

A SELECTION
OF
LEGAL MAXIMS

Classified and Illustrated

BY
HERBERT BROOM, LL.D.

TENTH EDITION
(1939)

BY
R. H. KERSLEY, M.A., LL.M., CANTAB.

SOLICITOR: CLEMENT'S INN, EDMUND THOMAS CHILD,
AND BRODERIP PRIZEMAN, 1931

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Juris praecepta sunt haec: honeste vivere alterum non laeder, suum
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PREFACE

THE late Dr. Broom published the first edition of this book in 1845 and four subsequent editions in 1848, 1858, 1864 and 1870. From the first it was recognised as a masterly exposition of the principles upon which our common law is based ; and, more especially in the Colonies and in the United States, it had become something in the nature of a legal classic long before the death of Dr. Broom in 1882.

Further editions were brought out in 1884 by Mr. Herbert F. Manisty and Mr. Charles Cagney, in 1900 by Mr. Herbert F. Manisty and Mr. Herbert Chitty, in 1911 by Mr. Joseph Gerald Pease and Mr. Herbert Chitty, and in 1924 by Mr. W. J. Byrne. These editors all took the view that no alteration except such as was inevitable should be made in the text as it had last left the hands of Dr. Broom.

The present editor has endeavoured, so far as circumstances permitted, to follow their example, and the arrangement of the subject-matter is unchanged, except for the transfer, to the chapter on Interpretation, of three maxims relating to the interpretation of statutes from Chapter I, where they formerly appeared under a separate heading as "Rules of Legislative Policy," and one from Chapter IV, where it was previously dealt with as one of the "Rules of Logic." Statutory developments, particularly the Property Acts of 1922-25 and the Law Reform Acts of 1934 and 1935, have, however, necessitated the re-writing of parts of the text and also rendered inevitable a slight increase in the size of the book.

Between seven hundred and fifty and eight hundred new cases have been noted, and the dates have been given of all cases mentioned decided in or after 1925.

The Table of Statutes has been greatly extended, not only by the addition of more than sixty Acts, but by the inclusion of short titles and dates, and references to numbers of sections, since it was thought that the old practice of citing merely regnal years and chapters made the table of very little value.

A number of errors which, during the course of successive editions, had crept into the notes, have been eliminated ; and it is hoped that few fresh errors have taken their place.

The editor wishes to acknowledge his gratitude to his friends, Mr. F. J. Odgers, who read part of the new edition in manuscript and proof, and Mr. R. E. Megarry, M.A., LL.B., who read part of the proof, for their valuable help.

The preface to the first edition is reprinted below.

R. H. K.

August, 1939.

PREFACE TO THE FIRST EDITION

IN the Legal Science, perhaps more frequently than in any other, reference must be made to first principles. Indeed, a very limited acquaintance with the earlier Reports will show the importance which was attached to the acknowledged Maxims of the Law, in periods when civilization and refinement had made comparatively little progress. In the ruder ages, without doubt, the great majority of questions respecting the rights, remedies, and liabilities of private individuals were determined by an immediate reference to such Maxims, many of which obtained in the Roman Law, and are so manifestly founded in reason, public convenience, and necessity, as to find a place in the code of every civilized nation. In more modern times, the increase of commerce, and of national and social intercourse, has occasioned a corresponding increase in the sources of litigation, and has introduced many subtleties and nice distinctions, both in legal reasoning and in the application of legal principles, which were formerly unknown. This change, however, so far from diminishing the value of simple fundamental rules, has rendered an accurate acquaintance with them the more necessary, in order that they may be either directly applied, or qualified, or limited, according to the exigencies of the particular case, and the novelty of the circumstances which present themselves. If, then, it be true, that a knowledge of first principles is at least as essential in Law as in other sciences, certainly in none is a knowledge of those principles, unaccompanied by a sufficient investigation of their bearing and practical application, more likely to lead into grievous error. In the present Work I have endeavoured, not only to point out the most important Legal Maxims, but also to explain and illustrate their meaning ; to show the various exceptions to the rules which they enunciate, and the qualifications which must be borne in mind when they are applied.

