the first two propositions as a result of which thinking, we arrive at a conclusion given in the third proposition. The whole is one piece of argument, although for the sake of convenience, we can divide it into two parts. But the most important fact to be remembered here is that the first two given propositions are to be taken as true. These two given propositions are known as premises, and the third proposition which we draw from these two, is known as the conclusion, 'Socrates is mortal'. This type of syllogism is the simplest example of mediate inference. The word 'premise' means the starting point which is taken as true. Therefore in a syllogism the first two statements are called premises because they are the starting points for the argument and also because they are taken as true. The conclusion is derived from such true premises and therefore, is true.

Each proposition of a syllogism consists of two terms and a copula. The terms are the extremes of the proposition and are known as the subject and the predicate of the proposition. Thus in the proposition 'the weather is pleasant', 'the weather' is the subject, pleasant, is the predicate and the word 'is', which connects the subject and the predicate, is called the copula. In the syllogism given above, we are said that the first two propositions have a common term. The common term is 'man' and is known as the middle term. The reason for this name is clear. It is the mediating term or the term to which the subject and predicate and referred.

It has already been pointed out that for inference there must be a common element binding the two terms, before we can say anything about their relation. In the example given above, mortal beings are much larger in number than men and includes men within it. That is, man is to a certain extent identical with those beings which are mortal. Again we find that human beings are larger in number, and Socrates is only one of them. That is, since Socrates belongs to the species of man, we say, he also has the characteristic of mortality which belongs to all men. This whole relationship may be illustrated by means of circles.



Here the most important to remember is that man is the connecting link between a mortal being and Socrates, Such a link is known as the middle term.

In the syllogism we have just considered, there are two other terms, viz., Socrates and mortal, which have to be explained. These form the subject and predicate of the conclusion and are known as minor term and major term. These get their names from the fact that major term always has the greatest extension and that which has the least extension is the subject term. As already shown by circles we find that 'mortal' which

is the predicate or the major term has the largest extension and ‘Socrates’ the subject of the conclusion has the least extension.

Now, if we look at the syllogism as a whole ;

‘All men are mortal

Socrates is a man

Socrates is mortal,

We find that the major term ‘mortal’ appears in the first premise, ‘all men are mortal’. Therefore that premise is known as the major premise. The minor term ‘Socrates’ appears in the second premise. That premise in which the minor term appears is known as the minor premise. When the major premise is first, the minor premise second and the conclusion third. Thus :

All men are mortal - Major premise.

Socrates is a man - Minor premise.

Socrates is mortal - Conclusion

It will be convenient to use symbols for the terms and represent the syllogism symbolically. We shall use the letter P,S and M.S. (which is the subject of the conclusion) will indicate the minor term, P (which is the predicate of the conclusion) will indicate the major term and M will indicate the middle term. Making use of these symbols, we have

M - P

S - M

S - P

This is the general pattern of the argument known as syllogism. Aristotle maintained that this is the most important form of reasoning. Here we proceed to draw a conclusion from the given premises. We deduce a conclusion from something that is given. ‘Deduce’ means to draw out. Hence this process of logical arguing from the known and the unknown. The facts that are given are such that they are related to a common ground. It is this common ground or mediating fact which helps us to reason out the relationship between the known facts. That is why it is usually maintained by logicians that in deductive arguments, we always have something new in the conclusion which we did not have something new in the conclusion which we did not have before. But it is not new in the sense that we did not know anything about it completely before. We had also known their independent relationship with the mediating term. Now, on that basis, we have gathered because it is drawn from premises which are given as true. In deduction, we always proceed to include the particular instance under a general rule. So it is proceeding from universal truths to truth of the particular.

THE PROPOSITION

The proposition and parts

A judgement, which is the mental act of thought, when expressed on language is known as a proposition. In the last chapter it was said that a proposition consists of two terms and a copula. The two terms are known as subject and predicate. The subject is that about which some thing is affirmed or denied. In the proposition ‘rose is red’ we say that the rose has the red colour. Hence ‘rose’ is the subject of the proposition. The predicate is that which is affirmed of denied of the subject. ‘Redness’ is the colour which is said to belong to the subject ‘rose’. Hence it is the predicate of the proposition. Similarly in the proposition, ‘ The black board is not white’ we are denying the quality of white as not belonging to the subject ‘blackboard’. Hence, the copula ‘is’ is the sign of relation between the subject and the predicate. For the form wherein the two terms are related by some form of the verb ‘to be’, preferably ‘is’, ‘is not’, ‘are’, ‘are not’. Such propositions can be shown symbolically thus :

S		P
Rose	is	red

where ‘S’ stands for subject and ‘P’ stands for predicate and the copula is shown marked off from S and P.

Such a logical proposition must be distinguished from the grammatical sentence. The logical proposition is the verbal form of a judgement. It gives a form to thought, and as such may be true or false. But a

grammatical sentence is not so limited. We can express not only thoughts, but also wishes, commands and feelings etc., in sentences. Therefore questions like 'Breathes there the man with soul so dead ?', commands like 'do thy duty without caring for the reward' and exclamations like 'horrible!' are not logical propositions as they stand. But each implies a logical proposition. Thus all grammatical sentences are not propositions as they stand. But each implies a logical proposition. So, when a sentence is given for logical treatment, the foremost thing to be done is to change the sentence in such a way that it becomes a correct proposition with a subject and a predicate connected by a copula which on in the chapter, it will be shown how to change sentences into logical propositions.

Classification of propositions

(a) According to quality : We have defined a proposition as a statement in which some thing is said either positively or negatively about something else. That is every proposition either affirms or denies something of the subject. This is called the quality of the proposition. Qualitatively, therefore, propositions are either affirmative or negative. In an affirmative or negative, In as affirmative proposition the predicate is affirmed as belonging to the subject. Such an affirmative proposition is always of the form 'S is P' where S and P stand for subject and predicate of the proposition. The negative proposition is of the form 'S is not P'. Taking a concrete example, in the proposition 'Roses are red', the predicate 'red' is affirmed of the subject 'roses'. In the proposition 'Man is not perfect', the predicate 'perfect' is denied of the subject 'man'.

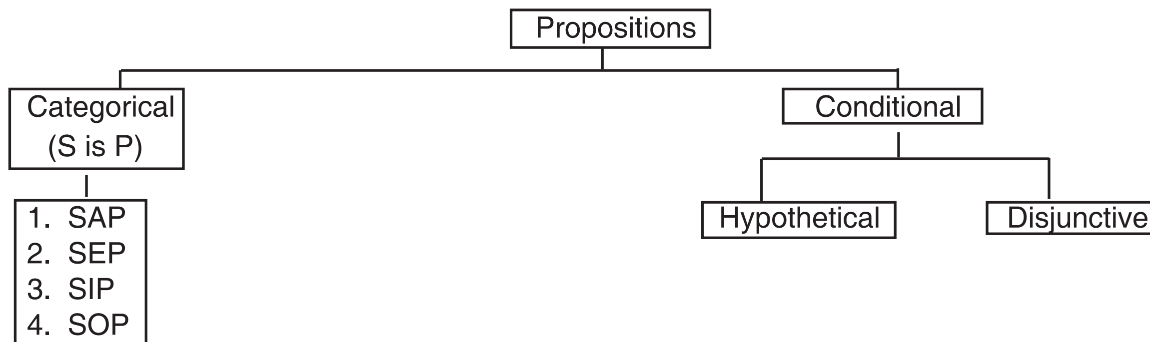
(b) According to quantity : Propositions are also divided according to quantity. The quantity of a proposition is always determined by referring to the subject of the proposition. When the proposition refers to all the individuals belonging to the class signified by the subject, the proposition is said to be universal in quantity. Thus in the proposition 'all men are mortal', the predicate 'mortal' is affirmed of the whole group of 'men'. Similarly in the proposition 'No men are perfect', the predicate 'perfect' is denied of the entire class of 'men'. In the both cases, since the whole of the class is referred to, these propositions are called universal propositions. But when the predicate is affirmed or denied only of the part so the class signified by the subject, then the proposition is said to be particular. Thus in 'some men are wise', the predicate 'wise' is affirmed only of a portion of the class of men, and in the proposition 'some men are not wise' the predicate is denied again only of a portion of the class of men. Hence these propositions are known as particular propositions. Apart from these two types of propositions, there is also another type of proposition where the subject is a proper name of only one of its sort in the world. For example in the proposition 'Socrates is mortal', the subject 'Socrates' is a proper name and thus refers to only one particular individual. Such propositions are called singular propositions. Their subjects cannot be divided into parts and must be referred to as a complete whole always. Such propositions are also called universal for the sake of convenience. These quantitative differences in logical propositions are always shown by the words 'all' and 'some' - all' if the predicate speaks of the whole of the subject and 'some' if it speaks only for a part of the subject. Universal propositions are also stated without the sign of quantity thus : 'Man is mortal'.

We have now seen that all propositions have quantity and quality. They are either affirmative or negative; universal or particular. Combing these we have four different types of propositions. They are usually represented by the vowels A,E,I and O.A and I are the first two letters stand for universal affirmative and particular affirmative propositions represented by A. Universal affirmative propositions are of the form, 'A; S is P' (SAP); and particular affirmative propositions are of the form 'Some S in P' (SIP). Similarly E and O are the vowels in the Latin word 'nego' (I deny) and they stand for universal negative and particular negative propositions respectively e.g., 'no men are perfect' is a universal negative proposition. Symbolically stated it is of the form 'No S is P' (SEP). A particular negative is of the form 'Some S not P' (Sop).

The form of the E proposition requires explanation. It is expressed as 'No S is P'. If we look at the copula 'is', it will be seen as though the proposition is affirmative. But it is not so. The subject of the E proposition is 'All S' and the copula is 'is not'. Still the proposition is not written in the form 'All S is not P' because this statement in the English language means 'some S is not P'. Therefore, the form 'No S is used for the universal negative.

