PART THREE – THE WORKS OF LORD DENNING

Chapter 3

THE DISCIPLINE OF LAW (1978)

Illustration – 22
Front Cover of the Book “The Discipline of Law”

“Law is a bottomless pit,
It is a cormorant, a harpy,
That devours everything”

John Arbuthbit (1667-1735) *

General Aspects of the Discipline of Law


Lord Denning was a born Victorian and any how follows the traditional system of writing his books. There is a prologue and an epilogue to his book. There are seven broad chapters. In the preface Lord Denning declares that the book deals with the nature and the scope of law in which the discipline of Law has been discussed. Lord Denning cautions us while studying the principles of law laid down by the judges of the 18th and 19th centuries. They were quite suitable to the contemporary social
situations; however, they must not be applied directly to the complex litigation of the modern societies. Lord Denning further stresses the principles “JUS NON DARE” and tells the people to compel the parliament to pass the laws in order to secure maximum good of the maximum number. The first part of this book is called the Construction of Documents. Lord Denning stresses for the command of Legal Language among the Lawyers. He, then, turns toward the Interpretation of the statutes. The rules of Interpretation are discussed in nutshell. He, then, gives the importance of the Treaty of Rome and other international convention in this regard. The Interpolation of wills and other unilateral documents have been discussed with appropriate case laws. Lord Denning turns towards the construction of contracts.

**Critical Aspects of the Discipline of Law**

The Discipline of Law is the first book of the Christmas series published in November 1978. All the books in this series (total six in number) were published officially on the holy days of 20 to 30 December of the concerned years. These sacred days are celebrated as the Christmas vacations throughout the Commonwealth Realms. Lord Denning was a religious man and always adhered to ethical principles. Even in the very preface of the first flower of the garland he has mentioned a sacred quotation from the Holy Book. It is in relation to authority of the law. [1]

> “I also am a man set under authority”
> (Gospel – Luke 7.8)

Lord Denning has particularly used the title "The Discipline of the Law" in the sense given in the Shorter Oxford Dictionary i.e. [2]

> 'Instructions imparted to disciples or scholars'

He admitted that he had no disciples. There were few scholars yet. He wanted to impart instruction in relation to the principles of law. Lord Denning always wanted to do justice by all means. His mission was related with the reformation of the Laws according to the practical needs of the contemporary age. He says- [3]

> "My theme is that the principles oflaw laid down by the judges in the19th century however suited to socialconditions of that time are notsuited to the social necessities andsocial opinion of the 20th century. They should be molded and shapedto meet the needs and opinion
PART - I THE CONSTRUCTION OF DOCUMENTS

The part is further divided into four chapters with a separate introduction. Lord Denning actually fought a long crusade for changing the law by his judicial activism and legislative foresight. Lord Denning in this part of the book gives us the importance of the interpretation of statute till the 19th century. The process of construction of document was divided into two distinct methods – strict construction and construction according to the intention. However, there was the more domination of the strict construction in those times. The House of Lords applied the Golden Rule in 1857 in the famous case Gray v Pearson (1857) H.L. CAS 61. In this case, Lord Denning has stated the importance of interpretation of statutes. In the 19th century the strict constructions dominated the legal scene. They stood by the Golden Rule laid down by the House of Lords. The Lord Chancellor there said that the courts should adhere as rigidly as possible to the express words that are found and to give those words their natural and ordinarily meaning. The rule still has many adherents today. In the modern times the intention seekers are gaining ground: but very slowly they have been reinforced by the method of interpretation used by the European Court of Justice at Luxembourg. The legal system there is so broadly conceived upon the Civil Law methods. They look to the scheme or design and then fill in the gaps. In this part Lord Denning provides us the development of the rival methods and leaves the matter of preference with the readers.

According to Lord Denning, the lawyers must have a good command over the general as well as legal language. Their concepts must be clear because obscurity in thought leads to obscurity in language. The lawyers must have a skill and courage while addressing the court with their intellectual arguments. He advises the lawyers to be punctual and to dress neatly. He further advises them to pronounce the vowels and consonants correctly without slurring the words. The argument must not be too fast or too slow. It should be in proper sound frequency. Then Lord Denning turns to the delicate subject of the interpretation of the statues. According to him, the statutes should be implemented as per the intention of the legislation. However the ultimate justice must be done by using the judicial discretion. When Seaford v Asher 1949 2 KB 481 came for hearing he had recently entered the judiciary and Lord Green was the Master of the
Rolls. In that case, the rent of the flat had been increased from £175 to £250 p.a. The increment was due to an agreement by which the landlord had to provide hot water. Lord Denning carefully interpreted the word 'burden' in the Rent Act, 1920 and stated that the Parliament cannot foresee all the circumstances. A judge must not alter the material but should carefully interpret the socio legal position. The case further went to the House of Lords, where Lord Mac Dermott issued dissenting judgment and stated the principle rather 'widely'. Then Lord Denning gives us an interesting account of Magor’s case.

