PART FOUR – EPILOGUE TO THE LIFE AND WORKS OF LORD DENNING

Chapter 8

LORD DENNING’S CONTRIBUTION TO THE PHILOSOPHY OF LAW

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Lord Denning as a Law Lord

“If there is a label for Lord Denning’s stance as a law maker – it is radical conservatism. (His importance) is not merely as a Judge but as a historical figure.”

Dr. Stephen Sedley (British Jurist)

Lord Denning without a doubt was one of the greatest judicial figures of the world. His love for the protection of freedom of individual compelled him to remain a controversial Law Lord. Throughout his life, he struggled hard and protected the freedom of Her Majesty’s subjects in various Commonwealth Realms where much part of Constitutional Law is unwritten especially in defining the relationship between the Head of the State (The British Crown) and The Heads of the Government in the different parts of the Realm.
8.1 ACTION RESEARCH:

It is to be noted that Lord Denning had written treatise upon law and had further written his life experiences through the Christmas Series. However, he had never put any legal doctrine or certain part of theory directly as a fruit of his research. In other words, it was not ‘The Research’ but it was ‘Action Research’ which brought his legal philosophy to the benefit of the world. He was constantly doing his work with an intention to safeguard the liberties of the subjects of Her Majesty throughout the Commonwealth Realms and his Philosophy of Law was revealed automatically. Wikipedia states:[1]

“Action research is a research initiated to solve an immediate problem or a reflective process of progressive problem solving led by individuals working with others in teams or as part of a "community of practice" to improve the way they address issues and solve problems. It sometimes called participatory action research.”

Lord Denning’s academic views and zeal of arriving at the justice compelled him even to willingly come down to the Court of Appeal from the Grand House of Lords, the highest court for all the Commonwealth Realms. He remained the Master of Rolls for more than 20 years and fought against the Bureaucracy. He also found many unsuitable clauses in the Treaty of Rome. He fearlessly opposed the jurisdiction of the European Court of Justice over the British Isles. However, the United Kingdom signed the Treaty of Rome. Lord Denning thought it to be the danger to the sovereignty of Great Britain. Lord Denning had written a number of books. Some of them like ‘The Changing Law - 1953’, ‘The Road to Justice -1954’ are purely legal while the famous ‘Christmas Series’ which he wrote at the times of his superannuation is the best example of legal literary classics. There are five books supplemented with The Family Story – 1981 – An autobiography. The books upon which the present research work is based include:

I. The Discipline of Law (1978)
II. The Due Process of Law (1979)
IV. The Closing Chapter (1983)
V. Landmarks in the Law (1984)

These classics are truly socio-legal literary pieces having the amalgamation of the history of Laws culminated with his autobiographical touches. Here he traces not only his individually decided cases but also many cases decided by his Senior Masters like Lord Atkin, Lord
Lord Denning always remained in touch with the constitutional and legal history of the Commonwealth Realms. He pondered upon the previous cases and incidences and also the contemporary cases upon the Bench. He was fearless Law Lord. He never cared for the opinion of the fellow Law Lords sitting upon the Full Bench of the Court of Appeal or the Privy Council where the last appeals may go from all the Commonwealth Realms. The vast life experiences of Lord Denning as a professional judge have been resulted into his action research and it has provided us many delicate legal theories and doctrines which we normally contribute to him. It is his great contribution to the philosophy of law.

**Lord Denning’s Contribution to the Philosophy of Law – [ A] Substantive Law**

### 8.2 DOCTRINE OF PRECEDENT.

In the Common Law countries, the precedent or principles settled by the judicial authority and established in a previous legal matter that are binding on the other subordinate court or tribunal when deciding subsequent cases with similar issues and facts. Blacks Law Dictionary defines "precedent" as - [2]

"A rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases."

In the common law countries the precedent is a third kind of law. It is having equal footing with the statutes and codes enacted by legislative bodies and the regulations promulgated by executive branch agencies. In the common law countries, the courts decide the law applicable to a case by interpreting statutes and applying precedents (back decisions irrelevant of their age or the contemporary conditions when the were pronounced.) which record how and why prior matters had been decided. In the Civil Law systems, the doctrine of Stare Decisis is not followed and the courts are not at all bound by their own previous decisions in similar cases, and all lower courts can pronounce their own decisions inconsistent with previous decisions of higher courts. For example in all the Commonwealth Realms under Her Majesty, all the lower courts must follow the precedents of the Privy Council but it itself is able to deviate from its earlier decisions, although in practice it is rarely done. In the Civil Law or the hybrid law systems precedent is not binding. However, the precedents may be taken into account by the courts. For example in the
Kingdom of Spain or the Republic of Portugal the civil law system is in vogue. They consider the precedents, but not binding upon the courts. The United States is a combination of the 13 Royal Colonies under the King-Emperor George III. The colonies declared their independence on 4-7-1776 at Philadelphia. Though separated from the Crown, they are essentially the common law countries. Same is the position of the Republic of (Southern) Ireland. The later region remained in the Commonwealth for a certain period, while the former has never applied for the same upto the writing of the present thesis. Today, we find the mixture of the common law and the civil law systems in those republics. The mission for abolishing the binding force of precedent was started by Lord Denning in England and it was actually for all the Commonwealth Realms under the territorial jurisdiction of the Privy Council of Her Majesty. It was strongly supported by Lord Scarman, Lord Upjohn and Lord Halisham. No doubt, the former Realms of Her Majesty are also impressed by the mission of Lord Denning. At the Magna Carta Exhibition Ceremony, the jurists from the United States invited Lord Denning as a Chief Guest. His thoughts on the Doctrine of Precedent and the Policy of Decentralization of Powers, [executive, legislative and the judicial ] within the Commonwealth Realms, scattered all over the globe, for pragmatic purposes of imparting efficiency in the Royal Administration, were warmly welcomed by the American jurists. (P-35)

Lord Denning, throughout his life, struggled hard to curtail importance of precedents and its binding force. It seems that he must have been impressed by the civil law systems. Which gives enormous independence to the judges? There is much scope for the liberal interpretation than the common law system. Moreover, the social conditions are rapidly changing. He has warned us in the very beginning of his ‘The Discipline of Law’ not to follow blindly the precedents set by the judges of the 18th or 19th century (up to the writing of this thesis even the judges of the 20th century). They may be suitable to the contemporary social situations, but mat not be suitable to the present needs. His efforts became fruitful, when in 1966 the House of Lords (Lord Upjohn) declared that the Apex Court of Commonwealth Realms is no longer bound to follow its own precedents.