A part from the division of propositions according to quality and quantity, there is another division into categorical and conditional. This is also a very important division in the study of deductive logic. In a

categorical proposition the predicate is either affirmed or denied or the subject definitely, without any condition. We definitely say 'the sun is shining', 'Socrates is a man'. There is no doubt or condition. On the other hand, conditional propositions are those where we affirm something only under some conditions. We do not say anything directly about the subject itself, but only under certain conditions. Such conditional propositions are of two kinds, the hypothetical and the disjunctive. The hypothetical proposition is expressed in the form : (1) If A is B, C is D. If there is rain, the roads will be wet. '(2) k If A is B, then A is C 'If one is intelligent, one will pass the examination. In these two forms, 'If A is B' is the condition and is called the antecedent. An antecedent is that which comes first or is the condition. The disjunctive propositions are also expressed is one of two forms. (1) Either A is B or C is D. 'Either all wars should be stopped or humanity will perish. (2) Either A is B or A is C. 'The signal lights are either red or green'. All these different types of propositions may be expressed as follows :



Reeducation of Sentences to Logical Form

We have already stated that form the purposes of Logic every sentence must be changed into a logical proposition. Here are some suggestions which will help in this :

1. A,E,I,O are the four types of logical propositions. Sentences which are not given in these forms must be reduced to none of these four types.
2. The meaning of the given sentence must not be changed while changing the form of the sentence.
3. When compound sentences like 'Gold and silver are costly metals' are given, they must be split up into simpler propositions like 'Gold is a costly metal' and 'Silver is a costly metal'.
4. There are some propositions where the subject term is limited by words like 'alone', 'only', 'none but', 'none except', 'none who is not', etc. For example, 'Graduates alone are eligible' : Such sentences can be changed into logical form in two days.
   (a) By interchanging the subject and predicate of the give proposition, an A proposition is formed. The example given above, becomes ' All those who are eligible are graduates'.
   (b) By taking the contradictory of the given subject as the subject, and keeping the predicate as it is, an E proposition is formed. Thus the above example will take the form 'No non-graduates are eligible'.
5. In some sentences we find words like 'unless', 'except', 'but' etc. If we know to what extent these limitations are used, the sentences can be changed into an A proposition, eg., 'All metals except mercury are solid.' If we do not know this limitation, then the proposition is to be a particular proposition, e.g., 'All metals except one are sol id' = 'Some metals are solid.'
6. Words like 'all', 'every', 'each', 'any', when joined to the subject, mean and A proposition; e.g., 'Every soldier fought bravely' = 'All soldiers are persons who fought bravely'.'Each and every student should study hard' = 'All students are those who should study hard.'
7. Propositions with words like 'all', 'every', 'each', 'any' and having the negative sign of 'not, are generally changed into particular negative. E.g., All is not gold that glitters = Some things that glitter are not gold.
8. Words like 'no', 'none' when added to the subject given an E proposition.
9. When there is no sign of quantity in the subject, the proposition is to be treated as a universal. 'Blessed are the pure in heart'='All those who are pure in heart are blessed'.

10. Propositions with words such as ‘most’, ‘a few’, ‘certain’, ‘many’, ‘almost all’, ‘all but one’, ‘several’, are to be treated as particular. E.g., ‘Most of the legislators did not attend the meeting’ = ‘Some of the legislators are not those who attended the meeting’. A few students have come prepared with their lessons’ = ‘Some students are those who have prepared their lessons.’

11. The word ‘few’ means ‘almost none, and logically it means ‘some not’. Thus a sentence beginning with ‘few’ and not containing the sign of negation is to be reduced to an O proposition. E.g., Few books on Logic are easy to read = Some books on Logic are not easy to read.

    But is the sentence contains the sign of negation, then, because two negatives be come a positive, the sentence is to be treated as an I proposition. E.G., Few person are not selfish = Some persons are selfish.

12. Words like ‘seldom’, ‘hardly’, ‘scarcely’ have a negative meaning. As before, if there is no negative sign it is to be changed into an I proposition, E.g., Unasked advice is seldom accepted = Some unasked advice is not accepted.

    Prosperous merchants are not seldom honest = Some prosperous merchants are honest.

Apart from these particular hints, there are some general facts to be remembered when reducing a sentence into the logical form. The real subject of the proposition is always got in answer to the question ‘What is being spoken about?’ The logical predicate is also got in answer to the question ‘What is being spoken about?’ The logical predicate is also got in answer to the question ‘What is stated about the subject ?’ The copula must be clearly given in the logical form and it must always be the present tense of the verb ‘to be’ with or without the negative sign. We must determine the quality of the subject by asking the question ‘Does the predicate apply to the whole of the subject or only to a part ?’ If the answer be the former, then the proposition is universal; If is the latter, it is particular. The most important rule is the meaning should not be changed while reducing sentences to logical form.

Distribution of terms

We have said that a proposition consists of a subject term, a predicate term and a copula. We have also said that propositions can be divided into universal and particular based on the nature of the subject. Now we have to consider the relation existing between the two terms, subject and predicate, more fully. Every term can be understood in two ways. It can be understood as having certain characteristic. It can also be understood as representing a class of objects. For example, the term ‘rose’ may be understood as the sweet smelling, pond coloured flower which grows on thorny bushes. It can also stand as a mark for all the roses in the world. The former is known as the intorsion of the term and the latter is known as extension of the term. In categorical propositions both the terms are taken only in their extension. That is, the subject and predicate are always regarded either as individual or as classes of objects. If this is so, then it follows that, in the propositions taken as a whole, the relation between subject and the predicate is one of either inclusion or exclusion. That is, the group of things indicated by the subject must be either wholly or partly within or without the group of things indicated by the predicate. For example, when we say ‘all men are mortal beings’, the class of men, which is the subject, is meant to fall entirely within the class of mortal beings which is the predicate. The is an A proposition. It must be noted here that we are not given any information about the whole of the predicate. It is only shown that there are some moral beings who are identical with all men. The propositions means all men are some mortal beings.’ That is, the predicate of an A proposition is only taken partially or only in a limited way. The subject as universal term refers to all the things of its kind. So we say the subject is distributed and the predicate is undistributed. Generally speaking, we say a term is distributed when the whole extent of the term is referred to and undistributed when the reference is only limited. There are four types of categorical prepositions and two terms in each. We shall see which of them are distributed and which not.

In the universal affirmative (A) proposition, we have already seen, that the subject is distributed and the predicate is undistributed.

The universal negative proposition (E) distributes both subject and predicate. For example, in the proposition ‘No men are angles’, the subject ‘men’ is referred to fully. The proposition says that these two classes of being, viz., men and angels, are entirely separate, each excluding the other. That is, the whole class of men is excluded from the whole class of angels. Hence both subject and predicate are distributed.

In the particular affirmative proposition (I) both subject and predicate are undistributed. For example, in the particular proposition ‘Some students are hard working’, we are not referring to all the students, not are

we referring to all the people who are hard-working. It is only a part of the class of students who are identical with a part of the class of hard-workers. This identical with a part of the class of hard-workers. This identical part may be either large of small. But still it is only a part. Hence in a particular affirmative both the subject and the predicate are undistributed.

In the particular negative proposition (O) the subject is undistributed and the predicate is distributed. For example, in the proposition 'Some men are not wicked' a part of men is excluded from the whole of wicked beings. The whole class of wicked being is referred to by the predicate whereas only some men are referred to by the subject. Hence the subject is undistributed whereas the predicate is distributed.

To sum up these results : Universals (A and E) distribute their subjects, particulars (I and O) do not; negatives (E and O) distribute their predicates, affirmatives (A and I) do not,

Proposition A	:	Subject distributed, predicate undistributed.
Proposition E	:	Subject and predicate distributed.
Proposition I	:	Subject and predicate undistributed.
Proposition O	:	Subject undistributed, predicate distributed.

These results may be summarized in the code word Asebionp, which means A distributes subject only; E both; I neither and O predicate only.

THE OPPOSITION OF PROPOSITIONS

We have already shown the difference between mediate and immediate inference in the last chapter. When we proceed to draw a conclusion from only one proposition which is given, he argument is known as opposition. We have already seen that categorical propositions are four kinds asked on the differences of quality and quantity. When any two of these four types (A,E,I and O) of propositions, having the same terms as subject and predicate, differ in quantity of quality or in both they are said to be opposed. The word 'opposition' normal means, 'disagreeing'. When two things are so much against each other that they cannot go together, we say there is opposition between them. But logically, the word 'opposition' has a wider meaning. It includes here some cases of propositions which are not really in conflict. Propositions with the same subject and predicate but different in quantity of quality are said to be propositions which are opposed to each other. E.g., The propositions 'all men are wise' and 'no men are wise' are opposed because they differ in quality. Such opposition of propositions is of four kinds. If two propositions differ both in quantity and quality, the opposition is called contradiction. If the difference is only in quality, and if both the propositions are universal, the opposition is known as subcontrariety. Lastly if the two propositions agree in quality but differ in quantity the opposition is known as sub-alternation. Let us examine these oppositions one by one in detail.

Contradiction : Two prepositions which differ both in quantity and in quality are in contradictory opposition. A and O,E and I are the two pairs of contradictories. 'All men are wise' is the contradictory of 'some men are not wise', 'No men are perfect' is the contradictory of 'Some men are perfect.' Of these two pairs of contradictories, it follows that if one proposition is accepted as true, the other cannot be true. For example if the proposition 'all men are wise' is true, then definitely the proposition 'Some men are not wise' cannot be true, because the latter proposition contradicts the truth of the former proposition. Hence the rule of contradiction says that of a contradictory opposites, one must be true and the other false. They cannot both be true, nor can they both be false. If the proposition A is accepted as true, then the proposition O must be rejected as false. Similarly the agreement is applied to the other paid of contradictors E and I. Of the two propositions 'No politician are honest' and 'Some politicians are honest', both cannot be true. If one is true, the other must definitely be false.

Contradictory : If two propositions differ in quality and if they are both universal, there is contrary opposition between them. Thus the propositions A and E are contraries, 'All men are perfect' and 'No men are perfect' are true, but both may be false. If one is false, the other is doubtful, i.e., may be either true or false. But if one is true, the other must be false.

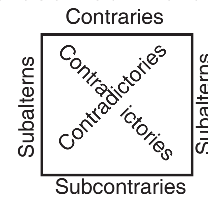
Subcontrariety : This opposition is present between two particular propositions I and O which differ in quality alone. Since they may refer to different groups of things, both may be true, 'Some men are not wise', may or may not be true. But if the former proposition is false, the latter must be true. Therefore, of the subcontractors both may be accepted as true, but both cannot be rejected as false.

Subalternation : Two propositions which differ in quantity only are in subalter opposition. The universal and the corresponding particular are related by way of subalternation. A and I, and E and O are the two parts of subalterns. The universal is called the subalternant and the particular subalternate. Thus A is the

subalternant of I and I is the subalternant and the particular subalternate. Thus A is the subalternant of I and I is the subalternate of E. In this opposition of propositions if the universal is true, the particular must be true, but if it is false the particular may or may not be true. If 'All men are mortal', then it follows that 'Some men are mortal'. But from the truth of the statement 'Some men are wicked', we cannot say anything about 'all men'. If the universal is not accepted, the particular may or may not be accepted. If the particular is not accepted, the universal also must not be accepted; if the particular is accepted, the universal may or may not be accepted.

The Square of Opposition

All the four types of relations we have explained above are usually represented in a diagram which is called the Square of Opposition.



