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Legal Maxim - SIC UTERE TUO UT ALIENUM NON LAEDAS

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ABSTRACT

"SIC UTERE TUO UT ALIENUM NON LAEDAS" is the precedent-based law saying charging one to utilize his property in such a manner as not to harm that of another. It is the reason for this paper to consider the significance, extent of this proverb from its beginning and examination of some Indian cases.

The rule that one should utilize his own property so as to not harm that of another is to be discovered in the beginning of the precedent-based law. The rule is by and large suggested in the conversation of the particular employments of property which the law had held to be unlawful in light of the fact that the outcomes were stepped as damaging to another's property. "Nuisance" was a typical word in the law of this period, and in an extraordinary number of situations it can be applied so as to decide what a nuisance was.

MEANING

The saying "sic utere tuo ut alienum non laedas" implies that one should utilize his property so as not to harm the legal privileges of some another person. It is an all-around settled rule that a land owner may put his own property to any sensible and legitimate use, in as much as he doesn't in this manner deny the bordering landowner of any privilege of satisfaction in his property which is perceived and ensured by law, thus long as his utilization isn't a particularly one as the law will articulate a disturbance or nuisance. While an individual is qualified for the utilization and pleasure in one's domain, the privilege isn't unbounded. Limitations can invite tort cases activities including trespass, negligence, and nuisance.

INTRODUCTION

The saying of "sic utere tuo ut alienum non-laedes (utilize your own property in such a way that you don't harm that of another)" has been perceived as a basic head of law both in Roman and customary law frameworks. In global law, this principle goes about as a constraint on the sovereignity of a State. It is a settled principle of worldwide law that a State has the sovereign right to practice the essential elements of a state[1]. Yet, at that point the activity of this privilege is dependent upon specific obstructions. One constraint is that the state can't permit certain exercises to meddle with the power of different states. A state will be discovered at risk under international law if the outcomes of exercises inside that state's control truly harm people or property of different states. This rule throughout some stretch of time has come to be known as the "no harm rule". As indicated by this guideline, a state is liable in any event, for demonstrations of a private individual who is under that state's

[1] See Draft Declaration on the Rights and Duties of States, General Assembly Resolution 375 (IV) adopted on 6 December 1949.

control[2]. State rehearses plainly show that the laws overseeing state duty will apply to wounds emerging out of perilous exercises which are inside a state's control in light of the fact that the danger of outcomes presented by such dangerous exercises are serious, paying little heed to their legitimateness inside the individual state[3].

HISTORICAL CONTEXT AND USAGE

By the by, obviously the actual saying was obscure in this early period. It came as a commitment of the later "sixteenth and mid seventeenth hundred of years" and was just the use of a "Latin" articulation to the actual principle, which had hundreds of years of acknowledgment and use behind it. "The Latin structure served to give this rule more noteworthy position and introduced to the legal executive a helpful articulation for it", which most likely records for the acknowledgment and general utilization of the maxim from that point.[4]

For quite a long-time overall set of laws across the globe have looked to justify the "principle" that the individuals who cause critical, predictable injury to others can be "liable" at risk for the harm their activities cause. In a significant early verdict imposing culpability for natural damage, a "British court hearing a private Nuisance activity in 1702" referred to the antiquated proverb of "Roman law sic utere tuo ut Alienum non laedas", interpreted as "each man should so utilize his own as not to Damnify another."[5] Now widely known as the "sic utere" principle, this concept also has been incorporated into "public international environmental law." It is "Recognized in Principle 21 of the 1972 Stockholm Declaration and Principle2 of the 1992 Rio Declaration." These declarations acknowledge that nations have the Duty "to ensure that activities within their jurisdiction or control do not cause Damage to

[2] Gunther Handl, 'State Liability for Accidental Transnational Environmental Damage by Private Persons', vol. 74, American Journal of International Law, 1980, pp. 525-527; Gunther Handl, 'Territorial Sovereignty and Problem of Transnational Pollution', vol. 69, American Journal of International Law, 1975, pp. 50-55.
[3] Gabriel M. Benrubi, 'State Responsibility and Hazardous Products Exports: A Solution to an International Problem', vol. 13, California Western International Law Journal, 1983, pp. 135-138.
[4] scholarship.law.cornell.edu
[5] tenant v. goldwin, 92eng. rep. 222 (1702)

the environment of other States or of areas beyond the limits of National jurisdiction." Thus, both private parties and sovereign nations have a Duty to avoid causing harm to others.