**Magor and St Mellons Rural District Council v Newport Corporation [1951] 2 ALL ER 839**

In this case, the Newport Corporation had expanded its boundaries by taking in some parts of two Magor and St. Mellons Rural District – paying a large amount of rates. The Act provided for reasonable compensation to the two District Councils. Then the Crown Minister made an order amalgamating the two District Councils into one. The Newport Corporation protested. It seemed very unjust to Lord Denning the Newport Corporation had taken a literal meaning to the orders and succeeded in the High Court in the final appeal. Lord Denning stated in -

*Seaford Court Estates Ltd. v Asher.*

“We do not sit here to pull the language of Parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do, and it is a thing to which lawyers are too often prone. We sit here to find out intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.”

According Lord Radcliff, Lord Denning was right and the judicial power can interpret the intention of the legislature. In those times, Lord Simonds dominated the Law Lords being superior in position and senior in age. He rejected the opinion of Lord Denning by stating -[4]

"It was the duty of the court to find out the intension not only of parliamentarians but also of Minister’s. It cannot by any means be supported the duty of the court is to interpret the words which the legislature has used”

**The Treaty of Rome:** Then Lord Denning turnses to the treaty of Rome. He gives us the importance of the treaty by which the U.K. became a member state of the European Community. He considered two methods of interpretation. One English traditional method and second European method as stated in *Bulmer Ltd v Bollinger S.A. (1974) 4 Ch.401.* The first and the
most important point is that the Treaty concerns only those matters which have a European element, that is to say, matters which affect people or property in all the nine (Now -25) European countries of the common market besides the U.K. The Treaty does not touch any of the matters which concern solely England and the subjects in it. These are still governed by English law. They cannot be affected by the Treaty. In the very words of Lord Denning-[5]

‘But when we come to matters with a European element, the Treaty is like an incoming tide. It flows into the estuaries and up the rivers. It cannot be held back. Parliament has decreed that the Treaty is henceforward to be part of our law. It is equal in force to any statute of the United Kingdom’.

Further Lord Denning arrives at the interpretation of wills and other unilateral documents. Here he mentions Sydall v Casting Ltd. 1967 1QB 302. It was the case of one Mr. Sydall who was a member of a group life assurance scheme. His employers had a scheme by which, on a workman’s death, money was payable to his ‘dependants’ or ‘relations’. Mr. Sydall died and £300 was payable. He had four children by his first wife and a baby girl named Yvette from a woman whom he had not officially married. There was a ‘Live in Relationship’. All the Law Lords held that none was payable. They did it frankly on the grounds that she was illegitimate. Lord Denning protested saying-[6]

“I would hold, therefore, that according to the ordinary meaning of the words, Yvette is a “relation” of her father and a “descendant” from him. She should, therefore, be included among those qualified for benefit”.

Then Lord Denning further quotes a conversation between Bassanio and Portia from ‘The Merchant of Venice’. It is related to the Court Scene. He states 'I am a Portia man'. Then he turns towards construction of contracts. Here he provides us an interesting accounts of British Movie Tones v London and District Cinemas 1951 1 KB 190. During the War in 1941 film distributors agreed to supply their newsreels to cinemas for ten guineas a week. These were newsreels to support the war effort. After the war ended (1945) there was an entirely new situation. The newsreels were no longer related to the war. New regulations were made for government publicity and private advertisements. The cinema company said they need not to take the war films at ten guineas a week. Delivering the judgment of a unanimous court Lord Denning said, referring to earlier judgments - [7]
“The Judgments, if I may say so, are so valuable that they should be read in full, and I will not venture to read extracts from them.... The judgments show that, no matter that a contract is framed in words which taken literally or absolutely, cover what has happened, nevertheless, if the ensuing turn of events was so completely outside the contemplation of the parties that the court is satisfied that the parties, as reasonable people, cannot have intended that the contract should apply to the new situation, then the court will read the words of the contract in a qualified sense: it will restrict them to the circumstances contemplated by the parties: it will not apply them to the un contemplated turn of the events, but will do therein what is just and reasonable”.

PART II  THE MISUSE OF MINISTERIAL POWERS

In the introduction of this part Lord Denning distinguishes between the Laissez Faire State and modern Welfare State. According to him, in the present century, the powers of administration are constantly increasing and touching to every aspect of life. We have the welfare state in which he government departments have been given enormous powers in which they have also usurped the judicial powers by establishing tribunals and inquiry commissions. They have vast discretions and they can regulate housing, planning and social securities and other number of activities. The modern philosophy is a blend of socialism and collectivism. According Lord Denning there is always a danger to the ordinary man, because the power is capable of misuse abuse. It is a great problem before the modern judiciary. How to cope with the abuse or misuse of administrative powers? In his famous treatise ‘Freedom under the Law’, he states - [8]

“Our procedures for securing our personal freedom if sufficient, but our procedure for preventing the abuse of power is not just as the pick and shovel is no longer suitable for winning of the coal. So also the procedure of mandamus, certiorari and actions on the case are not suitable for winning of freedom in the new age......... We have in our time to deal with changes which are of equal constitutional significance to those which took place three hundred years ago. Let us prove ourselves equal to the challenge”.