1. Contradictories : A and O ; E and I
2. Contraries : A and E
3. Subcontraries : I and O
4. subalterns : A and I ; E and O

The result of oppositions that we have obtained may be summed up in the following table :

	A	E	I	O
If A is true...	True	False	True	False
If A is false...	False	Doubtful	Doubtful	True
If E is true...	False	True	False	True
If E is false...	Doubtful	False	True	Doubtful
If I is true...	Doubtful	False	True	Doubtful
If I is false...	False	True	False	True
If O is true...	False	Doubtful	Doubtful	True
If O is false...	True	False	True	False

Conversion and obversion

One form of immediate inference we have so far studied. When two prepositions are logically opposed to each other, we can, in some cases, know the truth or falsity of one of them, given the truth or falsity of the other. There are also other processes of immediate inference, where we infer the truth of one proposition from the truth of another. These processors are all called educations. The word 'educe' means 'drawing out' and 'education' is the process of drawing out. This name is given to these immediate inferences because they try to draw out the meaning of the given proposition and make it plain.

There are two main kinds of such edicts, viz., Conversion and Obversion. Conversion is the process whereby we draw a new proposition from the given proposition without changing the meaning of that given preposition by interchanging the subject and predicate of the given proposition. For example, symbolically, if the given preposition is 'S-P' then the new preposition will be 'P-S'. Thus the proposition 'No men are perfect' is converted into 'No perfect beings are men'. The given preposition is called the convertend and the inferred proposition is called the converse. While conversion, the quality of the proposition is not changed. While interchanging subject and predicate, we have to be careful to see that no term which is undistributed in the original is distributed in the converse. The reason for this is plain. An undistributed term is limited in its application where as a distributed term is universal in its application. Just a little way above we showed how it is illogical to infer the more from the less. The undistributed term which is more in extension from it. But on the other hand, if the term, is distributed in the convertend and not distributed in the converse, there is no harm, for hare, we are inferring the less from the more. Therefore, the rules of conversion are :

1. The quality (affirmative or negative) of the original proposition is unchanged in the converse.
2. No term must be distributed in the converse which is not known to be distributed in the convertend.

The first rule is necessary, because if the quality is changed, the meaning of the proposition will be changed. Then there can be no inference. The need for the second rule will be clear, if we try, for example, the conversion of the proposition. 'All monkeys are animals' into 'All animals are monkeys'. The converse is absure because monkeys are not the only animals. This absurd conclusion is got because 'animals' which is undistributed in the converted is wrongly distributed in the converse.

There are two kinds of conversion usually recognised : (1) Simple conversion, (2) Conversion by limitation of per accidents.

1. We have simple conversion, when we directly interchange subject and predicate without any other change. The propositions E and I can be converted this way. The converse of ‘No S is P’ is ‘No P is S’. The proposition ‘None of the books here are novels’ can be converted simple as ‘No novels are the books here’. Similarly ‘Some S is P’ becomes ‘Some P is S’ when converted. For example. ‘Some men are wise’ becomes, when converted. ‘Some wise beings are men’.

2. Conversion by limitation or per accidents is applied only to the A proposition. We have already seen that A proposition distributes only its subject and not its predicate. If we interchange subject and predicate for conversion, then applying the second rule, P which is undistributed in the original must also be undistributed in the converse. Thus ‘All S is P’ becomes ‘Some P is S’. ‘All rose are sweet smelling flowers’ therefore, when converted, becomes ‘Some sweet-smelling flowers are roses.’

The O proposition is the only proposition which cannot be converted. We have seen that E and I can be converted simply; A is converted per accidents. But from an O proposition ‘ Some S is not P’ it is not possible to derive another O proposition with S as predicate. This is because, negative propositions distribute their predicates and S in the Original as subject is undistributed and cannot be distributed in the converse where takes the place of P, according to rule 2. But it is not so distributed, we cannot get an O proposition. So now we have :-

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	S	a	P
1 . A- Convertend : All S is P	All men	are	mortal
	P	i	S
Converse: some P is S	Some mortals	are	men
	S	e	P
2 . E- Convertend : No S is P	No men	are	perfect
	P	e	S
Converse: No P is S	No perfect beings	are	men
	S	i	P
3. I- Convertend : Some S is P	Some men	are	wise
	P	i	S
Converse: some P is S	Some wise beings	are	men

4. O-has no converse.

Obversion : This is the name of the immediate inference where the proposition is changed in quality without changing the meaning. In the process of this change, the subject of the proposition is kept as it is, while changing the predicate to its contradictory. Now, we infer from a proposition of the form 'S-P' another proposition of the form 'S is not-P'. This is based on the principle that all statements can be made both affirmatively and negatively. It is all the same whether we say 'All men are mortal' or 'No men are non-mortal'. In such an obversion the original proposition 89s called the obvertend and the inferred proposition is called the quality of the proposition, keep the subject as it is and substitute for the predicate its logical contradictory. Applying this to the four types of categorical propositions, we get the following results.

				S	a	P
1.	A- Obvertend	:	All S is P -	All men	are	mortal
				S	e	P
	Observe	:	No S is not - P -	No men	are	non-mortal
			(where P represents the contradictory of P)			
				S	e	P
2.	E- Obvertend	;	No S is P -	No men	are	perfect
				S	a	P
	Observe	;	All S is not - P -	All men	are	non perfect
				S	i	P
3.	I - Obvertend	:	Some S is P -	Some men	are	wise
				S	o	P
	Observe	:	Some S is not not P-	Some men	are not	non-wise
				S	o	P
4.	O- Obvertend	:	Some S is not P -	Some men	arenot	intelligent
				S	i	P
	Obvertend	:	Some S is not P -	Some men	are	non-intelligent

From these examples it will be clear that the logical contradictory of the term is got by use such phrases as 'other than'. But it should always be remembered that just as non-P is the contradictory of P, P is the contradictory of not-P. If the obvertend is of the form 'S is not - P, the obverse will be of the form 'S is not P'.

THE SYLLOGISM

Introduction

In the last chapter we considered some of the forms of immediate inference. The various forms of immediate reference show that there are different ways in which the same truth can be expressed. That is, if the given statement is true, then without changing its meaning, we can express it in other forms of propositions also. But this is not all. There is also the other kind of inference known as mediate inference, where we cannot go so directly from one proposition to another. In mediate inference, as we have already seen in the first chapter, we must have a mediation fact which connects the subject and predicate. It is based on this relation that the predicate is either asserted or denied of the subject in the conclusion. The whole argument is known as a syllogism. We have also seen that the parts of a syllogism are the major premise, the minor premise and the conclusion. The major premise gets its name from the major term and the minor premise from the minor terms. These major and minor terms are the predicate and the subject of the conclusion. In the premises there is also another term which is known as the middle term, which supplies the mediating fact. If we form the syllogism now, we have.

M	a	
All men	are mortal	
S	a	M
Socrates	is	a man.
S	a	P
Socratesis	mortal.	

In this syllogism,

Man	= Middle term - M
Socrates	= Minor term - S
mortal	= Major term - P.

Representing symbolically, we have

M	a	P
S	a	M
S	a	P

since all the three propositions are universal affirmative propositions.

These three propositions that are the parts of a syllogism can be any one of the three kinds of proposition, viz., categorical, hypothetical and disjunctive. First let us consider that which is made up of purely categorical propositions. Such a syllogism is known as a categorical syllogism. It is necessary that any such arrangement of propositions with the purpose of drawing a conclusion which is true, must be governed by rules and laws. The categorical syllogism is governed by eight such rules which are as follows :-

A. Rules relating to the structure of the syllogism

1. A syllogism must contain three and only three terms.
2. A syllogism must contain three and only three propositions.

B. Rules relating to quantity

3. The middle term must be distributed in one, at least, of the premise.
4. No term must be distributed in the conclusion which is not distributed in the premise.

C. Rules relating to quality

5. From two negative premises there can be no conclusion, i.e., one at least of the premises must be affirmative.
6. If one premise is negative, the conclusion must be negative, and if the conclusion is negative, one premise must be negative.

D. Rules which follow from to above rules

7. From two particular premises there can be no conclusion
8. If one premise is particular, the conclusion must be particular.

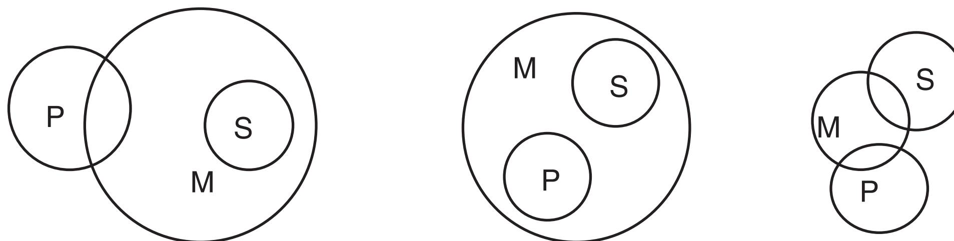
Explanation of the above rules.

The first two rules tell us what a syllogism is. A syllogism is an argument in which from two given propositions we infer a third proposition. Hence there must be only three propositions. If there are more than three propositions, we have more than one syllogism; if less than three, we have no syllogism. We have also seen that a logical argument of these type is the result of comparing two terms with a common third term. It is on the basis of the middle term that the major term is either affirmed of denied of the minor term in the conclusion. If there are more than three terms, then no such comparison is possible. Hence there must be only three terms in a syllogism. When leads to wrong conclusions. Such wrong syllogisms are fallacious reasonings. Sometimes the same term is used having a double meaning. Such usage may be with reference to all the three terms. For example,

The end of a thing is its perfection
Death is the end of life
Therefore: Death is the perfection of life.

Here the word end is used first in the sense of 'goal' and then in the sense of 'termination'. Hence it ceases to be a middle term. The middle term is used in an ambiguous way. In such cases also we have four terms and the syllogism is not valid. So in determining the terms of a syllogism, we must be careful to see that no word is used in a double sense.

The third rule that the middle term must be distributed at least once in the premises is a very important rule. The whole syllogistic argument centres round the middle term and the rule demands that the whole extend of the middle term must be referred to at least once. If this is not done, the major term may refer to another part. This will make it impossible for us to compare the major and the minor terms to another part. This will make it impossible for us to compare the major and the minor terms and arrive at a conclusion. This may be illustrated by means of three diagrams where each one breaks this rule and thus leads to wrong conclusions.



In figure 1, we find the S which is the minor term has no connection at all with P which is the major term because they both represent different parts of the middle term M. Similarly Figures 2 and 3 also show that unless the whole extent of M is referred to in connection with either S or P, we cannot say anything the relation between S and P. Let us consider a practical example.

All men are mortal
All monkeys are mortal
All monkeys are men.