8.3. DOCTRINE OF PROMISSORY ESTOPPELS
Lord Denning will always be remembered as the exponent of the Doctrine of Promissory Estoppel. He must have been impressed by the ancient Ramayana Principle-[3]

रघुकुल रीत सदा चली आयी !
प्राण जायी पर वचन न जायी !!
Raghukul Reet Sada Chali Aayee
Pran Jayee Per Vachan na Jayee.

(There is an antique custom among the followers of Lord Rama. They may lose the Life but not the Words.). The Holy Ramchatitmanas composed by Goswami Tulsidasji.

The ethics expounded by the Holy Texts is common all over the world. Lord Denning entered the British judiciary as a High Court Judge in 1944. India was a part and parcel of the mighty British Empire. The last appeals were frequently referred to the Grand Privy Council. London was crowded with many Indian Advocates who were basically engaged in the appeals from British India. Some of them were also friends of His Lordship. The present doctrine is related to equity and good conscience. The doctrine of promissory estoppel was first developed in Hughes v Metro Railways [1877] but was lost for half a century until it’s revival by Lord Denning in the above case of High Trees (1947). His judgment in the landmark case Central London Property Trust Ltd v High Trees Ltd. [1947] K.B. 130 has become a backbone for the most famous legal doctrine of the last century. Estoppel in its broadest sense is a legal term referring to a series of legal and equitable doctrine that clearly states—[4]

"a person from denying or asserting anything to the contrary of that which has, in contemplation of law, been established as the truth, either by the acts of judicial or legislative officers, or by his own deed, acts, or representations, either express or implied."

This term appears to come from the ancient Gallic language "stop up or impede." The Doctrine of promissory estoppel prevents one party from withdrawing a promise made to another party, if the latter has reasonably relied on that promise. The doctrine does not stress for the written documents signed before two sane witnesses and duly affixed by the Notorial Powers of the Crown in the Commonwealth Realms or the State in India. A bare oral promise, properly brought to the notice of the court, is sufficient.
In common law, a promise made without consideration is generally not enforceable. It is known as a bare or gratuitous promise. Thus, if a real property dealer promises not to sell an open plot of land over the month, but does so, the promise cannot be enforced. But should that dealer accept even one paisa in consideration for the promise, it will be binding and enforceable in court. Estoppel is not an exception to this rule. Promissory estoppel requires an unequivocal promise by words or conduct. The strict evidence is immaterial.

In general, estoppel is 'a shield not a sword' — it cannot be used as the basis of an action on its own. It also cannot extinguish rights. In High Trees the plaintiff company was able to restore payment of full rent from early 1945, and could have restored the full rent at any time after the initial promise was made provided a suitable period of notice had been given. In this case, the estoppel was applied to a 'negative promise', that is, one where a party promises not to enforce full rights.

It is a rule of Evidence preventing a person to deny the statement of the fact which he had made earlier and by which he had made others to believe and to act upon. It is provided in s.115 of the Evidence Act. In England also-[5]

“The law for centuries has been that an act done at the request of another, express or implied, is sufficient consideration to support a promise”

LORD DENNING in an article on recent developments in the doctrine of consideration, [1952] 15 mod LR1 has stated that—[6]

“now a days there are some grounds for suggesting that an act may be good consideration even though it is not a benefit to the promisor nor a detriment to the promisee. If a man promises a charitable institution that he will pay hundred pounds into its funds if it procures nine other persons to do the same, justice requires that his promise joule be held binding on him as soon as it has procured the nine others to pay a 100 pounds each; but the act done by the institution is not a benefit to him nor a detriment to the institution.A promise was made which was intended to create legal relations and which, to the knowledge of the person making an English contract law decision in the High Court. It reaffirmed the doctrine of promissory estoppel the promise, was going to be acted on by the person to whom it was made and which was in fact so acted on.”

Facts of the High Trees (1947)
In 1937, High Trees House Ltd leased a block of flats in Balham, London, for a rate £2500/-year from Central London Property Trust Ltd. Those were the high times of the most destructive war in human history. The Nazi Regime had made the City of London as the prime target. Heavy bombarding was constantly going on at all sides of the city. Many subjects of His Majesty had escaped themselves into the deep rural parts of the United Kingdom. Due to these conditions the occupancy rates in the urban area were much lower than normal. In January 1940, the parties made an agreement in writing to reduce rent by half. Central London Property Trust sued for payment of the full rental costs from June 1945 onwards. The matter came to the Bench of His Lordship where he pronounced his landmark judgment in which he held that the full rent was payable from the time the flats became fully occupied in mid-1945. However, he stated in an obiter statement that the Central London Property Trust had to get the half rent from 1940-1945 1/2. This was reasoned on the basis that if a party leads prevent him from doing so at a later stage. This obiter remark was not actually a binding precedent, yet it fortunately gave the world the famous Doctrine of promissory estoppels.

**8.4 DOCTRINE OF PROPRIETARY ESTOPPELS**

In the English common law, the Doctrine of Proprietary Estoppel is quite different from the Doctrine of the Promissory Estoppel. Proprietary Estoppel is not recognized by the United States Supreme Court. Presently, the Americans follow a mixture of the common law and the civil law. The matters in that country are decided while considering the general doctrines of the promissory estoppel. Traditionally, proprietary estoppel arose in relation to rights to use the land of the owner, and possibly in connection with disputed transfers of ownership. Although proprietary estoppel was only available in disputes affecting title to real property, it has now gained limited acceptance in other areas of law also. The Doctrine of Proprietary estoppel and the Doctrine of Constructive Trusts must be considered as the two sides of the same coin. The later becomes a separate point in the present research work. Eminent jurist J. Fry has given us the five important elements of the Proprietary Estoppel. According to him, here the plaintiff makes mistakes to comprehend his legal rights and puts faith on the defendant who may be engaged in invalid transfer. Fry further gives us the position of the defendant who knows the existence of a legal
right which he possesses and which is inconsistent with the rights claimed by the plaintiff. He perfectly knows about the plaintiff’s mistaken beliefs but he encourages in his act of reliance.