In this part he has tried to show how the challenges of administrative powers have been met with by the judiciary. He has shown that- [9]

“Ouster clauses have themselves been ousted, and that literal interpretation has gone by the Board. All is in support of the Rule of law. All is done so as to curb the abuse of powers by the executive authorities”.

Increasing administrative autocracy mixed with plutocracy and supported with high nepotism became themes for many books. Lord Hewart in his famous treatise ‘New Despotism’ elaborates
the position of the U.K. of the last century. In this part Lord Denning gives us an interesting account of wrong decision taken in Northumberland v Compensation Appeal Tribunal Case 1952 1 KB 338. Here a clerk who fought for his claim of compensation. On the setting up of the National Health Service, Mr. Shaw had been made redundant. He became entitled to compensation to be decided by a Compensation Tribunal which gave him too little. They were wrong in the construing the complicated rules of compensation. They had made a mistake of law. Everyone thought that the High Court could not rectify the error. Eight years earlier there had been a decision in the Court of Appeal directly on the same point. It was the reserved Judgment of an Apex Court presided over by Lord Greene MR (Racecourse Betting Control Board v Secretary of State For Air [1944] Ch 114). He was one of the most accomplished and distinguished intellects of 20th century. He was an Oxford Scholar. Lord Justice Goddard was sitting beside him and agreed with him.

Here Lord Denning stated: [10]

‘The question in this case is whether the Court of King’s Bench can intervene to correct the decision of a statutory tribunal which is erroneous in point of law. No one has ever doubted that the Court of King’s Bench can intervene to prevent a statutory tribunal from exceeding the jurisdiction which Parliament has conferred on it; but it is quite another thing to say that the King’s Bench can intervene when a tribunal makes a mistake of law. A tribunal may often decide a point of law wrongly whilst keeping well within its jurisdiction. If it does so, can the King’s Bench intervene?’

He further stated: [11]

“‘The Court of King’s Bench has from very early times exercised control over the orders of statutory tribunals, just as it has done over the orders of justices.’”

The Court of King’s Bench used on certiorari to quash the orders of the commissioners for errors on the face of them. The errors of Law have also been discussed in Baldvin v Petants Appeal Tribunal 1966 AC 663. Here Lord Denning considered the position of Crown Practice issuing the Writ of Certiorari directing the inferior tribunal, here, ‘The Patents’ Appeal Tribunal’, established under the Patents Act, 1949. Certiorari is issued when the error of law is found on face of record. The construction of technical terms is necessary to enable the court to construe documents. It was also decided in this case, whether assessors may be appointed to assist the court or not. The court carefully considered the position of the construction of documents with
evidence in relation to the meaning of technical terms. In the times of Lord Denning, certain statutes were passed by the Parliament, in which High Courts were stopped to interfere with the Tribunals i.e. administrative courts. They were called 'Ouster Clauses'. They were responsible for making the tribunals a 'Supreme Court" Lord Denning could not agree with such system and opposed the ouster clauses by way of issuing writs. In the famous case Taylor v National Assistance Board (1957) P 101-111. He openly stated [12]

“The remedy is not excluded by the fact that the determination of the Board is by Statutes made ‘final’: Parliament only gives the impress of finality to the decisions of the Board on the condition that they are reached in accordance with the law and the Queens Court can issue a declaration to see that that condition is fulfilled”.

Then Lord Denning turns towards the administrative declarations and gives us an account of Bernard v National Dock Labour Board (1953) 2 QB 18. In this case, a docker had been suspended from work by a Tribunal without pay. He wanted to be reinstated with back wages. He also challenged the jurisdiction of the Labour Board. It was said that the courts had no power to interfere. Learned advocate Mr. Paull argued the case. He was always a most learned opponent. According to Mr. Paull, the traditional courts have no right to interfere with the decisions of statutory tribunals except by issuing the Writ of Certiorari. According to him, the intention of the Parliament must be protected. However, according to Lord Denning, the courts have power to interfere in the decisions of the Tribunal by issuing certiorari and further by also the way of declaration. The time proved the correctness of the views of Lord Denning. Lord Denning was a highly justice oriented personality and stressed for the strong implementation of the principles of natural justice. In his maiden speech, which he delivered in the House of Lords upon the Report of Lord Franks Committee on 27th Nov, 1957, he stated [13]