We see the absurdity of this conclusion that all monkeys are men. Such absurdity arises because the middle term 'mortal' is undistributed. Consequently the major term refers to a portion of it and the minor term refers to a completely different part of it. Thus when the middle term is not distributed even once, we get wrong conclusions.

The fourth rule is a double rule. (a) The minor term should not be distributed in the conclusion unless it is distributed in its premise. When the rule is broken we have the fallacy known as 'illicit process of the minor term' or shortly as illicit minor. (b) The major term should not be distributed in the conclusion unless it is distributed in its premise. If the rule is broken, we have the fallacy known as 'illicit process of the major term' or shortly as illicit major. The reason for these double rule is very clear. We can never say something about the universal by knowing only a part of it. If the major and minors terms are undistributed in their premises, it means that only a part of their extension in the conclusion and this is what is done if these terms are distributed in the conclusion. The argument.

M	a	P
All men	are	mortal
M	a	M
All men	are	rational
S	a	P
All rational being	are	men

commits the fallacy of illicit minor. Here we are saying something about 'all rational beings' in the conclusion, whereas in the minor premise where 'rational' is the predicate, it remains undistributed. From less we are deriving more. From part, we are saying something about the whole which is wrong syllogism. Similarly about the major term in the argument.

All cruel men are cowards.

No college men are cruel.

No college men are cowards.

Where the major terms remains undistributed in its premise while it is distributed in the conclusion.

While applying this rule of distribution, we should note that the mistake is only when we take more of a term in the conclusion than is referred to in the premise. But there is nothing wrong if we take less from more. If the terms are distributed in their premises and undistributed in the conclusion there is no fallacy.

The fifth rule states that from two negative premises no conclusion can be reached. In a negative statement the predicate is always denied of the subject either wholly or partly. If both the premises are negative, it means that both the major term and the minor term are excluded from the middle term. Hence, we can conclude no thing as regards the relation between major and minor terms. The negative statements give us no ground for inference. Therefore at least one premise must be affirmative. For example.

Anger is not good.

Calmness is not anger.

From these two premises it is not possible to say whether calmness is or is not good. But sometimes, the premises appear to be negative while they are not really negative statements in meaning. For example,

Whatever is not a compound is an element.

Gold is not a compound.

Gold is an element.

In this argument both the premises seem to be negative. But examining them closely, we find that neither of them is negative. They can written as follows :

Whatever substance is not a compound is an element.

Gold is a substance that is not a compound.

Gold is an element.

The sixth rule says that if one premise be negative the conclusion must be negative. In a syllogism the middle term occurs in both the premises. If one premise is negative, then it means that of the major and minor terms one agrees with the middle term whereas the other does not agree with the middle term. From such a syllogism the inference that can be drawn is that the minor and major terms do not agree with each other.

That is, the conclusion is bound to be negative. For example,

No men are perfect.

X is a men

X is not perfect.

Here the negative; premise says that the major term 'perfect' is excluded from the middle term 'man'. The affirmative premise states that the minor is connected with the middle term. From this it follows that the two terms S and P are not related. Similarly if the conclusion (S-P) is given as negative, then one of the premises must be negative. In the conclusion there is exclusion of P from S. This exclusion must be shown to be drawn from the premises themselves. That can happen only when one of the premises is negative.

The seventh rule is that from two particular premises no conclusion is possible. This may be seen to follow as a consequence from the above discussed rules. There are two particular positions, I and O. As either of them may be major of minor premise, there are four possible combinations, II,IO,OI, and OO. Of

these, OO is not possible because of the fifth rule which says that from negative premises no conclusion can be drawn. The combination II also has to be given up as it does not distribute any term. According to rule 3, the middle term must be distributed at least once in the premises. In IO and OI only one term is distributed, viz., the predicate of O. This must be middle term as per rule 3. Then neither the major term nor the minor term is distributed. But as one of the premises is negative, as per rule 6, the conclusion must be negative. If this is so, then the predicate of the conclusion which is the major term is not distributed in the premise, since only one term can be distributed in the premises and that has already been taken to be the middle conclusion without being distributed in its premise. Thus illicit major occurs, breaking rule 4. Hence from the particular propositions no conclusion can be drawn.

Similarly the eighth rule, that if one premise is particular, the conclusion must be particular may be proved by examining the different combinations of the premises possible : AI and IA, AO and OA, EI and IE, EO and OE. Of these combinations EO and OE are not possible because they are both negative premises and according to rule 5, there can be no conclusion. In combination AI and IA only one term is distributed which is the subject of the A proposition. This must be the middle term to satisfy rule 3. No other term is distributed in the premises. Hence the major and minor terms which from the predicate and subject of the conclusion cannot be distributed. Hence the conclusion must be a particular conclusion, for particular propositions alone do not distribute their subjects.

In the prepositions AO and OA, two terms are distributed, viz., the subject of A and the predicate of O. One of these distributed terms must be the middle term. That leaves us only with one more distributed term which can be either the major or the minor term. As one of the premises is negative, the conclusion must also be negative according to rule 6. All negative premises distribute their predicates as already explained. That is, the conclusion which is negative will distribute their predicates as already explained. That is, the conclusion which is negative will distribute its predicate which is the major term. To avoid the illicit prices of the major term. To avoid the illicit process of the major and the minor term must be distributed in its premise. So know the middle term and major term are distributed in the premises. In the premises, the minor term is not distributed. That means the subject of the conclusion cannot be distributed, which, therefore, makes it a particular proposition. Similarly the combination EI also lead to a particular conclusion. The leaves us with the combination of IE alone. From these two propositions, only a negative conclusion is possible, because one of the premises is negative. Negative propositions distribute their predicates. So in the conclusion the major term is distributed. To avoid the illicit process of the major, it must be distributed in its premises which is I, a particular affirmative proposition, which does not distribute any term. Hence no valid conclusions is possible.

The rules that have been so far discussed give us the conditions for a valid syllogism. There are three terms in a syllogism and two premises in which these three terms must be place. In every premise there are two terms and hence there are four places in which the three terms, the middle term, the major term and the minor terms have to be placed. But the middle term must occur in both the premises either as subject or predicate. Hence there are four possible ways of arranging the terms in an argument. These four forms of syllogistic reasoning are called the figures of the syllogism. It is the position of the middle term in the premises that determines the figures of a syllogism. The four figures may be symbolically represented as follows :

Fig.I	Fig.II	Fig. III	Fig.IV
M-P	P-M	M-P	P-M
S-P	P-M	M-S	M-S
∴ S-P	∴ S-P	∴ S-P	∴ S-P

In the first figure the middle term is subject in the major premise and predicate in the minor premise.

In the second figure the middle term is predicate in both the premises.

In the third figure the middle term is subject in both the premises.

In the fourth figure the middle term is predicate in the major premise and subject in the minor premise.

There are three propositions in a syllogism; and each of the propositions may be of any one of the four forms. A,E,I and O. Syllogism thus vary in respect of the quantity and quality of the propositions which constitute them. This character of the propositions which constitute them. This character of the propositions which go to form a syllogism is called the Mood of the syllogism. As there are three propositions in each syllogism, and as each of the propositions may assume any one of the four form A, I and O, the total number of possible moods is 43 or 64. Thus of each figure we have 4*4*4 or 64 possible varieties. We may write out these 64 combinations and determine which of them are valid. But it is must easier to determine the valid combinations of premises selves. In each syllogism there are two premises, and each premise may take any one of the four forms, A,E,I or O. Thus we get sixteen combinations in all.

AA	EA	IA	OA
AE	EE	IE	OE
AI	EI	II	OI
AO	EO	IO	OO

Some of these combinations will not be correct according to the rules of the syllogism. We know that from the negative premises no conclusion is possible; hence the combinations ES, EO, Oe, and OO are to be ruled out. From two particular premises no inference can be drawn; hence the combinations II, IO and OI are invalid. As we have already seen the combination IE does not lead to a valid conclusion. After all the combinations are removed, there are eight valid ones left over;

AA	EA	IA	OA
AE	..	..	..
AI	EI	..	..
AO	..	..	..

When these combinations are used in the four figures we get nineteen valid moods in all- four in the first figure, four in the second, six in the third, and five in the fourth figure. These moods are represented by code words which show the combination of the premises.

Fig. I-Barbare, Celerent, Darii, and Ferioque.

Fig. II-Cesare, Camestres, Festino and Baroco.

Fig. III-Darapti, Disamis, Datisi, Felepton, Bocardo and Ferison.

Fig. IV-Bramantip, Camenes, Dimaris, Fesapo, and Fresison.

The vowels contained in each word signify the quality and quantity of the three propositions of the syllogism. Thus in Barbara, the three propositions are all universal second figure whose propositions are EAE.

Hypothetical and Disjunctive Syllogisms

We have so far been studying the categorical syllogism. But a syllogism can also be made up of propositions which are other than categorical proposition, viz., hypothetical and disjunctive propositions. We have already seen in the last chapter that there are two forms of the hypothetical proposition : (a) If A is B, C is D; (b) If A is B, A is C. The first part which begins with 'If' is the condition down as the antecedent and the second part the condition is the consequent. Of the two forms of the hypothetical proposition given above, in the first, the subject of the antecedent which is 'A' is different from the subject of the consequent which is 'C'. But in the second form, the subject of the antecedent which is 'A' is the same as the subject of the consequent which is also 'A'. The antecedent and the consequent in both the forms are either the antecedent or the consequent may be negative. For instance, the first form need not always be 'If A is B,C, is D.' It can also be : "If A is not B,C is D', 'If A is B, it is not D', 'If A is not B, C is not D.' In the case of the categorical proposition the quality of the proposition is shown by the copula. How are we to determine the quality of the hypothetical proposition ? Can them are negative, the preposition is negative ? No. Because the distinction of affirmative and negative does not apply to the hypothetical proposition. The proposition affirms that the consequent follows upon the condition which is given in the antecedent. The antecedent or the consequent may be by itself either negative or affirmative. In all cases, the function of hypothetical proposition is only to say that if the condition that is given by the antecedent is there, then the fact that is given by the consequent will also be there. Similarly there are also no quantitative differences. We have seen that in the categorical proposition, the reference is always to individuals or groups of individuals. There, the predicate which is a quality is said to either belong or not belong to the subject which is an individual. If we say that the quality belongs to the whole of the subject, then the proposition is universal; if only to a part of the subject, then it is a particular proposition. No such quantitative differences are there in hypothetical propositions. Here the consequent depends on the decedent. That is, the relation between antecedent and that the qualities of a mortal being are elated hypothetical propositions is only concerned with qualities and hence quantities have no place in it.

The disjunctive propositions also are given in two forms : (1) A is either B or C. (2) Either A is B or C is D. Whatever is the form in which the disjunctive propositions given the principle of disjunction is the same. This always gives us the alternatives of any system and makes use of the words 'either-or'. For example, 'Signal lights are either red or green'. But he alternatives given need not be only two as in the above example. There may be many more alternatives as in the example, "triangles are either equilateral, isosceles, or scalene".