Proprietary estoppel is an equitable doctrine which came out in the leading case of Dillwyn v Llewelyn (1862) 4 De GF & J 517. In this case a father promised a house to his son who took possession and spent a large sum of money on it. But the father never transferred the house to the son. Upon the father’s death, the son claimed to be the equitable owner. There appeared a testament. The court found that the testamentary trustees were stopped from denying the son’s proprietary interests, and ordered them to convey the land to the son. The doctrine is based on encouragement and acquiescence whereby equity was prepared to intervene and adjust the rights of the parties. Lord Denning applied the similar ratio of the Dillwyn’s case a new colour of proprietary estoppels read with a constructive trust.

It was the famous reference case - Re Sharpe [1980] 1 WLR 219, a constructive trust was imposed on a trustee where an age old aunt had lent money to her nephew for purchasing a big row house on an assumption that she could be easily be accommodated there for the rest of her life.

The Supreme Court of Appeal applied the doctrine in Gillett v Holt [2001] Ch 210. Recently, the House of Lords applied it in Yeoman’s Row Management v Cobbe [2008] UKHL 55 and Thorner v Major [2009] UKHL 18 by further adding the novel approaches into the old doctrine and both matters have started a lively discussion among the jurists all over the world. The contemporary legal matters are constantly being considered under this old doctrine revived by Lord Denning in its full vigour so as to suit the modern socio legal circumstances. Let us have a birds eye’s view upon two leading legal matters and to see, how the doctrine has proved to be a boon for our times in the 21st century. They are as follows-

**Jennings v Ri [2003] 1 P & CR 8.** In this case the equity was satisfied by the compensation in the form of money.

**Matharu v Matharu (1994) 68 P & CR 93.** In this family dispute the license did not give a beneficial interest but gave the defendant a right to live in the disputed house for the rest of her life.
8.5 CONSTRUCTIVE TRUSTS

The constructive trust is a trust made by the court, for the benefit of a party as it may deem fit. An exhaustive definition has been provided by a jurist thus-[7]

‘A constructive trust is an equitable remedy resembling a trust imposed by a court to benefit a party that has been wrongfully deprived of its rights due to either a person obtaining or holding legal right to property which they should not possess due to unjust enrichment or interference.’

The House of Lords has re-introduced some of the earlier flexibility into the constructive trusts showing the existence of equity in modern times. The new model constructive trust has been most alive in the field of licenses. At common law, a contractual license is controlled by the doctrine of the privity of contract. The Equitable remedies are always available to the licensor and the licensee. It has been accepted that certain licenses may create an equitable proprietary interest by way of a constructive trust or proprietary estoppel. In Binions v Evans [1972] Ch 359, CA, it was held by Lord Denning MR that purchasers were in nature of equity and the law of trusts. They were bound by a contractual license between the former owners and Mrs. Evans, an occupant. His Lordship imposed a constructive trust in her favour as the purchasers had bought the real property subject to Mrs. Evans’ interest and had, for that reason, paid a reduced price. The importance of these developing areas is shown in case law and it appears to hold back from a development which may have pushed the frontiers too far. The Obiter dicta and the Ratio decidendi pronounced by the Courts suggest that a license can only give rise to a constructive trust where the conscience of a third party is affected. It will be imposed where their conduct so warrants. Judicial creativity in novel equitable fields has thus become a great need of the contemporary age in which we live. The legislative of any country is fully unable to foresee all the circumstances.

8.6 JUDICIAL ACTIVISM

The concept of the judicial activism has been made famous by the American jurists of the Federal Court of that country. It describes the judicial rulings based on personal considerations of a judge rather than on the existing law which he/she is supposed to administer. The definition of judicial activism, and which specific decisions are activist, is a controversial political issue, particularly in the United States of America. The term was also used by the American Freedom
Fighter and also a Constitutional lawyer Mr. Thomas Jefferson referring to the "despotic behaviour" of the federal judges like John Marshall. The question of judicial activism is closely related to the rule of law independence of judiciary and the separation of powers. Lord Denning was one of the early judicial personalities from the Commonwealth Realms who brought the concept to the Privy Council, the Judicial Committee of the House of Lords. It was the world famous case **Sykes v DPP (1962 AC 528)** It becomes a separate part ‘The Revival of Misprision’. The Full-Text of this landmark judgment is provided in Appendix XXII

**B) PROCEDURAL LAW:**

**8.7. PLAIN ENGLISH**

Here Lord Denning describe the importance of plain English in the legal judicial world. He was the strong supporter of simplicity in the language. He praises the Nursery rhymes like 'Humpty Dumpty' for their simplicity of words. Then he quotes the thoughts of Sir Arthur Quiller-Couch-[8]

"Our fathers have, in the process of centuries, provided this realm, its colonies and wide dependences, with a speech malleable, yet free of Teutonic gluttural, capable of being precise as French, dulce as Italian, sonorous as Spanish, and captaining all these excellencies to its service".

The above quotation is nothing but the part of the glorification of various qualities of English, particularly Plain English. **Plain English (sometimes referred to more broadly as plain language) is a generic term for communication in English that emphasizes clarity, brevity, and the avoidance of technical language—particularly in relation to official government or business communication. The goal is to write in a way that is easily understood by the target audience: clear and straightforward, appropriate to their reading skills and knowledge, free of wordiness, cliché and needless jargon. It often involves using native Germanic words instead of those derived from Latin and Greek.** According to Lord Denning Lord Atkin was the first judge of the Privy Council who stressed for the simplicity of the language. Then Lord Denning stresses us to follow five central principles for the simplicity of the English language-[9]

1. Always think of the others while speaking or writing.
2. Don't use long words.
3. Avoid the foreign terminology – Latin, French, Greek etc.
4. Use plain and simple words.
5. Try to use present tense construction by avoiding unparliamentarily language.