“My Lords, it has been my lot as a judge to review the decisions of many tribunals and may I say how welcome it is that this important report should be accepted by all parties in State because it contains and re-affirms a constitutional principal of first importance namely that these tribunals are not part of the administrative machinery of the government under the control of departments. They are part of the judicial system of the land under the rule of law.”
According to Lord Denning, the Queen’s Courts must have jurisdiction over the tribunal system so that the basic principles of natural justice *Nemo judex in causa sua* (No man shall be a judge in his own cause) and *audi alteram partem* (Opportunity to be heard) must be protected. Here he mentions the famous case *Kanda v Govt. of Malaya* (1962) AC 322. Inspector Kanda was dismissed by the Government of Malaya on the basis of a report which he had not seen. He brought an action for a declaration claiming that his dismissal was void, inoperative and of no effect. He succeeded in the Privy Council. The judgement encouraged him that he afterwards was called to the Bar by Lincoln’s Inn and returned to Malaya and practiced there with high success. In that case Lord Denning said: [14]

“In the opinion of their Lordships, however, the proper approach is somewhat different. The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: *Nemo judex in causa sua*, and *Audi alteram partem*. They have recently been put in the two words, Impartiality and Fairness. But they are separate concepts and are governed by separate consideration. In the present case inspector kanda complained of a breach of the second. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.”

He further mentions the case *Metropolitan Properties Co (FGC) Ltd. v Lannon* (1969) 1 QB 577 to illustrate the concept of bias. In this case, Mr. Lannon was the Chairman of Rent Assessment Committee. He was an advocate. One day the Fresh Water Company made an application to his Committee. It was found that his father had a case pending against that company. He was disqualified to decide the matter. Lord Denning declared,[15]

“A man may be disqualified from sitting in a judicial capacity on one of two grounds. First a ‘direct pecuniary interest’ in the subject matter. Second ‘bias’ in favour of one side or against the other. Mr. John Lannon had direct pecuniary interest in the suit”.

Lord Denning discusses the important aspects of the prerogative powers and mentions *Laker Airways v Department of Trade* (1977) QB 643 and finally ends the part by mentioning the pros and cons of ultra-virus clause as discussed in *Ashbridge Investments Ltd v Minister of*
Housing (1965) 1 WLR 1320. There was a question whether on the evidence a building was a ‘house’ and whether it was ‘fit for human habitation’. Lord Denning stated – [16]

“We have to apply the modern procedure whereby the inspector makes his report and the Minister gives his letter of decision and they are made available to the party. It seems to me that the court should look at the material ---------- whether on that material the Minister has gone wrong in law?”

PART III LOCUS STANDI

It is fully devoted to the delicate concept of Locus Standi. Lord Denning argues about the abuse and misuse of power and the capacity of the man to bring a case before court. It is important whether any member of the public can sue or whether there are any specific qualifications in relation to the infringement of his right in personam. During the 19th century, the courts were reluctant to let anyone come unless he had a particular grievance of his own. He had to show that his legal right had been infringed. However he had no right to sue as the member of a public where his direct a right is not at all infringed. However in our times the position has been much altered. The ordinary individuals can knock the doors of the court. He will be heard if he has sufficient 'interest'. The test of sufficient interest is not clear presently and it is in the discretionary power of the court. Lord Denning has stressed the need of the development of Locus Standi in the modern era. In many statues, we find the word 'person aggrieved'. Lord Denning gives us an important account of R. v Thames Magistrate Court (1957) 5 LGR 129. The case was about a pitch in a street market at Bermondesy, UK. The Magistrate had awarded the pitch to a fisherman. But a newspaper seller wanted the pitch. He had no legal right to that. But Lord Denning held that he had a full locus standi and he quashed the order of Magistrate. In this way, we can firmly say that Lord Denning had revolutionized the procedural law under the light of broad human rights. What he did long ago was repeated by a number of judicial courts throughout the Commonwealth. In India, too, Hon’ble Mr. Justice P. N. Bhagwati introduced tremendous changes in the ancient concept of locus standi in the eighties. Lord Denning further gives us another important case R. v Paddington Valuation Officer, ex parte Peachey Property Corporation Ltd. (1966) 1 QB 380 wherein he clearly stated-[17]

“The question is whether the Peachey Property Corporation Ltd are ‘persons aggrieved’ so as to be entitled to ask for certiorari or mandamus. Learned advocate Mr. Blain contended that they are not ‘persons aggrieved’.”
However according to Lord Denning there is much need of liberal approach and the principle of locus standi must be made wide enough so as to give the courts power to implement the justice in the real sense of the term. Then Lord Denning turns to the landmark case of our era Blackburn v Attorney General (1971) 1 WLR 1037. Mr. Blackburn was a solicitor having zeal for social reforms. In this case, he raised a matter of great constitutional significance. When the Government was about to join the European Common Market [EEC], he brought an action in the courts challenging the Government’s right to do it. He sought a declaration that, by signing the Treaty of Rome, Her Majesty’s Government must be surrendering the sovereignty of the Crown. It had no right to do so. The court heard that argument and rejected it. But on the question of locus standi to claim declaration, Lord Denning said - [18]

‘A point was raised as to whether Mr. Blackburn has any standing to come before the court. That is not a matter on which we need rule today. He says that he feels strongly and that it is a matter in which many people in this country are concerned. I would not myself rule him out on the ground that he has no standing. But I do rule him out on the ground that these courts will not impugn the treaty-making power of Her Majesty’.