From this it is clear that in disjunctive propositions there is neither quantity nor quality. The principle of disjunction gives us the alternatives of any system. Hence it always positive. There can also be no quantity here, because there is no reference to any individuals here. But the disjunctive gives us the alternatives of any system. Hence it always positive. There can also be no quantity here, because there is no reference to any individuals here. But the disjunctive has a condition. That is, the alternatives of a disjunction must be mutually exclusive and exhaustive. If we take the example 'A is either B or C', the alternatives B and C must tell us all that there is to be known of A, both positive and negative. This is what is meant by saying the alternatives must be exhaustive. Also, the alternatives A and B must be completely different from each other, and they must not have any fact common between them. For example, in the proposition 'Signal lights are either green or red', in the system of signal lights, within it is a green light is completely excludes the red light. Hence the alternatives here are mutually exclusive.

We have so far seen the nature of hypothetical and disjunctive propositions. These propositions can take the place of categorical propositions in syllogistic arguments. Let us examine first that syllogism in which the propositions are hypothetical in nature. In a hypothetical syllogism, ordinarily, the major premise would be a hypothetical proposition, the minor premise would be a categorical proposition and the conclusion again a categorical proposition. Its general symbolic form is

If A is B, C is D

A is B

∴ C is B

For example :

If he is Madras, he will come to see me.

He is in Madras

∴ He will come to see me.

The rule of the hypothetical syllogism is : either affirm the antecedent or deny the consequent. The major premise which is the hypothetical proposition has two parts, the antecedent and the consequent. The minor premise which is categorical must either affirm the antecedent or deny the consequent of the major hypothetical proposition. Depending on this the conclusion takes shape. If the minor affirms the antecedent, the conclusion will affirm the consequent. If it denies the consequent, the conclusion will deny the antecedent.

For example :

If it rains, he will be wet.

It rains.

∴ The roads will be wet.

Here the minor premise affirms the antecedent of the major hypothetical premise and the conclusion affirms the consequent. Again

If it rains, the road will be wet.

The roads are not wet.

∴ It has not rained.

The reason for this rule is that the antecedent is only one of the conditions and not only condition for the consequent. 'For example, heat is given out by electric current, burning of coal, wood and from sunshine. So if any one of these causes are present heat with be produced. That is, if the antecedent is present, we can say the consequent is also present. But from the absence of the antecedent we cannot definitely say the consequent will also be absent, because the consequent may be present because of conditions other than the given angeceern being present. If electric current is not present, we cannot say heat will not be present, because heat may be caused by other conditions. Similarly we cannot conclude that the antecedent is present because of the presence of the consequent, for the consequent may be present because of other causes being present. So now we see the reason for the rule of the hypothetical syllogism which says present. So now we see the reason for the rule of the hypothetical syllogism which says that either the antecedent should be affirmed or consequent be denied. Here affirming means stating what is given in the major premise. Applying this rule, we have two types of hypothetical syllogisms; one in which the minor premise affirms the antecedent and the other in which the minor premise denies the consequent. These two are known as Modus ponens and Modus tollens or the constructive hypothetical syllogism (modus ponens) and the destructive hypothetical syllogism (modus tollens). Symbolically these two forms are :

Modus ponens :

If A is B, C is D

A is B

∴ C is D.

If it rains, the roads will be wet.

It rains.

∴ The roads are wet.

Modus tollens :

If A is B, C is D

C is not D

∴ A is not B

If he is in Madras, he will call on me.

He has not called on me.

∴ He is not in Madras.

These reasons for affirming the consequent and denying the antecedent of the hypothetical syllogism have an exception. Ordinarily, we have stated, the antecedent is one of the conditions of the consequent. But if it is known that the antecedent is the only condition of the consequent, then it is not wrong to infer the absence of the consequent from the absence of the antecedent or presence of the antecedent from the presence of the consequent.

E.g., Only if a triangle is equilateral it is equiangular

This triangle is not equilateral.

∴ This is not equiangular.

Similarly,

Only if it is a magnet, it will attract iron.

This bit of iron is attracted.

∴ This is magnet.

While deciding on the syllogism which comes under this exception, it must be carefully examined if the antecedent is an essential and necessary condition. In the above example, it is essential and necessary that an equilateral triangle must also be an equiangular triangle. Similarly, it has been known that magnets invariably attract iron. So, the consequent and the antecedent may be denied or affirmed irrespective of the rules of the hypothetical syllogism.

The disjunctive syllogism is an argument where the major premise is a disjunctive proposition, the minor premise a categorical proposition and the conclusion is another categorical proposition. We have said that the disjunctive proposition must be of the form ‘Either A is B or C is D’. Here the alternatives or disjunction are ‘A is B’ and ‘C is D’.

In the disjunctive syllogism the minor premise which is categorical either affirms or denies one of the alternatives and if the minor premise denies one alternatives, the conclusion will affirm the other alternative. Let us first state this symbolically.

Either A is B or C is D - Major : disjunctive premise.

A is B - minor : categorical premise.

∴ C is not D - conclusion : categorical.

Here one of the alternatives ‘A is B’ is affirmed in the minor premise and the other alternatives ‘C is D’ is denied in the conclusion.

Either A is B or C is D

A is not B

∴ C is D.

FALLACIES

Introduction

The purpose of Logic is to give us valid principles of thinking. Thinking must be done correctly if we are to get conclusions. This is done when thought conforms to the laws of systematic reasoning. The function of logic is only to give us the rules of standards for right thinking. Not only should we know positively what is right, we should also know negatively what is wrong. Such wrong inferences are known as fallacies. A fallacy may be defined as a conclusion resulting from thought which claims to be valid but which violates the principles of reasoning. As we have already seen, thinking always proceeds in two ways. We have general, universal judgements from which we argue about the truth of a particular. We include the particular statement under the universal. This type off reasoning we have called deduction. We deduce the truth of the particular from the given universal. The other way of thinking is known as Induction where are arrive at a universal truth as a result of such observation. Both these form of thinking are governed by laws. When these laws are violated, we have fallacies. We shall examine the fallacies of deductive reasoning first.

Deductive Fallacies :

We may divide all deductive fallacies into formal fallacies and material fallacies. Formal fallacies are those where the forms of inference are incorrect. There are two types of inference, the immediate and the mediate. When the rules governing these inferences are not followed, we have formal fallacies. But inference not only obeys certain formal laws, it also has a meaning and content. When the contents of a syllogism are absurd, although the form is valid, we have material fallacies. These may be because the words in the premises are wrongly used and interpreted or may be because the premises assume truths which they should not do so.

(a) Formal fallacies :

(i) We have seen the obversion and conversion are forms of immediate inference. When the rules of these are violated, we have Illogical education. In obversion the logical contradictory of the predicate is taken in the place of the original predicate. Instead of this, if the logical contrary is used, the observe will be fallacious. For example, if from the proposition 'Honesty is always a good policy', we draw the conclusion that 'Di-honesty is always a bad policy', we are having a wrong inference. Again the A proposition should be converted per accidents. When this is not done, we have an illogical conversion e.g., 'all men are mortal', when simply converted. Becomes 'all mortals are men', which is materially wrong, for, mind are not the only mortal beings.

ii) There are fallacies which result from the violation of the rules of the syllogism in mediate inference.

(1) Quaternio Terminorum or the fallacy of four terms :

The first rule of the syllogism states that a syllogism must contain three and only three terms. When this rule is not followed, we have the fallacy of four terms.

For example :

Cultured men are reasonable

Logicians are wise-men

Logicians are reasonable

This argument, although in the form as syllogism, is not a syllogism at all, since the premises contain four terms which have nothing in common between them. In some cases, the four terms will not be so differently and clearly stated. The same word may be used with different meanings.

For example

Gold can be expelled by heat

Govinda's illness is cold

Govinda's illness can be expelled by heat.

Here the word cold is used in the two senses. First as showing temperature condition and second as an illness. So, although the argument looks like a good syllogism, it is not so as it has four terms. Just like this, even the major and minor terms may have double meaning, in which are the fallacy will be Quaternion Terminorum.

(2) Undistributed middle :

The third rule of the syllogism says that the middle term must be distributed in one, at least, of the premises. When this is not observed, the fallacy of undistributed middle arises. For example,

All Punjabis are Indians

All Bengalis are Indians

All Bengalis are Punjabis

The argument is fallacious because the middle term 'Indians' is not distributed even once. The middle term should be such that it relates the minor and the major terms and this it will not be able to do if it is undistributed in both the premises.

(3) Illicit major :

The fourth rule of the syllogism says that no term must be distributed in the conclusion which is not distributed in the premise, If the major term is distributed in the conclusion and not in its premise, it means we are inferring more from the less. It is called illicit process of the major term or shortly illicit major. For example :

All rational beings are responsible people Brutes are not rational beings Brutes are not responsible people.

(4) Illicit minor :

This fallacy also occurs when the forth rule is broken. This happens when the minor term remains undistributed in its premise and becomes distributed in the conclusion E.g.,

All generous people are loved by the poor

All generous people are polite

All polite people are loved by the poor.

Here are the minor term 'polite people', which as the predicate of an A proposition is undistributed, becomes distributed in the conclusion. This is a fallacy if illicit process of the minor term or shortly illicit minor.

(5) Negative premises :

The fifth rule of the syllogism says that from two negative premises there can be no conclusion. When this rule is broken, we have the fallacy of two negative premises.E.g.,

Anger is not good

Calmness is not anger

From these two negatives, we cannot draw any conclusion.

(6) Particular Premises :

The seventh rule states that from two particular premises there can be no conclusion.
Some Asians are Indians

Some Asians are Chinese

Some Chinese are Indians

Here, since the middle term remains undistributed, the conslusion does not follow from the premises.

(7) Denying the Antecedent :

This is a fallacy in hypothetical reasoning. In a hypothetical proposition, the antecedent is only one of the conditions. Because it is absent, we cannot say the consequent also must be absent for the consequent may have other conditions. Hence the rule : Affirm the antecedent. Instead of doing this, if the antecedent is denied in the minor premise, the syllogism will be fallacious. Such a fallacy is known as the fallacy of denying the antecedent. For example :

If my friend is in need,

he would come to me

He is not in need He will not come to me

Here the antecedent is denied and the conclusion is given as negative. We do not know, if 'being in need' is the only condition under which he would come. Just as we know, if there is fire there is heat, we cannot say wherever there is heat, there must be fire. Hence the conclusion is wrong.

(8) Affirming the consequent :

This is the other fallacy in hypothetical reasoning which occurs when the minor premise affirms the consequent. For example,

If there is rain, he will not go out

He has not gone out

There is rain.

