



**LegalMines**

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## **IMPORTANT**

### **Doctrines / Maxims / Words**

<b>1</b>	<b>Ab Initio:</b> Ab initio is a Latin term meaning "from the beginning". It is derived from the Latin 'ab' ("from") and 'initio', ("beginning"). For example, the agreement should be declared void ab initio. Further under Section 11 of the Indian Evidence Act, 1872, a contract entered into with the minor is void ab initio.
<b>2</b>	<b>Actionable per se:</b> The very act is punishable and no proof of damage is required. If a legal case is actionable per-se, one does not have to prove that he suffered loss or damage in order to take the case to court. Assault, battery, false imprisonment, libel or trespass are actionable per se and no specific proof to prove these civil wrongs are required. <b>Ashby v. White</b> (1703) 14 St Tr 695, 92 ER 126 is the example of actionable per se.
<b>3</b>	<b>Actus Curiae Neminem Gravabit:</b> This maxim literally means 'an act of the Court shall prejudice no man' i.e no man should suffer because of the fault of the court or delay in the procedure. This principle is key to the administration of justice in Indian jurisprudence. Right to speedy justice (i.e. disposal of case within prescribed time-frame), right of hearing, nobody shall be judge in his own cause, right to appeal, right to review etc. are <i>ejusdem generis</i> of this maxim. For examples, Sections 152 and 153 of the Code of Civil Procedure, 1908 are founded upon the maxim of Actus Curiae Neminem Gravabit.
<b>4</b>	<b>Actio personalis moritur cum persona:</b> It is a Latin maxim. It means a personal right of legal action dies (i.e. abandoned) with the death of person. In other sense, if the claimant or plaintiff or respondent or defendant dies the right to sue is gone. Elaborately, some legal causes of action can survive the death of the claimant or plaintiff or respondent or defendant, for example actions founded in contract law. However, some actions are personal to the plaintiff, viz. defamation of character. Therefore, such an action, where it relates to the private character of the plaintiff, comes to an end on his death, whereas an action for the publication of a false and malicious statement which causes damage to the plaintiff's personal estate will survive to the benefit of his or



	her personal representatives.
<b>5</b>	<b><u>Actori incumbit onus probandi</u></b> : This is a Latin maxim which means the burden of proof is on the plaintiff. The general principle is that a party who raises the issue (the plaintiff) is the one who has the burden of proof. This general rule is based upon this maxim. As per this maxim, a plaintiff to a legal action must prove his or her case to win the lawsuit against the defendant. Chapter VIII (Sections 101-114A) of the Indian Evidence Act, 1872 is based upon this Latin Maxim.
<b>6</b>	<b><u>Alford Plea</u></b> : Alford plea is a special type of guilty plea by which a defendant does not admit guilt but concedes that the State has sufficient evidence to convict. This type of plea is normally made to avoid the threat of greater punishment by the Court.
<b>7</b>	<b><u>Allegians Contrarie Non Est Audiendus</u></b> : This maxim means he is not be heard who alleges things contradictory to each other. The principle of estoppel used in the Indian jurisprudence is based on this maxim. In simple terms, the maxim means that if a person states something in good faith on one event and says the contrary about the same event, that shall not be allowed. <b>Sections 115-118</b> of the Indian Evidence Act, 1872 deal with the laws as to estoppel.
<b>8</b>	<b><u>Assentio mentium</u></b> : This is a Latin maxim which means the meeting of minds, i.e mutual assents or consent. Such consent may be expressed or implied. This maxim is relevant in contractual relations/ obligations and synonymous to Latin maxim 'consensus ad idem'. Section 13 of the Indian Contract Act, 1872 is based upon this maxim.
<b>9</b>	<b><u>Bona vacantia</u></b> : It is a Latin term which means goods without an apparent owner, such as treasure trove or the estate of a person dying intestate and without heirs. Thus, unclaimed assets/ funds are Bona Vacantia. Examples of unclaimed funds include unclaimed back wages, life insurance funds, pension money, and tax refunds. Bona vacantia is also known as "vacant goods" or "ownerless goods". <b>Article 296</b> of the Indian Constitution, 1950 deals with the concept of bona vacantia with reference to the State/ Union.
<b>10</b>	<b><u>Caveat actor</u></b> : It is a Latin maxim which means let the doer beware or let the doer be on guard. This is a common law maxim. Caveat actor is used as a warning that the doer of an action should be beware of his/her act. The burden of the action would be on the doer of