And, as a result, the law was enforced. Mr. Blackburn fought for the public rights throughout his life. In India too, Mr. M.C. Mehta had fought legal battles with the mighty administration for upholding the social causes.

In an another case R. v Commissioner of Police ex-parte Blackburn (1968) 2 QB118 Mr. Blackburn challenged the gambling clubs of London which were breaking the law. He found inactiveness of the police department. He was a private citizen with no greater interest. There was a question of locus standi. Lord Denning again considered the locus standi on a broad level. The case was allowed. Lord Denning declared: [19]

“In 1966 Mr. Blackburn was concerned about the way in which the big London clubs were being run. He went to see a representative of the commissioner of the police of the Metropolis and told him that illegal gaming was taking place in virtually all London casinos. He was given to understand he says, that action would be taken. But nothing appeared to be done. The policy decision was a confidential instruction issued to senior officers of the metropolitan police . . . . . It was dated April 22, 1966, and was in effect an instruction to take no proceedings against clubs for breach of the gaming laws unless there were complaints of cheating of they had become haunts of criminals ....”
In another case of the same title but reported in **1973 Q.B. 241** Mr. Blackburn this time discussed that the Laws against Pornography were not properly enforced. Finally Mr. Blackburn succeeded in this legal battle. In the next litigation, Mr. Blackburn filed a case **R. v Commissioner of Police ex parte Blackburn** (1968) 2 QB 118 in which he argued about the phonographic films exhibited in London. He demanded hard censorships. Lord Denning allowed this petition and left the matter for the open discussion. Lastly, Lord Denning quotes the famous **GOURIET v UNION OF POST OFFICES 1978 AC 435.** This is the case in which the House of Lords reversed the Court of Appeal which caused much disappointment. In the Gouriet’s case the House of Lords proceeded on the footing that the High Court had no power to grant an “Interlocutory injunction except in protection or assertion of some legal or equitable right”. Mr. Gouriet had no such right. Although it was most just and convenient that an injunction must be granted nevertheless the House of Lords held it was not permissible. There is a beautiful Latin maxim in this regard - [20]

\[\textit{Vigilanti bus jura subvenient} \]
\[\text{(The law helps the vigil and not the sleepy).}\]

Mr. T. P. Curran of the Middle Temple said in the year 1790- [21]

\[\textit{‘It is ever the fate of the indolent to find their rights become a prey to the active.} \]
\[\textit{The condition upon which God hath given liberty to man is eternal vigilance’}.\]

**PART IV ABUSE OF GROUP POWERS**

Lord Denning in this part discusses the abuses of group powers. In the past centuries the individuals fought the legal battle. Now we find not only the individuals but also the groups. More correctly now the group battles are prevalent. There are group battles of workers, ledgers, doctors, lawyers, officials and so on. The unions are having enormous power over the working man. Lord Denning says that the powers of the government can be abused or misused and in the same way the powers of group can also be abused of misused. The important question before him was in relation to the Law by which the abuse the powers of both can be controlled. Lord Denning has given us the importance of the volumetric associations like the Labour Party, the Conservative Party, the Cricket Club etc. He stresses that these associations actually have powers and tremendous influence over the nation. They can call for strikes or order lockout. They can
inflate wide spread damage. The important question is whether the court can restrain the abuse of their power. None of the old machinery of issuing various writs is available against these groups because they are not public authorities. Lord Denning stresses for the existence of new machinery. In this part he has given us certain important cases establishing important ratios where the associations have abused their power and states that the innovative methods be applied to courts to deal with these matters. In this important part Lord Denning discussed the important case of **Lee v Showman's Guild (1952) 2 QB 329**. Frank Lee ran a roundabout called Noah’s Ark. He had a recognized pitch at the Brand ford Summer Fair. Another showman, William Shaw, claimed the pitch which was decided in his favour by The Trade Union Committee. They found that Lee has been guilty of ‘unfair competition’ and fined him £100. Lee brought an action against the Trade union - the Showmen’s Guild – claiming that the Committee’s decision was invalid, The Court upheld Lee’s claim. Then Lord Denning discusses **Nagle v Feilden (1966) 2 QB 633** where a woman was refused an entry on account her sex. He stresses for male female equality.