It is interesting to note that Lord Denning character comes akin to Saint Ramdas of India. Whatever they told to the public at large they followed themselves. Lord Denning started his life corner as a School teacher of mathematics. Teaching in a school requires the simplicity, ideas and the lucidity of style. These qualities might have made him the greatest Judge of 20th century. According to him, the judgment must be understood by the common men directly without even the help of the lawyer. Normally in judgments, the names are not directly referred. They are given before the salutation. Against each name, it is specified whether he/she is plaintiff No. 1 and 2 in the same was whether defendant no. 1 or 2 and so on Lord Denning was an excellent ‘Story Teller’. His method directly attracted the very hearts of the people. He used to avoid the words like plaintiff and defendant etc. Instead he directly referred the name of the parties. It becomes a picturesque Judgment and is easily understand by the parties. Sometimes we continuously feel that Lord Denning had written not the judgment but the life experiences. Let’s have a cursory glance upon his judgment in Beswich v Beswick reported in [168 A.C. 58] read as under:-[10]

“Old Peter Beswick was a coal merchant in Eccles, Lancashire. He had no business premises. All he had was a lorry, scales, and weights. He used to take the lorry to the yard of the National Coal Board, where he bagged coal and took it round to his customers in the neighbourhood. His nephew, John Joseph Beswick, helped him in his business. In March 1962, old Peter Beswick and his wife were both over 70. He had had his leg amputated and was not in good health. The nephew was anxious to get hold of the business before the old man died. So they went to a solicitor, Mr. Ashcroft, who drew up an agreement for them.”

Or consider the famous opening lines from his judgment in Miller v Jackson [1977] QB 966[11]-

“In summertime village cricket is the delight of everyone. Nearly every village has its own cricket field where the young men play and the old men watch. In the village of Lintz in County Durham they have their own ground, where they have played these last 70 years. They tend it well. The wicket area is well rolled and mown. The outfield is kept short. It has a good club house for the players and
seats for the onlookers. The village team play there on Saturdays and Sundays. They belong to a league, competing with the neighbouring villages. On other evenings after work they practise while the light lasts. Yet now after these 70 years a judge of the High Court has ordered that they must not play there any more. He has issued an injunction to stop them. He has done it at the instance of a newcomer who is no lover of cricket. This newcomer has built, or has had built for him, a house on the edge of the cricket ground which four years ago was a field where cattle grazed. The animals did not mind the cricket. But now this adjoining field has been turned into a housing estate. The newcomer bought one of the houses on the edge of the cricket ground. No doubt the open space was a selling point. Now he complains that when a batsman hits a six the ball has been known to land in his garden or on or near his house. His wife has got so upset about it that they always go out at week-ends. They do not go into the garden when cricket is being played. They say that this is intolerable. So they asked the judge to stop the cricket being played. And the judge, much against his will, has felt that he must order the cricket to be stopped: with the consequence, I suppose, that the Lintz Cricket Club will disappear. The cricket ground will be turned to some other use. I expect for more houses or a factory. The young men will turn to other things instead of cricket. The whole village will be much the poorer. And all this because of a newcomer who has just bought a house there next to the cricket ground.”

To stress the simplicity and lucidity of his English (or more correctly King’s English – The standard form of English which is dominantly spoken in the South Eastern part of England the cradle of ancient Oxford and Cambridge educational centers). Along with impartiality, Lord Denning must be remembered as a great social activist like George Bernard Shaw Quiller-Coache who helped the English language in becoming a Lingua Franca. It became an international language in the real sense of the terms.

8.8 DOCTRINE OF FUNDAMENTAL BREACH

Lord Denning was perhaps the greatest law-making judge of the 21st century. He was the most controversial judge. His achievement was to shape the common law according to his own individual vision of society. He was also popular as a dissenting judge. He has enriched various areas of law through his various precious judgments. The point elaborates the contribution of Lord Denning in the field of law of contract. It has also been tried to analyze the legacy of his judgements in contemporary era. The Doctrine of Fundamental Breach is a method of controlling the unreasonable consequences of wide and sweeping exemption clauses. Even when
a notice of the terms and conditions in a document has been given, the party imposing the condition may not be able to rely on them if he has committed a breach of the contract which can be described as 'fundamental'. The rule has been thus stated by Lord Denning LJ as-[12]

“These exempting clauses are now-a-days all held to be subject to the overriding proviso that the only avail to exempt a party when he is carrying out his contract, not when he is deviating from it or is guilty of a breach which goes to the root of it. Just as a party who is guilty of a radical breach is disentitled from insisting on the further performance by the other, so too he is disentitled from relying on an exempting clause.”

J. Spurling Ltd v Bradshaw [1956] EWCA Civ 3. It is an English Contract and Property Law case on the exclusion clauses and bailment. It is best known for Lord Denning’s Red Hand Rule comment, where he said-[13]

“I quite agree that the more unreasonable a clause is, the greater the notice which must be given of it. Some clauses which I have seen would need to be printed in red ink on the face of the document with a red hand pointing to it before the notice could be held to be sufficient.”

J Spurling Ltd had a warehouse in East London. Mr. Andrew Bradshaw had eight barrels of orange juice. He asked Spurling Ltd. to store them. In the contract was the "London lighterage clause" which exempted warehousemen from liability due to their negligence. When the barrels were collected, they were damaged. When Bradshaw refused to pay Spurling Ltd., the company sued for the cost. Bradshaw further counterclaimed for damages for breach of an implied term of a contract of bailment to take reasonable care.

Denning, held that although the warehouse employees were negligent, the clause effectively exempted them. But his reference to the concept of a fundamental breach precluding an exclusion of liability was rejected by the House of Lords some years later. If the clause is taken literally, it is wide enough to exempt the company from any obligation to redeliver the goods. It would mean that if the manager sold the orange juice or used it up for the personal purposes, maybe by mistake or even by fraud, the company would not be liable. If the clause went to those lengths, it would be very unreasonable and might for that reason be invalid.
Actually bailor- bailee relations are based on the trust on each other. The essence of the contract by a warehouseman is that he will store the goods in the contractual place and deliver them on demand to the bailer on his order. If he stores them in a different place, or consumes, destroys, sells or delivers them without excuse to somebody else, he is guilty of a breach which goes to the root of the contract and he cannot rely on the exempting clause. Lord Denning stated that negligence can never go to the root of the contract. If a warehouseman were to handle the goods so roughly as to come to the inference that he was reckless, he would be guilty of a Fundamental Breach going to the root of the contract and could not rely on the exempting clause. He cannot be allowed to escape from his obligation by saying to himself that he was not going to trouble about those goods because he was covered by the exempting clauses of the contract.