USAGE: "Private litigation" seeks to hold polluters liable for harm which had faced considerable snags. "Private offended" parties once in a while have had the option to recuperate "Damages" when huge, "single sources of pollution caused" obvious injury (e.g, mid twentieth century smelter suit, enormous oil slicks) or where specific poisonous substances (e.g., asbestos) have caused extraordinary "signature" wounds. Although, the trouble of demonstrating singular causation has delivered "private law" as a helpless vehicle for preventing the sort of injury which is currently brought about by numerous "pollutants from different Sources." While most nations presently depend on "public law" to control "ecological harm" through exhaustive administrative projects to prevent contamination, these Programs generally don't give attention to the casualties of such damage. At the point when contamination is brought about by "another country", then it is significantly more difficult to consider the "polluters" responsible on the grounds as the public worldwide law at present can't seem to create a successful worldwide system of risk for "transboundary contamination despite having commitments in both declarations of Stockholm and Rio."[67]

[6] See Stockholm Declaration Principle 22 & Rio Declaration Principle 13.
[7] Robert V. Percival, Liability for Global Environmental Harm and the Evolving Relationship between Public and Private Law; https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=2021&context=fac_pubs; Accessed on 25.01.21

DISCUSSION AND ANALYSIS FROM A CONTEMPORARY PERSPECTIVE

Presently the legal maxim "SIC UTERE TUO UT ALIENUM NON LAEDAS" is applicable as "NUISANCE" under "TORT of LAW"

Nuisance is when a person interferes unlawfully with another person's use of land and property, or use of some right over it, or connected with it.

In accordance with section 268 of the "INDIAN PENAL CODE" [8], any person who is culpable of doing any act or culpable of any illegal omission which has led to common injury, danger or regarded as annoyance to the general public or people that take over property of the neighbourhood or which leads to harm, hindrance, annoyance to the public who have the opportunity to use any right.

[8] The Indian Penal Code Act, 1860, No. 45, 1860

DISCUSSION AND ANALYSIS OF CASE LAW

1) Sarju Prasad And Ors. vs Mahadeo Prasad And Anr[9]

Facts: Plaintiff has brought suit for damages and has appealed for the second time to the High Court of Allahabad. Plaintiffs alleged that Defendants had dug trench on their own land adjoining the wall of the plaintiffs. The trench got filled with water and percolated into the walls of the plaintiff and had damaged the walls and floors of the house. The lower appellate court said that defendants are not liable. The plaintiffs had appealed and remanded the lower appellate court for findings on the questions of fact. It found that damages caused to the extent of Rs. 200 and no questions arises as regard to lateral support to the plaintiff's land.

Judgement: A question arises on the liability of the defendants. Bombay High Court held a similar conclusion that defendants are not liable as per Mohonlal Maganlal Sha v. Bai Jivkore[10]. Madras High Court doubted the decision of Bombay High Court and has said that if "the defendant is held not liable" for damaging the walls is an extraordinary proposition. Defendant argued based on the distinction between "natural and non-natural user of property given in Rylands v. Fletcher" that natural user of property can do anything with his property even though it damages the neighbour.[11] However, the High Court of Allahabad held that this case is different from the case of "Hurdman v. North Eastern Ry. Co." as mine owner will protect from percolation of water by putting coal as barrier.[12] As per the case of Broder v. Saillard, the defendant is liable as the that case held that any "artificial erection on his land causes damage to neighbour's land, he is will liable for the damages."[13] So, the Court held that if defendant was negligent and did not cover up the trench and not prevent it from damaging the neighbour's wall, he is liable for damages. Thus, defendant has to pay for the damages of Rs. 200.

[9] Sarju Prasad v. Mahadeo Prasad 1915 All 219
[10] Mohonlal Maganlal Sha v. Bai Jivkore [1904] 28 Bom. 472
[11] Rylands v. Fletcher [1868] 3 H.L. 330.
[12] Hurdman v. North Eastern Ry. Co. [1878] 3 C.P.D. 168

[13] Broder v. Saillard [1876] 2 Ch. D. 692

2) Hari Ram And Anr. Vs. Siya Ram And Anr.[14]

The defendants second set was impleaded because they were the parties in the criminal court even though they were not concerned with the Bandh.

Facts: The fact was that according to the contesting defendants the bandh was raised for the first time in 1963 by the defendants second set to harm the interests of the defendants in the first set. The defendants lost the second set in the criminal court under section 133[15]. Plaintiffs have the right to protect their own land from floods by use of an embankment which would be constructed, but this would lead to flooding of the neighbour's land. "An appeal was taken to the lower appellate court by the defendants and the same was allowed." The appellate court held that the building and maintenance of the bandh would "lead to damage" to the land of the contesting defendants. "The lower court" taking into consideration the case of Tukaram V Maroti.[16]

Judgement: The suit was dismissed by the lower appellate court. The decisions relied on this court were distinguished. The plaintiff wanted the pala to be removed so that the original flow of water could be restored. The main finding of the Lower court was that an act was bound to result in harm or injury to the defendants first set plot.

[14] Hari Ram And Anr. Vs. Siya Ram And Anr (1977) AIR All 244

[15] The Code of Criminal Procedure, 1973, Section 133

[16] Tukaram v. Maroti AIR 1951 Nag 276

CONCLUSION:

By the adage of "sic utere tuo ut alienum non laedas", the defendant has to take reasonable care to prevent damage to neighbour's land. By that defendant has to pay for the damages caused to the plaintiff.

The adage "sic utere tuo ut alienum non laedas" is a very useful maxim to reach to a proper and perfect judgement. It describes and implies that any person cannot use or utilize his or her land or property that it may injure anyone.

In present times, this maxim "sic utere tuo ut alienum non laedas" applicable as the nuisance under tort of law.