This discussion shows that the common law has done a good deal to prevent the abuse of power by a powerful group of employers or employees. It has held that the members of the group and its officers are liable if they are guilty of some unlawful conduct, that is, used some unlawful means or pursue some unlawful end. But this does not apply to the trade unions. Parliament has granted them immunity. It is not for the Judges to cavil at this; or to criticize it. This is further illustrated by the Trade Union Enactments of various countries e.g. Trade Union Act, 1926 passed by the British Indian Authorities clearly gives immunity to the Trade Unions duly registered from civil and criminal liability. Parliament must think - and no doubt with reason – that the law should have nothing to do with trade disputes. They are to be solved by the good sense of the parties and not by the Judges. Any intervention by the law would provoke such resentment that it would only make matters worse. Such being the philosophy of the day, it behoves these powerful bodies to act with responsibility towards society at large and not out of any sectional interest of their own. The law can do little in this regard.
PART V HIGH TREES

Part-V of the Discipline of Law touches the delicate subject of the comparison between Law and Equity. The law has its own rules while equity is always flexible. Eminent jurist Sir Henry Maine has quoted in 'Ancient Law' at P. 24 [22]

“Social necessities and social opinion are always more or less in advance of law. We may come indefinitely near to the closing of gap between them, but it has a perpetual tendency to re-open ---------- The greater or less happiness of people depends upon degree of promptitude with which the gap is narrowed.”

In this part Lord Denning gives us an account of the landmark Case Central London Properly Trust Ltd. v High Trees Ltd. 1947 K.B. 131 in which he changed the meaning of 'consideration' and 'estoppel'. The case studies the legal concepts under the light of 20th century society. The case reviewed the doctrines by the courts. In this landmark case, we find the socio-economic condition of the British people during the Second World War. London was facing bombarding by the German Flights. Flats were empty. In one block, there were many flats which were let on 99 year leases at £2500 pounds a year. However, the landlord agreed to reduce 50% of the amount and to accept £1250 pounds a year. After the war, tenants came back and landlord demanded the full amount. Lord Denning here applied the principle which later on became known as the Doctrine of Promissory Estoppel. He ordered the landlord to keep the promise at any cost.

PART VI NEGLIGENCE

In this part of the book Lord Denning has carefully discussed the various aspects of negligence. He says that negligence causes hurt to the other innocent persons and it must be punished properly for the sake of the civilization. Even the negligent attitude of the servant puts the responsibility of his master in the legal sense of the term. It is illustrated by the Latin Maxim

\[ \text{Qui facit per alium facit per se} \]
\[ (\text{The master is liable for the acts of his servants}).[23] \]

The rules of Equity also stress the concept of justice under this light. They can go further in the direction of justice by ignoring the technicalities of law. Then he comes towards the very imp
case **Candler v Crane (1951) 2 KB 164.** This case brought up the whole question of the liability of professional men for negligent statements. Once there was an accountant to prepare the accounts of a company. On the appeal, the case for the investor was argued by a young counsel, Mr. Neil Lawson. There was no Legal Aid in those days. The provisions of the Civil Procedure were not sufficient. Mr. Neil’s excellent arguments convinced Lord Denning, though not his fellow Law Lords. They reserved the decision. They worked on it during the Christmas vacation. It was a dissenting opinion worth giving because it had much impact. Then Lord Denning turns towards the medical negligence. Here he gives us a landmark case **Hiller v Saint Bartholomew’s Hospital (1909) 2 KB 820** in which the management was not held liable for the negligence of its professional staff. Prof. Goodhart criticized the judgment in Law Quarterly Review and the appeal was allowed. Lord Denning here quotes the ratio of a famous decision in **Cassidy v Ministry of Health (1951) 2 KB 343.** It was an important case. A man went into the Walton Hospital at Liverpool to be treated for two stiff fingers. His hand was put in a splint. But when the splint was removed, his hand was useless. Instead of two stiff fingers, he had four stiff fingers. The trial Judge wanted to know who [the exact staff member of the hospital] was responsible for proving negligence. The court reversed this decision. It is the leading authority on the subject ever since. Lord Denning further turns to discuss **Hedley Byrne & Co. Ltd. v Heller & Partners Ltd. (1964) AC 465.** This case dealt with negligent statements. Hedley Byrne was an advertising agent who was about to enter into a contract with a customer. He wanted a bankers’ reference as to the customer’s credit. The Bankers reported that the customer was considered good for ordinary business arrangements. Relying on this report, the advertising agents gave the customer credit sum of £17,000 who, in fact, was unsound in economic condition. The advertising agents lost the £17,000 for which they sued the merchant bankers for negligence. [in providing the report] The bankers pleaded for their no legal responsibility. The plea was accepted and they were held not liable. But the House of Lords, carefully considered Lord Denning’s decision in **Candler v Crane.** Lord Denning was gratified to find that they approved of his dissent and gave reasoning on the same lines. They held that a professional man was liable for negligent statements when he knew that they were acted upon. The case has issued a good ratio for the succeeding matters. Further he discusses the negligent attitude of the barristers for which they faced litigation in **Rondel v Worsley (1967) 1 QB 443.** In this case, Mr. Rondel was charged for causing grievous hurt. He was defended by counsel, Mr. Michael
Worsley. He was convicted and sentenced. He appealed and his appeal was dismissed. He then sued Mr. Worsley, his own Barrister. He said that Mr. Worsley had not cross-examined sufficiently, and had not called the witnesses whom Mr. Rondel wanted. In court, it was held that the action should be struck out. Hedley Byrne did not apply to a barrister. The reason was because, as a matter of public policy, a barrister could not be held liable for negligence in the conduct of a case. Lord Denning has certain different views in this regard and has stated about the duties of a barrister. A barrister may be held liable for not cross examining the witnesses properly. He has further discussed the case Ministry of Housing v Shark (1970) 2 QB 223. In this case, there was an Office of a Registrar in which the land charges may be seen and ‘Search Reports’ may be issued. A purchaser asked for a search to be made to see if there were any charges on a specific land. The Office clerk was negligent. He certified that there were no charges on the land. On the faith of the Report, the purchaser purchased the land. It was a case of a negligent statement by a clerk to a public authority which caused financial damage. Lord Denning felt no difficulty about it and declared - [24]