8.9 LAW TEACHING AND LAW RESEARCH

Lord Denning as a High court Judge received his knighthood on 15/03/1944. He was also elected as a Bencher of the famous Lincoln’s Inn. It was also his alma mater. He became its Treasure in 1964. Along with Lincoln’s Inn, he also advised the Law students of the other three Inns of Court, Gray’s Inn, Inner Temple and Middle Temple. Most of his foreign tours were in fact, for the expansion of practical legal education, though his formal teaching career ended long ago in Winchester, where he was a Mathematics Teacher. He had actually become a law teacher to litigants, juniors, lawyers, fellow judges and law-students of various universities. Telling the importance of law he stated-[14]

“The law effects the lives of all of us at some time or other”.

8.10. RED HAND RULE

Denning was able to see matters from a realistic, common-sense perspective, often that of the man-on-the-street, which gave his opinions a "real-world" application. The Red Hand Rule is a great gift of Lord Denning to the emerging Common Law and the Commonwealth Law. Let us see his views in the famous case- Thornton v Shoe Lane Parking Ltd. [1971]1 Aller 686. In this case the plaintiff parked his car and a ticket was thrown out by a machine. The ticket pointed to a poster inside the garage which contained the conditions, one of which excluded the liability for any injury to car or customer or both. While taking back his car, the plaintiff was injured.
He sued the defendants for exemplary damages. The defendant sought the protection of the exemption clause.

Lord Denning in this case pointed out that-[15]

“No customer in a thousand ever read the condition. If he had stopped to do so, he would have missed the train or the boat”. The individual therefore, deserves to be protected against the possibility of exploitation inherent in such contracts. Thus evolved the concept of reasonable notice of terms. The customer pays his money and gets a ticket [from a machine]. He cannot refuse it. He cannot get his money back. He may protest to it, even swear at it; but it will remain unmoved." He also stated that this particular clause was so wide and destructive of rights that "In order to give sufficient notice, it would need to be printed in red ink with a red hand pointing to it - or something equally startling."

He further categorically remarked that in order to give sufficient notice, it must be printed in red ink with a red hand pointing to it, or something equally appalling to human eyes. Thus, his view has evolved the Concept of Reasonable Notice of Terms.

8.11 REVIVAL OF MISPRISION

The word ‘Misprision’ is taken from Old French term, ‘mesprendre’, which means "to misunderstand". The term is used to describe certain kinds of offences. Writers on criminal law usually divide misprision into two kinds, negative misprision and positive misprision. The negative misprision means the concealment of the treason or felony. It must have been brought to England by the Norman French rulers. Presently it survives only in the terms of ‘Misprision of Treason’.

Halsbury’s Laws of England Vol XI Criminal law and Crown Proceedings (Page 463) states [16] that misprision is a serious offence. It is punishable with rigorous imprisonment with exemplary fines. The persons having knowledge of a felony is under the obligation to report it to the nearest judicial authority. It is an offence throughout the Commonwealth Realms.

It consisted of failing to report knowledge of a felony to the appropriate authorities. Exceptions were made for close family members of the felon. A person was not obliged to disclose his knowledge of a felony where the disclosure would tend to incriminate him. Hon, Felix frankfurter, while deciding Fisher v United States 326 US 1946 has clearly stated that the bite
of law is in its enforcement. Hon. Jackson Robert while deciding Stein v New York346 US 1953 stated that-[17]

‘The duty of disclosing the knowledge of crime rests upon every civilized citizen’.

With the development of the modern law, this crime has been discarded in many jurisdictions, and is generally applied against persons placed in a special position of authority or responsibility. For example the correction officers who stand idly by while drug consumption is going on the gaol, may be prosecuted for this crime. According to Blackstone misprision of treason consists in bare knowledge and concealment of treason without any degree of assent thereto for any assent makes the party a principal traitor. According to Bracton, it is the failure to reveal the treason of another is in itself high treason. However the Statutes of 1551 and 1555 have made concealment of treason misprision only. Under the old common law hierarchy of crimes these categories were abolished in 1967. The old writers say that misprision is contained in every felony and that the Crown may elect to prosecute for the misprision instead of the felony. The power of the Crown to have mercy to be conferred upon the convict may be invoked in certain cases under the sweet will. However, it is never the right of the convict. In the United States of America misprision of the treason (18 U.S.C. – 2382) is defined to be a crime committed by a person owing allegiance to the United States and having knowledge of commission of any crime which challenges the sovereignty of the state. It is the duty of every citizen in the country to disclose such information to the President, the Governors, the Judges or the nearest Police Stations as quick as possible. The punishment is imprisonment of seven years or a fine $ 1000 or both. Lord Denning revived this ancient crime at a crucial time when the world is facing acute problems of terrorism. In his youth, he had seen two mighty and devastative world wars. They were fought practically on the war grounds, at open farms, on the national borders, in the air and on the water. They were rarely fought in the high population of the cities. Of course there are certain exceptions of the Nazi attacks upon the innocent citizens of London and the most cruel attack in the human history i.e. the atomic explosions upon the Japanese cities of Hiroshima and Nagasaki on account of the non surrender of the Axis forces in that country. Lord Denning had greatly contributed to every branch of substantive and the procedural law.