Here again the antecedent is only one of the reasons and not the only reason. Rain is a cause of the person not going out, but it is not the only cause, for he may not go out on account of other reasons also. Hence this a fallacy of affirming the consequent.

(9) Improper Disjunction :

The condition of a disjunctive syllogism is that the alternatives must exclude each other and that they must together exhaust all possible alternatives. When this is not so, we have an improper disjunction which is the fallacy of disjunctive syllogism. For example,

He will either pass in the first class or fail.

He has not passed in the first class

He has failed.

This is improper, because there are other ways of passing also such as passing with a second class or a third class. So the disjunction does not give all the alternatives. Hence it is a fallacious argument. Similarly,

He is either an orator or a musician.

He is an orator

He is not a musician.

Here the alternatives are not exclusive of each other. A man can be both an orator and a musician. Hence such argument are also fallacious.

(b) Material fallacies :

An argument may be correct in form, and still may be invalid. This is because the matter of the syllogism is wrong. For example,

All men are monkeys

X is a man

X is a monkey.

Here, though the form of the syllogism satisfies all the rules, still it is not a valid syllogism because the meaning is nonsensical. There are two important principles of logical reasoning which should not be violated, if materially the argument is to be correct. The first principle is that the terms used in an argument should not be ambiguous. That is, the terms should not be doubtful in their meaning. The second principle is that what is to be proved, must be proved strictly from the premises. Nothing that is not given in the premises must be assumed or taken for granted. If the first rule is broken, we have the following fallacies.

(1) Fallacy of ambiguous and shifting terms :

Here the various terms of the syllogism are used in an ambiguous manner. For example, He who is most hungry eats most,

He who eats least is most hungry,

He who eats least eats most.

In this example since the meaning of words used is not definitely fixed. We arrive at an absurd conclusion. Such a fallacy can also be included under the formal fallacy of four terms. When the same term is used with different meanings in the syllogism, it becomes a syllogism with four terms.

(2) Fallacy of Composition :

An argument in which words, which should be taken separately, are taken together, commits the fallacy of composition. The fallacy is one where, from a statement about where, from a statement about a class of things distributively, we pass to a statement about the whole, collectively. When a word used detractively, we refer to the whole class represented by the word. When a word is used collectively, we refer to a group which is made up of similar individuals taken as a whole. In arguments where the fallacy of composition is committed, a term is first used in a distributive sense and then used in a collective sense. This happens because the word 'all' is misleading. For example,

All the angles of a triangle are less than two right angles

A, B, and C are all the angles of this triangle

A,B, and C are less then two right angles.

Here the word 'all' is used in the major premise in the distribute sense, and in the minor in a collective sense. Another example of this fallacy is 'A regiment of a hundred men is composed of soldiers who are all six feet high; therefore the whole regiment is six hundred feet high'.

(3) Fallacy of Division :

This is the opposite of the fallacy of composition. Words which must be taken together are here taken separately. For example, "Hindus and Muslims are men and brethren. Therefore Hindus are men and Muslims are men and brethren. That is, the fallacy of division occurs when we pass from a statement about the class considered collectively to the same statement about each every member of the class taken distributively. For example 'All the plays of Kalidasa cannot be acted in a day. The Sakuntala is play of Kalidasa; therefore the Sakuntala cannot be acted in a day'.

(4) Fallacy of Accident :

This fallacy has two forms (a) the direct or simple fallacy of accident and (b) the converse fallacy of accident.

(a) The direct fallacy of accident consists in arguing that what is true as a general rule is true also under special circumstances. For example, 'What is bought in the market is eaten : raw meat is bought in the market; therefore raw meat is eaten.'

(b) This is the opposite of the direct fallacy of accident. If consists in arguing that what is true under special circumstances is true also generally. For example, 'When a person is ill, staying in bed is good for his health. Therefore staying in bed is always good'.

When the second rule concerning the matter of the syllogism is broken, we get certain fallacies. 'That is, when the conclusion that is drawn is not strictly based on the premises, we have the following fallacies.

(1) Petitio Principle or begging the question :

Here we assume the conclusion in the premises. We prove the conclusion by premises which can be proved by the conclusion by premises which can be proved by the conclusion itself. For example, 'Virtue is right; to give to beggars is a virtue; therefore to give to beggars is right'. Here the conclusion is only a restatement of the minor premise. The major premise is a repetition; because to call charity a virtue and to call it right are the same. And so, to say that to give to beggars is a virtue is not to prove that it is right. Another form of this fallacy is where we argue in a circle. Two propositions are used, each in turn, to prove the other. For example.

'I should not tell a lie, because I know that I should not tell lies'

So we must be always careful to see that the conclusion is not assumed in the premises and that the conclusion must always follows the premises.

(2) Ignoratio Elenchi or irrelevant conclusion :

There are several forms of this, but we shall examine only two of them.

(a) Argumentum ad hominem : This is arguing about the person instead of about the proposition which he puts forward. For example, 'This man followed the principle of non-violence all these days, now he wants to follow violent methods to put down riots. So we cannot follow him.' Here instead of arguing about the proposition whether violence is good or bad under the given circumstances, we are arguing about the person of the man. Hence it is a wrong argument known as argumentum ad hominem.

(b) Argumentum ad verecundiam : Another form of the irrelevant conclusion is the fallacy of verecundiam. This is an appeal to authority or long-established custom in favour of, or against, a proposition. To argue that 'we must agree to a proposal because so and so approves of it' is to commit this fallacy. Instead of arguing and giving reasons for arriving at a conclusion, if authorities are quoted in support of the argument, we have the fallacy of verecundiam. The reference here if to authority and now to reason.

(3) Non-Sequitur :

This is otherwise known as the fallacy of false cause, non cause pro cause. It is committed whenever the conclusion does not follow from the premises. For example. 'Australians usually win cricket test matches in India. Therefore Indians must be a civilized people.' Here although there is a form of argument, it is not correct. The conclusion does not follow from the given statement. Hence the argument contains the fallacy of non-sequitur.

Inductive Fallacies

We have so far been discussing fallacies which occur in Deduction. Now we shall consider some fallacies which occur in Induction. Induction is the process whereby we arrive at universal statements by an analysis of particular instances. This process is strictly governed by the law of causation. Several processes have been shown already to be employed in arriving at such universals. Scientific Induction is that where the causal relation is established without doubt between two phenomena. The processes used are enumeration, observation, analogy, and explanation. In every one of these, it is possible to have wrong applications. We shall deal with these one by one.

(i) Based on enumeration: we have two fallacies. (1) Perfect induction, (2) Simple enumeration.

1. *Perfect Induction:* Sometimes we infer a conclusion by the method of complete enumeration. This is known as 'perfect induction'. For example, after carefully going through the list of members, I infer that they are all Hindu. This way if arriving at the conclusion is not satisfactory. The conclusion which is reached through 'perfect induction' is not her result of generalization. There is no inductive leap.

2. *Simple Enumeration :* Our generalizations are very often based on incomplete enumeration or simple enumeration. We count some instances and make a general statement which is true, not only of the observed cases but also of the unobserved ones. For example, after seeing several crows which are black, we generalize 'all crows are black'. This generalization is not well-established. There is no analysis here to show why crows must be black. It can easily be disproved by one contradictory instance. Hence the conclusion cannot be accepted as certain.

(ii) Errors of Observation : Observation is the process where we count instances and examine them to see if they can support a theory or build up a theory. While doing this, it is quite possible to omit to notice instances which would contradict our hypotheses. We have a tendency to consider only those facts which would support our theory and neglect those which would go against it. This error in observation is known as non-observation. Those who believe that number thirteen is not an auspicious number will always give instances of cases where the number was associated with failure or disaster. But, it will be noticed that they will purposely omit to mention cases where. Although the number thirteen was present, no disaster has occurred. Such observation is known as non-observation.

Sometimes, we also misinterpret facts so as to suit the theory which we want to prove. Such wrong observation is known as mal- observation. A person who is always afraid of snakes will see a snake in anything that has got that shape. Such misinterpretation of facts is a fallacy of observation.

(iii) Fallacies of Analogy : Whenever words are wrongly used in metaphors, we have fallacies of analogy. By using analogy we arrive at conclusions about facts which are similar to a large extent. For example, the city is compared to the heart and the country is compared to the body. Then it is said that, since the heart is diseased, the body also becomes bad, so also when the city is bad, the country is also bad. Here the error in reasoning is due to the metaphorical use of the words 'heart' and 'body'. If we devote some thought to it, we will know the difference between a living body and a country. A second form of unsound analogy is in not distinguishing between essential and non-essential properties. Sound analogy is always based on a comparison of essential points. For example, 'A child has come to know that, when the dog is pleased, he wags his tail. On this, the child argues that, when the cat wags its tail, it must be pleased. 'The child's argument here is a case of analogical reasoning. He observes a resemblance between the dog and the cat as regards wagging of the tail. He knows that the dog wags when he is pleased and therefore concludes that the cat also wags because it is pleased. But the resemblance is not an essential one. Hence the analogy is unsound.

(iv) Fallacies of Explanation : There are two important fallacies of explanation:

(a) The fallacy of non-observation may also be said to be a fallacy off explanation known as hasty generalization. Sufficient number of instances are not observed. Negative instances are omitted from the enumeration and a generalization is arrived at. Such a generalization, as it does not cover all instances, is known as hasty generalization or illicit generalization.

(b) A second error of explanation is in mistaking as cause and effect what merely follow each other. This fallacy is known as post hoc ergo propter hoc or the fallacy of false cause. One form of it we have already discussed as a non- sequitur. To argue that 'A is because of C since it is after C' is fallacious. For example to say that since night follows day, day is the cause of night, is an absurd argument which commits the fallacy of post hoc propter hoc.

Conclusion

We have come to the close of our study of the fundamentals of logic. The nature of thought, the principle that govern its processes, the mistakes in reasoning that we most commonly make when we stray away from the path of truth-these and other related topics have been discussed. Thinking is what each one of us is intimately concerned with. Even without our knowledge we employ logical principles in our daily conversation and arguments. The science of logic appears difficult and strange at first. But when once its principles are understood, we realize that we have been using them, however imperfectly, in our commonest thoughts and expression.

SUSTAINABLE DEVELOPMENT

The affluence of developed countries of the world and the desperate poverty of under-developed countries is injurious to the life support system on our planet. Human life in developed countries of the world requires large amounts of energy and material inputs while a ceaseless stream of wastes is generated which damages the environment and results in rapid depletion of resources of our planet.