I have devoted considerable time, and much labour, to consulting the Reports, both ancient and modern, and also the standard Treatises on leading branches of the Law, in order to ascertain what Maxims are of most practical importance, and most frequently cited, commented on, and applied. I have likewise repeatedly referred to the various Collections of Maxims which have heretofore been published, and have freely availed myself of such portions of them as seemed to possess any value or interest at the present day. I venture, therefore, to hope, that very few Maxims have been omitted which ought to have found place in a work like that now submitted to the Profession. In illustrating each Rule, those Cases have in general been preferred as examples in which the particular Maxim has either been cited, or directly stated to apply. It has, however, been necessary to refer to many other instances in which no such specific reference has been made, but which seem clearly to fall within the principle of the Rule; and whenever this has been done, sufficient authorities have, it is hoped, been appended, to enable the reader, without very laborious research, to decide for himself whether the application suggested has been correctly made, or not. In arranging the Maxims which have been selected as above mentioned, the system of Classification has, after due reflection, been adopted: first, because this arrangement appeared better calculated to render the Work, to some extent, interesting as a treatise exhibiting briefly the most important Rules of Law, and not merely useful as a book of casual reference; and, secondly, because by this method alone can the intimate connection which exists between Maxims appertaining to the same class be directly brought under notice and appreciated. It was thought better, therefore, to incur the risk of occasional false or defective classification, than to pursue the easier course of alphabetical arrangement. An Alphabetical List has, however, been appended, so that immediate reference may be made to any required Maxim. The plan actually adopted may be thus stated:—I have, in the first Two Chapters, very briefly treated of Maxims which relate to Constitutional Principles, and the mode in which the Laws are administered. These, on account of their comprehensive character, have been placed first in order, and have been briefly considered, because they are so very generally known, and so easily comprehended.

After these are placed certain Maxims which are rather deductions of reason than Rules of Law, and consequently admit of illustration only. Chapter IV. comprises a few principles which may be considered as fundamental, and not referable exclusively to any of the subjects subsequently noticed, and which follow thus : Maxims relating to Property, Marriage, and Descent ; the Interpretation of Written Instruments in general ; Contracts ; and Evidence. Of these latter subjects, the Construction of Written Instruments, and the Admissibility of evidence to explain them, and also those Maxims which embody the Law of Contracts, have been thought the most practically important, and have therefore been noticed at the greatest length. The vast extent of these subjects has undoubtedly rendered the work of selection and compression one of considerable labour ; and it is feared that many useful applications of the Maxims selected have been omitted, and that some errors have escaped detection. It must be remarked, however, that, even had the bulk of this Volume been materially increased, many important branches of Law to which the Maxims apply must necessarily have been dismissed with very slight notice ; and it is believed that the reader will not expect to find, in a Work of Legal Maxims, subjects considered in detail, of which each presents sufficient materials for a separate Treatise. One question which may naturally suggest itself remains to be answered : For what class of readers is a Work like the present intended ? I would reply, that it is intended not only for the use of students purposing to practice at the Bar, or as attorneys, but also for the occasional reference of the practising barrister, who may be desirous of applying a Legal Maxim to the case before him, and who will therefore search for similar, or, at all events, analogous cases, in which the same principle has been held applicable and decisive. The frequency with which Maxims are not only referred to by the Bench, but cited and relied upon by Counsel in their arguments ; the importance which has, in many decided cases, been attached to them ; the caution which is always exercised in applying, and the subtlety and ingenuity which have been displayed in distinguishing between them, seem to afford reasonable grounds for hoping that the mere Selection of Maxims here given may prove useful to the Profession, and that the examples

adduced, and the authorities referred to by way of illustration, qualification, or exception, may, in some limited degree, add to their utility.

* * * * *

HERBERT BROOM

TEMPLE,

January 30th, 1845.

ALPHABETICAL

LIST OF LEGAL MAXIMS

Throughout this list, Wingate's Maxims are indicated by the letter (W). Lofft's Reports (ed. 1790), to which is appended a very copious Collection of Maxims, are signified by the letter (L). The Grounds and Rudiments of Law (ed. 1751), by the letter (G); and Halkerston's Maxims (ed. 1823), by the letter (H); the reference in the last instance only being to the number of the Page, in the others to that of the Maxim. Of the above Collections, as also of those by Noy (9th ed.), and Branch (5th ed.), use has, in preparing the following list, been freely made. Some few Maxims from the Civil Law have also been inserted, the Digest being referred to by the letter (D), as in the body of the Work.

The figures at the end of the line without the parentheses denote the pages of this Treatise where the Maxim is commented upon or cited, either in the text or in the notes.