In the famous case, Sykes v Director of Public Prosecutions (1962 AC 528), he heard an appeal and declared- (Some details of the Judgment of the House of Lords in Appendix XXI). In this case
the question whether there is today such an offence as misprision of felony was considered very carefully by Lord Denning. On March 18, 1960 certain culprits stole the military armory of the United States Air Force Station in Norfolk. They sold 100 pistols, 4 machine guns and about 2000 bullets. They hired a taxi and took the stolen goods to Manchester. They were kept in the house of one Kenny. A day or two later a man named Whittle brought a car to Kennie’s house and took the ‘secret’ material to the house of a man named Black. The present appellant Sykes now came into the story. He anyhow knew about the ammunition. He went to an Irish man named Kerwin, a waiter in a club and asked him whether he had any contacts with the Irish Republican Army, an illegal terrorist organizations. Kerwin gave him time and they talked about the matter outside the club. They met two persons there one was Kenny and other was Tucker. Later on instead of helping them as they wished, Kerwin directly went to the nearest police station and told them everything. The police told him to continue to be in touch with the culprits and to inform him secretly. Kerwin according to police instruction told Sykes that he had arranged to dispose off the guns but he needed a sample to show to the said Fighters, so it was given to him. Then police disguised themselves as the purchasers of the guns met Kenny and arrested Whittle and Black along with him. Tucker and Sykes were also arrested in the course of time. The police intensively inquire Sykes about his actual contacts with the I.R.A. He said

“Look, Inspector, that can’t be possible. I don’t know this man Kenny and I haven’t seen Tucker for four months.”

All the five men were produced before the local magistrate. Kenny, Tucker, Whittle and Black were charged with receiving the stolen goods to be used for the illegal and devastative purposes in the course of time. They were further charged for keeping relations with the illegal organizations. Sykes was charged as being accessory after the fact. His advocate strongly urged that he ought not to be committed for trial. There was no evidence that he had been engaged in the felony. The learned advocate Mr. Edward Clarke Q.C. with Adv. John Hugill produced the full judgement of Rex v Jones. Their argument were rejected by the court and in the last appeal before the House of Lords the Grand Bench consisting of the greatest judicial intellects of the time, Lord Denning, Lord Goddard, Lord Morton, Lord Moris and Lord Guest was available. The Queen’s Counsel of the directors of public prosecution appeared and the Apex Law Lords pronounced their separate judgements. Lord Denning in this case declared the revival of the misprision of treason and felony throughout the Commonwealth Realms under Her Majesty. The precedents of this Apex Court are binding upon all the 16 Realms including Australia, Canada, New Zealand, Gibraltar Falkland, Granada, Isle of Man.
The Judge has sentenced Kenny to Seven years of rigorous imprisonment for deceiving the illegal ammunitions. Tucker to five years of rigorous imprisonment for felony, Black and Whittle were inflicted with a paltry punishment of 15 months and the most important accused in this case, the present appellant before this Grand House, Sykes was inflicted with five years of rigorous imprisonment for this newly revived crime of misprision of felony. The judgements of Lord Gooddard, Lord Morton, Lord Morris and Lord Guest follow mostly the principles which Lord Denning had put in clear words. Their judgements are not so elaborative like Lord Denning but they also throw ample light upon the position of misprision in the contemporary Commonwealth realms.

Lord Denning’s view has now accepted throughout the world. The Terrorism Act 2000 (U.K.) contains Section 18 (B) in which it is stated that the failure to disclose information that might prevent an act of terrorism will be an offence under the Act. The Queen has also given her Royal Ascent to the Criminal Law Act for Northern Ireland in 1967. It contains the similar provisions like the U.K. Act under section 5 (1 & 2). The Royal Administration has also passed the similar enactments for the Dominions of Canada, Australia and New Zealand. In short, Lord Denning’s historical judgement from the Apex Court has become guideline to check the modern terrorism which is far more dangerous than even the first or Second World War. Here the innocents are crushed without having any glimpse of the danger. The judgement is certainly responsible for even many constitutional amendments throughout the world. For example, the Indian Constitution has been amended and Article 51 has been added in which the state stresses for the Fundamental Duties. They include the respecting the sovereignty, the integrity, the unity of the state by promoting honour to the national symbols, national flag. It automatically include helping the democratic administrations in the delicate matters of handling terrorism. Here in India, the State has also passed MISA (The Maintenance of Internal Security Act 1978), TADA (The Terrorist and Disruptive Activities Prevention Act 1985) and POTA. (Prevention of Terrorism Act 2002.) They all are all to be read under the light of the various regional Police Acts e.g. Bombay Police Act, 1951 and the Indian Penal Code, 1860 (which contains the provisions for preventing the Waging of War against the Govt. of India ) Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 passed by the British / Indian Legislation. They have affinity with the obiter of Lord Denning-[18]

“It has always been an offence for the last 700 year _ Misprision of Felony _. It has been the duty of everyman who knows that a felony has been committed, to report to the proper authority”.
The history will always remember Lord Denning as a great jurist for his revival of the crime of misprision for which the courts must inflict the appropriate punishments. By the Common Law of England, it was the duty of every loyal subject to inform the king’s justices of all treasons and felonies of which he had knowledge. The disloyal subjects have no right to live in any part of the Queen’s Realms as the Unwritten Constitution stresses that they are, at least in theory, truly live in a Kingdom. (‘KING +DOM’ The Property of the King and the Queen). Hence everyone MUST be highly loyal to Her Majesty. In one of his last cases of his judicial career, once again, the ratios of this ancient doctrine were considered His Lordship was sitting on the Bench with the Hon. Reginald Golf LJ, and Sir George Baker. It was the famous matter related to the terrorist activities of the Irish Republican Army. In McIlkenny v Chief Constable of West Midlands (CA 1980) It was reported that one McIlkenny, was waging a war against Her Majesty. He was caught with enough illegal arms and ammunition. His confession was genuine. However, he brought a civil suit against the Royal Police for causing damages of assault based on the alleged violence by them in their custody. Their Lordships rejected the claims of McIlkenny. Lord Denning actually revived this ancient Anglo-Saxon judicial system at a time when the world is still facing acute problems of terrorism in which the innocents always suffer. Here, we also find the role of Lord Denning as a ‘Nation Builder’ and as a ‘Savior of Humanity’.