Life in under-developed countries strives to survive on a meager share, clamoring for the basic necessities and in ignorance or desperation often damages the very resource base on which rests the entire life support system of this planet. We have to build a sustainable world - a world which should last forever. There should be a fair sharing of global resources among the living beings of the world. Everyone in this world should get at least the basic amenities of everyday life - food, clothing, drinking water, shelter etc. in such a way that there could be no damage to other life-forms and the environment. Man should learn to live in harmony with nature.

The resources of this world, if properly managed, distributed and utilized economically, are sufficient for all living beings-as the biosphere stands today. In future, how-ever, we may require sharp decline in growth rate of human population, which we are capable of bringing about with a little more efforts (Khoshoo, 1990).

To build up a sustainable world, a world of permanence in which all living beings live in perfect harmony with each other and with the environment we shall have to adopt certain basic practices which can be enumerated as under:

1. Protecting and augmenting regenerability of the life support system on this planet which can be achieved by :(a) Rationalized husbanding of all renewable resources. (b) Conserving all non-renewable resources and prolonging their life by recycling and reuse (c) Avoiding wasteful use of natural resources.
2. Fair sharing of resources, means and products of development between and within the nations of the world. This should lead to a significant reduction in disparity in re source use, in its economy and shall curtail the associated environmental damage all the world over.
3. Educating people regarding the concealed economic and environmental costs of over-consumption of resources with particular reference to its impact on developing countries of the world.
4. Adopting willingly sustainability as a way of life by encouraging frugality (to be content with less) and fraternity (sharing things with others in a fair way).
5. Meeting all the genuine social needs and legitimate aspirations of people by blending economic development with environmental imperatives to remove poverty.

Today the environment is no longer a concern about a locality or wild-life or deforestation or pollution; it is crisis about the developmental pattern which we have followed so far. It is a global issue which forces us to think as to where we are going? What shall happen if we do not stop, re-consider and make necessary modifications in our means, methods and objectives. It is high time that we should rethink and take proper steps to build up a world of permanence - a sustainable society which lasts forever.

EDUCATION FOR ALL

The World Bank has envisaged a programme to aid the 'Education for All' movement in India. Large sums of money are being made available and offices, better equipped and much better furnished have been established in almost all the states. U.R has received its due share and so must have other States too. But it is not money alone that makes the mare go. How if the mare, at the start of the race, gallops fast but then stumbles and falls and is lamed and there remains no will in it to go any further?

There has ever been so much of talking about universalization of education at least at the primary level. Great thoughts have been quoted; great schemes have been formulated; a number of commissions have been commissioned to make their recommendations regarding education; a lot of experimentation has continued to be conducted particularly in the field of education during these sixty years of the country's independence, but the results achieved are far from satisfactory.

Ever since 1951, India has been making an all-out effort to universalize primary education. In this direction and to fulfill this ambitious plan, steps have planned — Educational facilities within easy walking distance of the child, encouraging parents towards a compulsory enrolment of children in the schools, taking due note of the drop-outs among children and to avoid such a situation in the best possible way and improving the quality of education at the primary level and making it more attractive in order to allure the child to come to the school.

The greatest problem on all fronts has always been felt in the rural area and particularly in the matter of the girl child there. The number of primary schools was estimated to have been in 1950-51, 209671, to when it was estimated to have been increased in 1984-85 to 6, 03,741. This records an increase of about 150 per cent. The effort of making the school facilities available within a walking distance has also borne fruit and nearly 90 per cent of children are to walk from 1 km to at the most 3 kms.

The enrollment in the primary classes — I to V also increased to 77,039 million in 1982-83 from 19.153 million in 1950-51 while the latest figures have shown a still greater increase. But the whole scheme seems to flounder at the level of the Union Territories and at the level of the Scheduled castes and the Scheduled tribes. The position particularly in the matter of girls among the scheduled castes and scheduled tribes is still worse.

Children of such groups do not get enrolled inspire of all efforts and all incentives. The girl child is considered necessarily as a handmaid to the mother in the household chores and in looking after the younger siblings. In some parts of the country, the girl is not sent to a co-educational school due to social inhibitions.

On this accounts girls even if they join in the earlier age group drop out as soon as they grow a little older. Under the World Bank 'Education for All' project even educational kits have been distributed free of costs; education, otherwise, is of course free but the results still are not that encouraging.

The problem of dropouts is a very major problem. The child as he grows above the age of 8 years or 10 years is treated in the rural families as one to be an earning supplement, hence education for him and for the family seems to be an undue luxury. The state of dropouts thus goes up to 60%. In order to meet this situation part-time short duration classes, especially for girls have been evolved as an alternative to the formal system of education. The major thrust of this non-formal education programme has been undertaken in the States like Andhra Pradesh, Assam, Bihar, Madhya Pradesh, Jammu and Kashmir, Orissa, Uttar Pradesh and West Bengal.

Every type of effort has been made, from inducing and attracting children to schools through entertaining shows, to rewarding staff at the Panchayat level for showing encouraging results in the enrollment of children and for carrying out non-formal education programmes. Even free textbooks and stationery, free dresses to girls, midday meals and such other allurements have been given in order to successfully implement this education for all programmes.

But there are, among other problems, two major problems hindering this programme. The one is non-availability of women teachers in the far-flung interior areas of the country. Women teachers would attract girls more to schools and also give a sense of security and confidence to the parents. The second major drawback is the lack of commitment on the part of teachers. The male teachers try their level best to get themselves attached or posted to a school in the closest vicinity of their home villages.

Having got this done, they remain on roll of the school while they are attending more to their own farming or home. Absence from the school is difficult to be checked due to the lack of the supervisory staff and due to the inaccessibility of certain areas and regions. Where the teacher lacks the sense of commitment he or she can hardly inspire students to feel that sense. Their absence from the schools gives leisure and license to children to indulge in playfulness or run back to their homes.

It is only one State — Kerala — which has shown the best results as far as the universalization of elementary education is concerned. It is a small State as far as the size is concerned and the general population has awareness towards education. That is the reason that the State has successfully implemented the programme of education for all. Otherwise, inspire of all efforts and all good 'intentions, the programme of education for all has not caught up in the country and this still, after sixty years of "dependence remains a distant dream.

CORRUPTION IN INDIA

Now-a-days corruption can be seen everywhere. It is like cancer in public life, which has not become so rampant and perpetuated overnight, but in course of time. A country where leaders like Mahatma Gandhi, Sardar Patel, Lai Bahadur Shastri and Kamraj have taken birth and led a value-based is now facing the problem of corruption.

When we talk of corruption in public life, it covers corruption in politics, state governments, central governments, "business, industry and so on. Public dealing counters in most all government offices are the places where corruption most evident. If anybody does not pay for the work it is sure work won't be done.

People have grown insatiable appetite for money in them and they can go to any extent to get money. Undoubtedly they talk of morality and the importance of value-based life but that is for outer show. Their inner voice is something else. It is always crying for money. It has been seen the officers who are deputed to look into the matters of corruption turn out to be corrupt. Our leaders too are not less corrupt. Thus the network of corruption goes on as usual and remains undeterred.

Corruption is seen even in the recruitment department where appointments are ensured through reliable middle agencies. Nexus between politicians and bureaucrats works in a very sophisticated manner. Nexus does also exist between criminals and police. Everybody knows that criminals have no morals, hence nothing good can we expect from them. But police are supposed to be the symbol of law and order and discipline. Even they are indulged in corruption. This is more so because they enjoy unlimited powers and there is no action against them even on complaints and sufficient proof of abuse of office atrocities and high handedness.

Corruption can be need-based or greed-based. Better governance can at least help to check need-based corruption. Better governance can check greed based corruption also because punishment for the corrupt will be very effective and prompt in a better-governed country. The steps should be taken to correct the situation overall. Declarations of property and assets of the government employees are made compulsory and routine and surprise inspections and raids be conducted at certain intervals.

Though it seems very difficult to control corruption but it is not impossible. It is not only the responsibility of the government but ours too. We can eliminate corruption if there will be joint effort. We must have some high principles to follow so that we may be models for the coming generation. Let us take a view to create an atmosphere free from corruption. That will be our highest achievement as human beings.

"JUSTICE MUST REACH THE POOR"

Justice is a concept of moral rightness based on law, rationality, ethics, rationality, natural law, equity or religion. It is also the act of being fair and just. The question is how many are following the path of justice. We live in a materialistic world, where ethics, laws and order etc. are less cared about. Everything can be purchased with money even love and respect. People are generally measure others on the scale of richness, the more rich a person is the more will be his love and respect in the society and vice-versa.

“”In a country well governed, poverty is something to be ashamed of. In a country badly governed, wealth is something to be ashamed of”- Confucius.

People with lack of money suffers everywhere, they not only struggle for their survival but also find it hard to earn respect in the society. Being poor is a curse, people with no money end up doing low paid jobs with no bright future. We can see examples of many domestic works who works hard day and night in the same household throughout their life.

Money can buy anything such as joy, freedom, respect and even justice. The culture of bribe is prevalent everywhere, if you have money in your pocket you can get any work done. High officials are bribed in cash or kind, which makes rich becoming richer and poor becoming poorer.

The idea of honesty and hard-work can hardly make a person rich. How can a poor even dream of changing his financial status. More than half of his day is wasted in doing lower level and low paid jobs. Next even if he tries to find new work or start a business he has no capital or money to bribe higher officials.

There is need to change the system of bribe and unjust. Justice must reach the poor. Everyone has equal rights for justice, but the problem is many times poor are uneducated are unaware about the injustice happening with them. They work on lower wages and feel grateful to their masters, unaware of the fact that their masters are the one exploiting them.

Imagine a country where all citizens are aware of their rights, and work only at those places where they are paid fairly. No one will be able to mold law and order for their selfish interest and have to pay fairly and treat their workers fairly in order to get the work done. Heaven will fall on earth if every citizen no matter rich or poor follow rules and regulation of the country and treat others with love and respect. Justice can only take place if we can increase the dignity of labour and get rid of the unethical practices like bribe.

We are the one responsible for our world. Change from us can ultimately change our society for better. Pay fairly to your workers at home and office, treat them with respect. It is only because of their hard work we lead a peaceful life. Educate them about their rights. Even encourage your kids to treat them nicely.

CHILD LABOUR

Child labour in my view is a spiritual disease, infact an epidemic that is caused and even spread because of the lack of compassion. All the activities, those of which can degrade the future and motivational levels of children to a considerable extent come under the menace of child labour and it needs to be curbed at an exponential rate to transform our developing nation in to a superpower. It has been a major hurdle for our country since the time of independence and the inefficient methodologies adopted for the past several decades resulted in an impotent workforce needed to build the nation in the new century.

Child labour usually means work that is done by children under the age of 15, which restricts or damages their physical, emotional, intellectual, social, or spiritual growth as children. There are many reasons for the existence of child labour in our country. Majority of child labour hail from the rural, tribal and slum areas of our country and are forced in to labourage because of poverty and worst economic conditions of their families and by failure to realise the importance of education by their parents. Also child labour is encouraged by some vested interests in order to get cheap labour.