	the act. The person will have to bear the probable consequences of the act if not otherwise provided in any agreement.
<b>11</b>	<b><u>Caveat venditor</u></b> : It is a Latin term that literally means “let the seller/ vendor beware’. As per this doctrine, the seller/ vendor is accountable for providing information about the goods to the buyer or purchaser. This forces the seller to take responsibility for the product and discourages sellers from selling products of unreasonable quality. For example, when the Bank/Financial Institution put the property on auction against defaulting borrower, they must show clear title to the said property. Jurisprudentially, this rule is co-relative to the rule of <b><i>caveat emptor</i></b> (let the buyer beware) and <i>vice-versa</i> .
<b>12</b>	<b><u>De Minimis Non Curat Lex</u></b> : It is a Latin maxim which means the law does not govern trifles (unimportant things) or law ignores insignificant details. <b>Section 95</b> of the Indian Penal Code, 1860 is based upon this maxim. Section 95 is titled as: Act causing slight harm. Elaborately, as per Section 95, nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.
<b>13</b>	<b><u>Ex gratia</u></b> : It is Latin term that literally means "by favour or as favour". When something has been done <i>ex gratia</i> , it has been done voluntarily, out of kindness or grace. Compensation payments are often made <i>ex gratia</i> if a government or organization is prepared to compensate victims of an event such as an accident or retrenchment or lay off etc. In fact, it is a kind of compensation but the giver does not admit it as a liability to pay compensation. An <i>ex gratia</i> payment is viewed as voluntary because the party making the payment is not obligated to compensate the individual.
<b>14</b>	<b><u>Factum Probandum and Factum Probans</u></b> : The whole laws relating to evidence under the moves around relevancy and admissibility of evidence relating to “ <i>facts in issue and relevant facts</i> ”. Thus, an evidence may be given only of two things—Facts-in-issue and relevant facts. Facts in issue is also known as “Principal facts” or “ <b><i>Factum probandum</i></b> ”. While relevant facts are also called “Evidentiary facts” or “ <b><i>Factum probans</i></b> ”.
<b>15</b>	<b><u>Doctrine of “Fruits of a Poisonous Tree (DFPT)</u></b> : The doctrine of “Fruits of a Poisonous Tree” was coined by <b>Justice Frankfurter</b> of the United States Supreme Court in <i>Nardone Vs. United States</i> (1939). The doctrine postulates that illegally procured evidence



	<p>becomes inadmissible in the court of law as evidence. The doctrine of “Fruits of a Poisonous Tree” is an extension to the exclusionary rule of evidence (The exclusionary rule states that the evidence that is obtained illegally should be excluded from being admissible as a part of the evidence in a criminal trial). However, this doctrine is subject to certain exceptions viz. evidence obtained in good faith, evidence collected out of independent source etc. This doctrine is not applicable in India except in certain circumstances.</p>
16	<p><b><u>Functus officio</u></b>: It is a Latin maxim which literally means ‘no longer having power or jurisdiction’. Functus officio refers to an officer or agency whose mandate has expired, due to either the arrival of an expiry date or an agency having accomplished the purpose for which it was created. Once a court has passed a valid sentence after a lawful hearing, it is functus officio and cannot reopen the case. However, right to review judgment is the exception to this Latin term “Functus Officio”. This principle is well established in international arbitration.</p>
17	<p><b><u>Jus scriptum</u></b> : It is a Latin maxim which means ‘written law’. Such law is enacted by the legislative authorities viz. Parliament/ State Legislatures/ President (in the form of ordinance). Thus law declared/ pronounced by the Judicial Authorities may be judicial precedents but not be categorized as ‘jus scriptum’.</p>
18	<p><b><u>Jus soli</u></b> : It is Latin term that means ‘right of soil’. It is commonly referred to as birthright citizenship. It is the right of anyone born in the territory of a state to nationality or citizenship. Thus, as a general rule, every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality. <i>Jus soli</i> in many cases helps prevent statelessness.</p>
19	<p><b><u>Innuendo</u></b> : Innuendo (also called <b>insinuation</b>) is statements which are defamatory because they have a double meaning. Such statements are veiled or equivocal reflection on character or reputation.</p>
20	<p><b><u>Doctrine of Lex Fori</u></b>: It is a general rule that once a court has taken jurisdiction, it will usually apply its own law. This rule is known as rule of <i>Lex Fori</i>. <i>Lex fori</i> is a Latin phrase which means the <i>law of the forum</i> (i.e. the law of the <i>place of action/ choice of forum</i>). Thus, <i>lex fori</i> means the law of the Court in which the proceeding is brought. For example,</p>