“I have no doubt that the clerk is liable. He was under a duty at common law to use ‘due care’ that was a duty which owed to any person.”

Lord Denning further has touched the famous Dutton’s case (Dutton v Bognor Regis UDC) (1972) 1 QB 373 in which the builder was held liable for faulty construction. Some contents of Misrepresentation Act, 1967 have been deeply studied in chapter and then the part is concluded. Some builders in Bognor Regis built a house on a rubbish tip. They did not make a proper concrete foundation. It was too thin – no doubt so as to save money. The Council’s Surveyor made his inspection either he did not notice the thinness or he turned a blind eye to it. Beyond doubt he was negligent. The first buyer bought it in ignorance. He sold it to Mrs. Saidee Dutton. There were no cracks at that time. Later on it was found that walls and ceilings had cracked. It would cost £ 2,240 to repair. She had not the money to do it. The builder paid £ 625 to settle the claim against him. She sued the Local Council for the balance, saying that their surveyor was negligent. This case gave the Bench much anxiety. It was well argued by Mr. Tapp, Barrister at Law. Lord Denning gave judgment in favour of Mrs. Dutton and against the Council.
PART-VII  :  THE DOCTRINE OF PRECEDENTS

In the last Part VII of the book, Lord Denning has minutely given us the pros & cons of the Doctrine of Precedent. Upto the times of Lord Denning, the whole English Judicial system was based on blindly following the precedents. Black’s Law Dictionary defines ‘precedent’ as a “rule of law established for the first time by a court for a particular type of case and therefore referred to in deciding similar cases”. It is based on Latin Maxim

\[
\textit{Stare decisis et non quieta movere} \\
\textup{(To stand by decisions and not disturb the undisturbed)[25]}
\]

In short the whole system of Common Law is based on the implementation of case law. Lord Denning was one of the earlier judicial personalities of the world who wanted to free judiciary from the doctrine of stare decisis in the larger interest of justice. His efforts became fruitful when the House of Lords declared that it is no more going to observe the binding force of precedents. (1966. Lord Gardiner LC). A judge has to carefully distinguish between the ratio decidendi (decided principle) and the obiter dicta (passing reference) while deciding a case. The precedents of the Privy Council before the passing of Abolition of Privy Council Jurisdiction Act, 1948 (INDIA) are binding upon the Supreme Court of India and the Indian High Courts. The precedents of the Supreme Court of India are binding upon the High Courts and the lower courts. In short, after our independence, many changes have occurred in the United Kingdom and the Commonwealth Realms but the position in India is still based on the Old System of adherence to the precedents. The system has given some certainty regarding the implementation of the laws. However, it was harmful to the acquisition of absolute justice because the socio-economic conditions change from time to time. However, the Victorian Poet – Laureate Lord Tennyson was singing of England-[26]

\[
\textit{“A man may speak the thing he will,}
\]
\[
\textit{A land of settled government,}
\]
\[
\textit{A land of just and old renowned,}
\]
\[
\textit{Where Freedom broadens slowly down,}
\]
\[
\textit{From Precedent to Precedent”}.
\]

However, according to Lord Denning, the precedent actually does not broaden the basis of freedom but it narrows it. If the lawyers hold to their precedents too closely, the fundamental principles of truth and justice are bound to tumble down. The Hon’ble Mr. Justice Jackson,
United States Federal Court in his famous treatise ‘The Struggle for Judicial Supremacy’ (P.295) writes:-

“The common law will cease to grow. Like a coral reef
It will become a structure of fossils”.