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A COMMUNI observantia non est recedendum (W. 203).		Actionum genera maxime sunt servanda (L. 460).	
Ab abusu ad usum non valet consequentia (a).		Actor sequitur forum rei (Branch M. 4).	
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Actio quælibet it sua via (Jenk. Cent. 77).		Actus legis nemini facit injuriam	75

(a) In *Stockdale v. Hansard*, 9 A. & E. 1, at p. 116, Ld. Denman observed, that this maxim cannot apply "where an abuse is directly charged and offered to be proved."

(b) The law, observed Lord Bacon, makes this difference, that, if the parties have put it in the power of a third person, or of a contingency, to give a perfection to their act, then they have put it out of their own reach and liberty to revoke it; but where the completion of their act or contract depends upon the mutual consent of the original parties only, it may be rescinded by express agreement. So, in judicial acts, the rule of the civil law holds, *sententia interlocutoria revocari potest*, that is, an order may be revoked, but a judgment cannot (Bac. M. reg. 20).

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Æquitas sequitur legem (Branch M. 8).		Arbitramentum æquum tribuit cuique suum (Noy, M. 248).	
Æquum et bonum est lex legum (Hob. 224).		Argumentum ab auctoritate est fortissimum in lege (Co. Litt. 254).	
Affectus punitur licet non sequatur effectus (9 Rep. 57 a).		Argumentum ab impossibili plurimum valet in lege (Co. Litt. 92).	
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(c) See *Kippen v. Darley*, 3 Macq. 203.(d) See the notes to *Moslyn v. Fabrigas*, 1 Smith L. C.; Story, Conf. Laws, tit. "Contracts."

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(e) Arg., *A.-G. v. Chomley*, 2 Eden, 304, at p. 313.

(f) "Every exception that can be accounted for is so much a confirmation of the rule, that it has become a maxim, *exceptio probat regulam*" (per *Ld. Kenyon, C.J.*, in *R. v. Eriswell, Inhab.* of, 3 T. R. 707, at p. 722). See also, per *Ld. Kenyon, C.J.*, in *Dand v. Sexton*, 3 T. R. 37, and in *Crespigny v. Wittenoom*, 4 T. R. 790, at p. 793; per *Ld. Mansfield, C.J.*, in *R. v. Jarvis*, 1 East, 643, n. (e), at p. 647; per *Ld. Campbell, C.J.*, in *Bostock v. N. Staffs. Ry. Co.*, 4 E. & B. 798, at p. 832; arg. *Lyndon v. Standbridge* 2 H. & N. 45, at p. 48.

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(g) Cited *Derby v. Bury Impt. Coms.*, L. R. 4 Ex. 222, at p. 226: *Kidston v. Empire Ins. Co.*, L. R. 1 C. P. 535, at p. 546.

(h) In the various treatises upon the law of evidence will be found remarks as to the weight which should be attached to the confession of a party. Respecting the above maxim, *Ld. Stowell* has observed that, "What is taken *pro confesso* is taken as indubitable truth. The plea of guilty by the party accused shuts out all further inquiry. *Habemus confitentem reum* is demonstration, unless indirect motives can be assigned to it." (*Mortimer v. Mortimer*, 2 Hagg. 310, at p. 315.)

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(i) "The law," says *Ld. Bacon*, "giveth that favour to lawful acts, that, although they be executed by several authorities, yet the whole act is good"; if, therefore, tenant for life and remainderman join in granting a rent, "this is one solid rent out of both their estates, and no double rent, or rent by confirmation" (*Bac. Max. reg. 24*); and if tenant for life and reversioner join in a lease for life reserving rent, this shall enure to the tenant for life only during his life, and afterwards to the reversioner (see *1 Crabb, Real Prop. 179*).

(k) Cited arg. *Hodgson v. De Beauchessne*, 12 Moo. P. C. C. 285, at p. 308; *Lloyd v. Guibert*, L. R. 1 Q. B. 115, at p. 119.

(l) A principal is civilly liable for those acts only which are within the scope of the agent's employment. But if a man incite another to do an unlawful act, he shall not, in the language of *Ld. Bacon*, "excuse himself by circumstances not pursued"; as if he command his servant to rob I. D. on Shooter's Hill, and he does it on Gad's Hill; or to kill him by poison, and he doth it by violence (*Bac. Max. reg. 16*; cited *Parkes v. Prescott*, L. R. 4 Ex. 169, at p. 182).

(m) Cited by *Bovill, C.J.*, in *Fletcher v. Alexander*, L. R. 3 C. P. 375, at p. 381.