	where evidence is taken in country 'X' for suit or proceeding in country 'Y', the law applicable to the recording of evidence would be law prevailing in country 'Y'. <i>Law of evidence is a lex fori</i> . Therefore, we find that the doctrine of Lex Fori is applicable in <b>procedural law</b> .
21	<b>Modus Vivendi</b> : Modus vivendi is a Latin phrase that means "mode of living" or "way of life". It often is used to mean an arrangement or agreement that allows conflicting parties to coexist in peace. In science, it is used to describe lifestyles.
22	<b>Nec vi, nec clam, nec precario</b> : It is a Latin maxim meaning 'without force, without secrecy, without permission' or, in an alternative formulation 'not by force, nor stealth, nor the licence of the owner'. It is the principle by which rights may be built up over time. Specifically, if a path is used – openly, not against protests, but <i>without</i> permission of the landowner – for an extended period (normally 20 years) then a permanent legal right to such use is usually established. This maxim is often referred to in the context of adverse possession and other land law issues. It is also relevant to the creation of easements whereby the law 'prescribes' an easement in the absence of a deed.
23	<b>Nemo Potest esse tenens et dominus</b> : It is Latin a phrase which means nobody can be both a landlord and a tenant of the same property.
24	<b>Doctrine of Severability (DOS)</b> : Severability literally means separation. As per DOS, any law inconsistent with the constitution shall be void to the extent of such inconsistency. Thus, the whole Act is not declared void. DoS was considered in detail in <i>A K Gopalan vs. State of Madras</i> (1950:SC) and the Court held that only the inconsistent law will be invalid and not the whole Act itself. Similar stands were taken in the cases of <i>State of Bombay vs. F M Balsara</i> (1951), <i>RMDC vs. Union of India</i> (1957:SC).
25	<b>Pater est quem nuptiae demonstrant</b> : The meaning of this maxim is that the father is he who is married to the mother. The said maxim is well accepted in India through section 112 of the Indian Evidence Act, 1882. But in the changing socio-economic dimension and accepted scientific advancements (viz. DNA), the meaning of this maxim needs to be redefined.
26	<b>Quantum Meruit (QM)</b> : <i>Quantum Meruit</i> is a Latin phrase meaning "what one has



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	<p>earned". This doctrine is based upon the rule of restitution. This remedy is not a contractual remedy rather it is a quasi-contractual remedy. As a general rule if the party has contracted to do a particular work, but he did not complete because of refusal of one of the parties. Here as per QM doctrine the aggrieved is remunerated for whatever he has already done. For example, if A agrees to deliver B 500 bags of wheat. A has already delivered 100 bags and B refuses to accept any further supply. Here A can recover from B the value of 100 bags of wheat which he has already delivered. <u>Section 75</u> of the Indian Contract Act, 1872 deals with remedy as quantum meruit for breach of contract (BoC).</p>
27	<p><b>Sine qua non</b> – It is Latin term that literally means “without which nothing”. It refers to a particular element/ state which is indispensable and essential action, condition, or ingredient without which something is not possible. For example, the <i>mens rea</i> is a sine qua non to constitute an offence.</p>
28	<p><b>Ubi jus ibi remedium</b>: It is a Latin maxim. The word “<b>jus</b>” means legal authority to do something or to demand something. The word “<b>remedium</b>” means that the person has the right of action in the court of law. The literal meaning of the maxim is where there is a wrong there is a remedy. The law of tort is said to be the development of the maxim Ubi jus ibi remedium. <b>Ashby v. White</b> (1703) 14 St Tr 695, 92 ER 126 is usually cited to exemplify the maxim. The maxim does not mean that there is a legal remedy for each and every wrong committed. For example, a contract which was required to be made on stamped paper may be made orally; in such circumstances, irrecoverable harm may be caused to other person and yet no legal remedy is available.</p>

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