In the Common Law countries the precedent deserves a great attention because it can become the backbone of justice. In the U.K. due to Unwritten Constitution their importance still becomes more dominant. However, Lord Denning always wanted to curtail the importance of precedents in order to make the judicial process more convenient, speedy and crystal clear. In this regard he has discussed certain cases like Young v Bristol Aeroplane Co. 1944 KB 718 and Bennet vs. Orange City Council (1967) 1 NSW 502 as well as Daymond v South West Water Authority 1976 AC 609. In Young’s case, Lord Denning illustrated how the court can distinguish present from past cases. He was humble enough to extend his area of research outside England and Wales as he found full support for his views throughout the Commonwealth Realms especially in New South Wales in Australia. It shows the importance of Lord Denning as one of the greatest judicial personalities of the world. In all these cases, Lord Denning has kept a view leading to justice rather than adherence to the procedural law. He concludes his classic by tracing two important cases. One related to Municipal Law while another related to International Law. He first of all discusses the position of Crown Privilege through a famous case Conway v Rimmer (1967) 1 WLR 1031. In this case, Michael Conway was a young boy training to become a police officer. Each of the boys in training bought his own electric torch. There was a mix-up about the torches. The Police Superintendent unnecessarily charged Conway with stealing another boy’s torch. The jury stopped the case. They strongly criticized the superintendent’s conduct. Conway was acquitted. The Police Superintendent afterwards called Conway and dismissed him from the Crown Service. Conway sued the Police Superintendent for exemplary damages. Conway’s lawyers wanted to see all the reports of the Police Dept. so as to see if they had an unreasonable prejudice against Conway. The Home Secretary then unnecessarily invoked the ‘Crown Privilege’. It means it was legal to keep certain documents confidential. Lord Denning condemned the Practice of Crown privilege. Then he traces an important case- Duncan v Cammell Laird. 1942. AC 624. It came from the highest authority. The Lord Chancellor had presided over with all the six Lords of Appeal. The House had unanimously declared that a
Crown Minister had the right to object to the production of any document to the Court ‘when the practical of keeping a class of document secret is necessary for the proper functioning of the public service’. If the Minister objected, the courts could not override his objection. The House had declared the decision in its legislative capacity. Lord Denning’s contemporary legal experts understood the importance of the dissent from this case. Conway was a pauper. He could not appeal to the House of Lords unless he got legal aid. In order to get legal aid, it is helpful to have a dissenting judgment in your favour. So a dissent is very important. The case has further stressed importance of legal aid to the needy litigants to protect the interest of justice. He further gives us his own judgment in relation to the foreign currency.

*Schorsch GmbH vs. Hennin 1975 BB 416*

In this case, the decided payment in German Deutschmarks was not done by the English firm. After two years the German company sued the English firm in an English court and asked for judgment for the Price to be awarded in German Deutschmarks. The judge refused. He said that he could only give judgment for the price in the Royal Currency of Pound Sterling only. The rate of exchange must to be taken at the 1971 figure when the goods were supplied. That would mean a great loss for the German company because during the two years Sterling had gone down. The German company appealed to the Court of Appeal and asked for judgment in German Deutschmarks. Now there was a decision of the House of Lords only fourteen years before in 1961 *(Re United Railway of Havan)* by which it was held that and English Courts could only give judgment in Sterling. Lord Denning said- [28]

‘….. A German company comes to an English court and asks for judgment – not in English pounds sterling, but, if you please, in German Deutschmarks. The judge offered a sterling judgment. But the German company said “No. sterling is no good to us. it has gone down much in value. If we accepted it, we would lose one – third of the debt. The debt was payable in Deutschmarks. We want Deutschmarks. We will accept no other”.

The judge refused their request. He had no power, he said, in English law to give any judgment but in Sterling. The German company further appealed to the Privy Council. Lord Denning view on precedent was accepted by the House of Lords. It is now not bound by its precedents. It was
announced in 1966. The Discipline of Law is a compelling reading for attorneys, jurists, students and leaders who want to understand development of Commonwealth legal history and how executive recklessness and human elements were tamed by a Judge who just fought a crusade for justice. Lord Denning’s views are already mentioned in his classic ‘Freedom under the Law’ not selected here for exhaustive studies. He has expanded the scope of English Common Law and he has also made the doctrine of precedent so suitable that it can be applicable to the modern times. In short, the Discipline of Law is a legal literary classic of excellent coherence depicting Lord Denning’s revolutionary views. Lord Scarman paid his tribute to his senior master through ‘The Times 5th Jan, 1977’ and stated- [29]

"The past 25 years will not be forgotten in our Legal History. They are the Age of Legal Aid, the Age of Law Reforms and the Age of Lord Denning".