8.12 ECCLESIASTICAL LAW (CANON LAW):

Canon law is the body of laws and regulations made or adopted by the Church leadership for the government of the Christian organization and its members. It is the internal religious law based upon the customs and up to certain extent the State Law especially in those countries which declare some Official Religion under Written or Unwritten Constitution. Here Lord Denning turns to explain the importance of the Ecclesiastical Law in England. The Church of England has full religious authority over the United Kingdom, Australia, Canada, New Zealand and all the remaining 12 Commonwealth Realms. Even the followers of this religion living in the United States and India (India, Pakistan and Bangla Desh), the former Crown Territories, also regard Her Majesty as the Head of the Church. As per the provisions of the Unwritten Constitution, Thus this Church deserves a special position throughout the Commonwealth Realms where Her Majesty is also the Head of the State. However it must be considered very carefully that ‘The Royal Proclamation of Queen Victoria 1858’ had guaranteed all her subjects full religious freedom. It is still regarded as a cardinal principle of the Royal Administration. It is miraculous
to note that discrimination is never made on the matters of faith, even though the Queen’s Realms are somewhat theocratic and Her Majesty is constitutionally the Defender of the Faith. They fully respect the principles of secularism and the religious toleration. The followers of the Church of England had long ago discarded their relations with the Papal Authorities of the Church of Rome. They still discard the many principles of the Roman Catholicism. After the First Elizabethan Age, the Pope of the Church of Rome is not at all any Apex Advisory Authority over the ruling Royal Dynasty of the Commonwealth Realms. However it is interesting to note that recently Her Majesty has appointed a dignified scholar of Indian descent who is a follower of the Church of Rome to be her Vice-Roy and Governor-General of New Zealand.

Lord Denning was appointed the Chancellor of Diocese of London 1937 when the Bishop of England especially suggested his name. The Churches and the Monasteries in Her Majesty’s Realms have the right to collect ‘Tithe’. According to Oxford Dictionary, it is a religious tax collected for the development of the religion and the spiritualism throughout the world. The sacred ‘Tithe’ may be upto the 10% of the annual income of a follower of the Church. The Tithe and the other religious donations, Intestate properties with no legal successors, the temporal properties of the various Churches throughout the Queen’s Realms, the matters in relation to conversion of the religion and matrimonial disputes (marriage, divorce and the custody of the minors) are all under the jurisdictions of the Ecclesiastical Law also called the Canon Law. Presently the Royal Administration has shifted the matrimonial disputes to the Family Division. For rest of the matters there is an ancient Court still functioning well. It is called the Court of Arches. The Head of the Court of Arches is called the ‘Dean’.

In the times of Lord Denning many reverable personalities like Sir Didbin, Sir Baker, Sir Willink, Dr. Wigglesworth, Sir Kent, Dr. Elphinston, Sir Owen were the Deans of Arches for whom he had a great respect. The powers of the Ecclesiastical Court are somewhat decreasing as the Divorce and Probate Division is functioning as a separate court recently. Here he traces an interesting case which tells us the present de facto position of ecclesiastical law in England. It is THE REPRESENTATIVE BODY OF THE CHURCH IN WALES V TITHE REDEMPTION COMMISSION (1944) AC 228. Here, the House of Lords unanimously
declared that the Rector is fully liable for not only repairing but also protecting the movable and immovable properties of the church. This important ratio has made the Rector the head of not only the spiritual but also the temporal affairs of the respective local church. The church authorities can utilize the tithe it for the religious, cultural or even social purposes.

8.13 FORERUNNER OF MODERN PUBLIC INTEREST LITIGATION

Lord Denning must be remembered as one of the most liberal judges who upheld the right of local cases in the delicate Blackburn cases (1977 ALL ER 696). He did not stick to the traditional view of a “person aggrieved”. He evolved the concept of “Sufficient interest of an applicant who approaches a court of law”. In R. v Greater London Council, ex Parte Blackburn prohibition was sought restraining the Council from illegally exhibiting pornographic films. The locus standi of Blackburn was challenged. Negating the contention and upholding the locus standi of the applicant, Lord Denning observed: [19]

“If Blackburn had no sufficient interest, no other citizen had and in that event no one would be able to bring an action for enforcing the law and transgression of law would continue unabated”.

Lord Denning’s careful interpretation of this delicate concept has actually given impetus to the social activists not only from the Commonwealth Realms but also from all the common law countries of the world to fight for social and ethical causes. His Liberal attitude has become a fountain of inspiration.

8.14 FORERUNNER OF MODERN RIGHT TO INFORMATION

In a Radio Talk of 1960 – Lord Denning had clearly stated – [20]

“Somehow I believe in the words of old Jeremy Bentham that in the Durban of secretary, all sorts of things can go wrong. And if things are really done in public you can see that the judge does behave himself, the newspaper can comment on it if he misbehaves – It keeps even one in order.”

Here we find the Role of Lord Denning as the forerunner of the modern Right to Information. He always allowed the Press/Law Reporters, Law students and social activists to the Apex Appellate courts. He states- [21]

“It is of first importance that all proceedings should be held in public and this includes the delivery of judgments together with the reasons for them. This is so that everyone who wishes to do so can come into court and hear what takes place
In a personal talk, Lord Jowitt advised him not to write books, however we are fortunate to receive the Christmas series from him. Thus, Lord Denning states the position of privacy under English Law. Lord Denning further traces *R v Lewes (1973) (1973) AC 388*. A company in Sussex applied to the Gaming Board for a licence to carry on five bingo clubs. The Board made inquiries of the police about the company and its director, Mr. Henry Rogers. The police sent a letter to the Gaming Board reported unfavourably about the director. The letter was very confidential for the information of the Gaming Board. Somehow or other the director got a copy of the letter. He said that the information in it was tales and was a libel him. He instituted proceedings for criminal libel – very rare, as Lord Denning have previously pointed out. In those proceedings he had to prove the sending of the letter and the receipt of it. He claimed that it should be produced in the interest of justice – so as to enable him to prove it in the criminal proceedings that he had started. But the House of Lords held that it should not be disclosed in the criminal proceedings. Lord Reid said- [22]

‘On balance the public interest clearly requires that documents of this kind should not be disclosed, and that public interest is not affected by the fact that by some wrongful means a copy of such a document has been obtained and published by some person;.