Child Labour is the mother of many ailments such as poverty, illiteracy, inequalities and poor workforce. For the elimination of poverty in our country, education is the primary weapon which can only be promoted by rooting out child labour. We have to realise that child labour and poverty are inevitably bound together and if we continue to use the labour of children as the treatment for the social disease of poverty, we will have both poverty and child labour to the end of time.

On the humanitarian side, it is an utter injustice that the education and future of a child depends on the economic condition of the family he is born in to rather than his own vices and virtues. Children do not constitute anyone's property: they are neither the property of their parents nor even of society. They belong only to their own future freedom. It is time for parents to realize that education for children is not only their right, but a passport to a better future - for their families and for the country.

The problems of child labour if listed can fill in terabytes of memory, for everything is a problem in the country with the existence of technology and illiteracy (fruit of child labour) side on side. Child labour in our country has two faces - One face is the with regard to the children who were labour aged in the fields of rural, tribal and slum areas and the other face is regarding children who were undergoing labour age in the name of education in schools and colleges. These two need to be tackled at an alarming rate for providing assured results for our future generations.

According to the statistics only around 64% [optimistic view] of child population are enrolled in schools in our country. Many of them are being forced into work from a very early age of 8 years to support their families. The result of decades of child labour is clearly visible at present in the form of poor economy that resulted because of poor agricultural economy, backbone of our nation. Child labour in fact creates a vacuum, for the cyclone of destruction to sweep the whole nation. It is not "a problem" but rather "the problem" as it can give rise to many more inequality disturbances. Any major problem in our country is intertwined with child labour and all steps for tackling those problems can go futile unless this menace is curbed off to the most possible extent.

The emergence of black markets for basic commodities is also a branch of child labour as the illiterate farmers are taken advantage of by the middle men whose pose themselves as the mediators between rural and urban areas. The illiteracy of farmers is not only a bane for them but also for the urban people who buy basic commodities at the whim of these middle men. The tree of child labour is turning our farmers into poor peasants and then into daily workers as they enter into slavery norms of stringent money lenders who advantage their backwardness to their own greed. The low agricultural productivity in our country is also a fruit of child labour. The traditional agricultural practices used in our country are extinct in other countries with the development of technology and the methods of high yielding and harvesting.

Despite ours being an agricultural country unfortunately the technical advancement is on the negative side. The basic cause for this trend is the lack of skills for farmers to bring in on the innovation into farming practices and their inability to bring in-smart-work in place of hardwork. For example, majority of farmers in our country plough their fields with the help of oxen which is very much time taking, while the technology arrived where a plough machine can be installed on motor bikes which can plough 10 acres of land in just a couple of hours compared to the week work in the former case at a very affordable cost.

The advent of child labour also prevents the coming generation from actively participating in the politics or other services that can directly constitute the growth of our nation. Because of prevalence of child labour over the past few decades, the number of persons in various competitive exams such as UPSC or IIT-JEE from rural areas is very less. The development of the country can be exponential when the farmers participate in its process directly rather than indirectly.

Moreover, child labour curbs off the confidence and motivational levels of our young children which can cost a fortune for our nation. For country to reach in par with world super powers the morals and attitude of the people must be very high and competent in various fields. The leaders arise only when child grows in an environment of knowledge and morals. The child labour prevents a set of generation to analyze the problems with the modern developments day when fellow citizens of our villages can understand the basic terms such as economy, GDP, inflation, etc. - that day my country, our country is transformed into a super power. This is possible only we can devour the menace of child labour from its roots.

THE INTERPRETATION OF STATUTES

The interpretation of statutes is the primary function of the court. The legislature can only pass an enactment. The individual members of the legislature cannot be required to explain or interpret what has been enacted. Therefore the interpretation is entirely within the province of judiciary. In this respect, courts are to be guided by the well established canons of interpretation. The object of the interpretation is to give effect to the intention of the legislature and in that process dictionary meaning the use of similar words in an earlier enactment on the subject, the definition section etc. may be considered.

Interpretation in the light of policy “Fringe Meaning’*

When interpreting the statutes the courts often try to discover the intention of the legislature. In fact it is very hard to find out the intention exactly so as to know whether a particular situation comes within the words of a statute. Hence in many cases the intention of the legislature is a fiction. In case of doubt the court has to guess what meaning parliament would have picked on if it had thought of the point. The intention is not actual but hypothetical. For example, the general notion of “building” is clear, but a judge may not find it easy to decide whether a temporary wooden hut or a telephone kiosk or a wall or a tent is a “building”. In whatever way he decides the case, the judge is discharging a legislative function rather than interpretative one. Therefore it has to be approached with the help of the policy implicit in the Act or by reference to the convenience or social requirements or generally accepted principles of fairness. This kind of interpretation may be legally and socially sound. However the result, in some cases, may be surprising. Thus the word murder was construed as accident in the context of workmen’s compensation Act and the result of the decision was that the widow of the deceased workman was entitled to compensation from the employer; because the murder in question arose out of and in the course of employment. In preferring this wider meaning of the term accident the court looked to the general purpose of the Act.

THE MISCHIEF RULE:

Interpretation with reference to social policy does not always command universal assent. However the judges are in fairly safe ground if they apply the mischief rule otherwise known as the rule in Heydon’s case, a 16th century case which related to the construction of leases, life estates and statutes. The mischief rule is based on the principle that the interpretation of a statute should be so as to advance the remedy and suppress the mischief The courts must take in to consideration factors like the history of the statute, reasons for the enactment the mischief intended to be suppressed and the remedy proposed to be conferred. If the apparent meaning of a statute leads to an absurdity, then the courts must resort to a reasonable construction and see whether a logical result can be arrived at. This rule has been followed in a host of decisions especially in interpreting penal statutes. Thus, in Smith v. Hughes a provision in the Street Offences Act 1959 came up for interpretation: Under the said Act it is a crime for prostitutes to loiter or solicit in the street for the purpose of prostitution. Some prostitutes were charged for soliciting from balconies and tapping on windows. They claimed that they were not guilty as they were not in the street. The judge applied the mischief rule to come to the conclusion that they were guilty as the intention of the Act was to cover this mischief or harassment from prostitutes.

THE LITERAL RULE:

The rules of interpretation have no function when the words of a statute are clear enough and admit of no other construction. Every statute must be constructed in its primary and etymological sense. All rules of interpretation come in only when the wording of a statute is not clear and the intention of the legislature cannot be gathered without recourse to the well known cannons of interpretation. According to this rule, Courts should use the mischief rules when the statute is plain and unambiguous. They can use it if the statue is ambiguous but must not invent fancied ambiguities in order to do so. However, the literal rule cannot be used where the words are used in the widely differing contexts of human or social situations. Professor Zander gives the example of parents asking a child minder to keep the children amused by teaching them a card game. In the parent's absence the child minder teaches the children to play strip poker. Though strip poker is a card game it is not the sort of card game intended by the instructions given. One knows this not from anything the parents have said but from customary ideas as to proper behavior and upbringing of children.

Nevertheless according to Lord Diplock it is improper to deviate from the statutory provision by interpreting words and phrases if the meaning of the statute is plain. The phrase in motion under the Factories act was interpreted to mean mechanical propulsion. Lord Diplock opines that the interpretation was uncalled for as the phrase was very plain. Hence the interpretation was the result of a fancied ambiguity. The chief merit of the literal rule lies in the definiteness and certainty of parliamentary enactments. If it is left to the judges to interpret and give meaning to words and phrases statutes will become more complex. People are entitled to follow statutes as they are, they should not have to speculate as to parliaments intention. Moreover if the courts intend to rewrite statutes it would encourage people who objected to the litigation to try their luck with the courts. There may be differences of opinion as to what is expedient, just and morals. But the parliaments opinions on those questions is paramount. However the hard truth is that parliament generally pays little attention to the working of the law. It is not merely that parliament fails to keep old law under continuous revision. It loses interest in its new creations as soon as they are on the statute book.

THE GOLDEN RULE : INTERPRETATION TO AVOID ABSURDITY:

The rule that a statute may be constructed to avoid absurdity is conveniently called the golden rule. The courts sometimes allow themselves to construe a statute in such a way as to produce a reasonable result, even though this involves deviating from the prima facie meaning of the words. The golden rule allows the court to prefer a sensible meaning to an absurd meaning, where both are linguistically possible. It does not matter that the absurd meaning is the more natural and obvious meaning of the words. This is definitely in contrast to Lord Diplocks opinion that inexpediency, injustice or immorality of the proposed application of the statute cannot in itself be a reason for finding a powerful motivating force leading the court to detect such ambiguity.

PRESUMPTIONS:

In interpreting statutes, various presumptions may be applied. They are the background of legal principles against which the act is viewed and in the light of which parliament is assumed to have legislated without being expected to express them. The important presumptions are the rule that a statute is presumed not to be retrospective, the presumption against interference with vested rights, the presumption against taking of property without compensation and the presumption against interference with contract.

The function of a Judge is also to do justice in accordance with certain settled principles of law in a free society and he is entitled to assume that parliament does not intend to subvert these principles* unless there is a clear statement that it does. The rules of natural justice, self defence, duress etc. are judge-made principles required by our ideas of justice grafted on the statute by Implication although there may be no words in the statute to suggest them.

The common law provides a lot of principles which bold judges will make use of, in order to do complete justice. For example, the principle that a murderer cannot take under his victim's will was established as early as 1775. Therefore it was easy for the judges to apply the rule in the case of Re Sigs worth that involved the question as to whether a son who murdered his mother was entitled to her estate as issue under the Intestates Estates Act.

Casus Omissus (case of omission) is another principle of interpretation which can be applied where there is a genuine omission in a statue. Certain phrase in the Official Secret Act, 1920 was considered in Adler v. George. Section 3 of the Act prohibits persons "in the vicivity of" any prohibited place from impeding sentries. The defendant impeded a sentry when he was inside a prohibited place. The argument for the defence was that the defendant, being inside, was not in the vicivity of the place" which meant outside. The court rejected the argument holding that the statute was to be read as if it were " in or in the vicinity of . This shows that statutes may be read not only against the background of notions of justice and settled legal principle but also against the background of notions of ordinary common sense.

There is a long standing presumption that Acts of parliament are not intended to derogate from the requirement of international law. The modern movement for legislative recognition of human rights, based on various international conventions, is in fact a movement for the increased control of legislatures by the judiciary.

Thus it is seen that enacted law requires proper interpretation by judges so that, a sensible result can be achieved in the interest of justice. Nevertheless much will depend on the legal knowledge and the integrity of the counsel and the court, as well as on the readiness of the court to take a liberal view.

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