He has also traced the *Burmah Oil Company v Bank of England (1979)1 WLR 473*. In this case the Burmah was compelled to sell its shares at a low price to Bank of England. Soon the prices tripled. They wanted to see the secret documents. The Secretary opposed on account of the Crown privilege. Lord Denning dissented. In the famous case of *Conway v Rimmer (1967 WLR 1031)* too, Lord Denning condemned the Crown privilege and ordered the administration to open the confidential documents in the interests of justice. Lord Denning’s mission to establish and to expand the Right to Information throughout the Commonwealth Realms has certainly inspired the social activists all over the world.

### 8.15. SPEEDY DISPOSAL

Lord Denning was very famous for his speedy disposal of the legal matters. He was always engaged in overwork. He was warned by his fellow judges in this matter. He is the single judicial
personality of the world who has provided 2000 landmark judgments and a number of inquiry commission reports in a record time. It also includes the world famous Profumo Report.

8.16. ADVICE TO LEGAL PROFESSION

Even at the Bar as well as at the Bench, Lord Denning’s action research was going on. He advises the young professional Lawyers. (Advocates and the to be Advocates, for the Moot Court Trials as well as the Pupillage) thus- [23]

1. Be brief in re-examination
2. Open clearly, but not at too great length.
3. Never call unnecessary witnesses.
4. Never interrupt opponent or object to questions unless it is flagrant.
5. Do not labour points of law.
6. Do not speak too loud.
7. ‘Take this from me, that what grief soever a man hath, ill words work no good and learned counsel never uses them.’ Coke
8. Treat every court with the utmost respect: express what you have to say, if justified, firmly but with patience.
9. Brevity, clarity and fairness: slow in speech.
10. In summing up, even to a judge, state briefly the law before proceeding to the facts.
11. Accept the word of counsel absolutely.
12. If you have one good point and other doubtful technical points, do not take the technical points but rely on the good point, for the weakness of one may influence the tribunal in regard to others by way of creating a suspicion of unsoundness.

Lord Denning’s Advice to Legal Profession is a matter of great fortune for the Advocate Community throughout the world. It is an outcome of his more than 80 years of his experience as an advocate, an apex judge and lastly as a jurist. If properly followed, it is bound to impart glory to the legal profession.

8.17 AMBASSADOR OF COMMON LAW:

There are more than 2000 reported judgments of Lord Denning. The most important of them are referred by His Lordship in his world famous Christmas series and only some of them have become a part and parcel of the present research work. Lord Denning’s legal and judicial career is a long journey of SIXTY years. He was a leading Barrister. (1924-1944) a High Court judge and a Privy Counsellor for the Judicial Committee of the House of Lords, the highest Court of Appeal for more than 30 Commonwealth Realms under His Majesty the King-Emperor George
VI. In that very Reign, he was elevated as a Law-Lord in 1944. He was the dignified Life-Peer of the Grand House of Lords with no age restriction. After 38 years, in 1982, he declared his superannuation. Upto this time, the territorial jurisdiction of the Privy Council in London has certainly been decreased, as the countries like India became politically independent and abolished the jurisdiction of the Privy Council over their respective territories. The QMEM Elizabeth II, under her sweet will, has granted ‘The Queen’s Privy Council at Ottawa’ in her Dominion of Canada. The same is the position of ‘The Royal Executive Council at Canberra’ in her Dominion of Australia. There is no need now, to send the last appeals from these two Realms to London. Lord Denning as a Law-Lord witnessed these important developments of the decentralization of power on account of the vast geographical distances and thus to provide convenience to Her Majesty’s subjects living in those Realms. The Crown Territory of Hong Kong became a part of the Republic of China and the jurisdiction of the JCPC ended over that region. The rest of 14 Realms including New Zealand can still send their last appeals to the Privy Council in London. Lord Denning often played a decisive role in developing the Law of the entire Commonwealth Realms. He was, perhaps, the most influential judicial personality around the Common Law World.

Lord Denning had a great interest of studying various legal systems of the world. His Approach was comparative and he wanted to pick up the best, irrespective of the place of its finding. This research oriented approach compelled him to travel all over the globe. Many of such travels were adjusted in his court vacations. In 1954, the Nuffield Foundations requested him to come to South Africa. He visited the African University and delivered Lectures. In 1955, the American Bar Association requested him to come to the United States. They elected him as their Honorary Member. In 1966, the Canadian Bar Association invited him to that part of the Queen’s Realm. The University of Ottawa conferred a Doctorate on him. In 1958 he delivered the Cohen Lectures at the Hebrew University at Jerusalem.

Lord Denning was in fact ‘Ambassador at Large for Common Law’ for the world. He widely travelled and spread the principles of common law even in civil law countries. That today we also find the demands of legal reforms even in the countries on ARABIAN PENINSULA which are governed under the traditional Mohammedan law. Recently, the AL SABAH Royal Dynasty in Kuwait has declared to introduce certain constitutional reforms along with changes in the
judicial hierarchy as well as the family law principles. Lord Denning’s contribution in this regard cannot be over-looked. His visits on all parts of the globe have created a consciousness to reform their Constitutional Law and even their Family Law under the light of the Westminster model and the Denning Reforms. He was the first judge of an Apex Court who visited many universities and stated the importance of equity. In India, eminent jurists Hon’ble M. Hidayatullah, Hon’ble Gajendra Gadkar, Hon’ble H. M. Seervai, Hon’ble Krishna Iyer, Hon’ble Palkhiwala, Hon’ble Kania all had a great respect for Lord Denning. It compelled him to deliver lectures at Dada Chitale Memorial Seminar held in India.

In 1964, Lord and Lady Denning came to India. He had a word with his friend and the then Prime Minister Jawaharlal Nehru. Many Indian Jurists felicitated him. It was nothing but a ‘Deepavali’ for them. The Dennings further visited Brazil, Uruguay Argentina, and Peru. They all are called the Civil Law countries. In 1966, Lord Denning visited Fiji and New Zealand. In 1996, the Lord Denning came to India with Mr. Elwyn Jones and Sir John Widgery. In 1970, he once again visited FIJI and this time solved the dispute between the Sugar cane growers and the Australian Mill owners. He worked as an Arbitrator without any remuneration. It was his own condition. The Foreign and Commonwealth Office Jamaica invited him for solving the dispute between Banana growing industries and their workmen. It was solved in 1971. He has been lovingly described as the – [24]

*Ambassador at Large for Common Law*. 