

IN PRAESENTIA MAJORIS CESSAT POTENTIA MINORIS

*Author: Aradhya Kumari, 1 year of B.A. LLB (H) from Kirit P. Mehta School of Law,
NMIMS*

Co-author: Suraj Agarwal, 1 year of B.B.A. LLB (H) from Bennett University

Abstract

Legal maxims can be understood as aphorisms of law based on the Roman law of antiquity. The European legal systems, common law, and civil law have extensively based their legal principles and practices on the Roman law of antiquity. American and Indian legal systems, both of which are inspired by the European legal systems especially the English common law, have adopted the use of legal maxims and legal principles based on the Roman law of antiquity. The legal maxim ‘*in praesentia majoris cessat potentia minoris*’ which means that in the presence of the major, power of the minor ceases – is the object of the study of this paper. In this paper, the application of the maxim in various fields of the law about case studies has been discussed. The maxim is primarily a creature of the public law but finds application in the field of private law as well. About the judicial office, the maxim is a part of the procedural law as well as the substantive law. The exercise of the appellate jurisdiction, revisional jurisdiction and supervisory powers of the courts occurs in consonance with the principle enshrined in the maxim. The Constitutional and statutory scheme of the Code of Civil Procedure and the Code of Criminal Procedure ensures that the exercise of powers of the subordinate Courts is never in derogation to the exercise of judicial powers by the superior Courts, such as the High Courts and the Supreme Courts. The principle of *stare decisis* is an example of the minor power being bound by the superior power.

The administrative action of the executive follows the principle enshrined in the maxim. The administrative power of officers is subject to the exercise of the supervisory powers of their superior officers. The administration is divided into horizontal and vertical power structure with a clear demarcation of the field of influence and exercise of powers. The application of the maxim ensures that there is no conflicting exercise of powers by administrative officers.

The exercise of the powers of delegated legislation is subject to the overall control of the delegating authority and the principal statute. In the case of private rights, a superior right or title defeats an inferior or imperfect right or title. The maxim helps determine the order of precedence in case of contemporaneous or concurrent exercise of power by different authorities.

Introduction

The maxim '*in praesentia majoris cessat potentia minoris*' means that in the presence of the major, the power of the minor ceases.¹ This maxim is often alternatively stated as '*in praesentia majoris potestatis, minor potestas cessat*' which means that in the presence of the superior power, the minor power ceases.² This equitable maxim finds application in cases of hierarchical or vertical arrangements of rights, powers or obligations. The maxim helps in determining the operational controller in a given case where multiple subjects or actors are acting in respect of the same subject matter. The maxim has application in the matters of public and private law. Various law dictionaries quoting the maxim and its meaning cite a single source.³ The maxim has rarely been quoted in juridical pronouncements and legal scholarship in full, however, the guiding principle can be observed in a wide range of cases. To study the operation of the maxim in various fields of the law and understand its concept and function, the use of illustrations and case laws can be very illuminating.

Judicial Office

The system of administration of justice in most common law and civil law jurisdictions is a hierarchical one. There is a vertical arrangement of courts that determine the scope of exercise of judicial functions. In India, the Supreme Court of India is at the head of the judicial organ of the state. The Supreme Court acts as the final arbitrator of legal rights in India. Its pronouncements creating precedent binding on all the High Courts and subordinate courts in India.⁴ The various High Courts exercise the power of superintendence on all the Courts subordinate to them in their respective jurisdictions.⁵ The powers of the appellate courts and the revisional courts allow them to reverse the orders of the subordinate court.

¹ Black's Law Dictionary 5315 (8th ed. 2004).

² Id.

³ Jenk. Cent. 214. See *id.*

⁴ Const. Ind. art 141.

⁵ Const. Ind. art 227.

It is a settled principle of procedural law, both civil⁶ and criminal⁷, that a judicial proceeding at the first instance is to be brought before the lowest grade court competent to try it. However, if a subordinate and superior court proceed with the same subject matter it can lead to situations where the two proceedings result in different outcomes which would be an absurdity. The rule of *res sub judice*⁸, orders of stay under other provisions of the Code of Civil Procedure, 1908, the writs of prohibition and certiorari, and orders under Section 397 and Section 482 Code of Criminal Procedure, 1973; all exist to guard against such an eventuality. Nevertheless, mere pendency of some application regarding the case before a superior court will not ipso facto act as a stay on the proceedings before the lower court and will not stop the subordinate court from exercising its powers. Where the application pending before the superior court is regarding an ancillary or merely procedural aspect of the case, a stay in proceedings will be contrary to the right of speedy justice. The subordinate court can proceed with proceedings regarding the presentation of evidence and submission of arguments. The final decision would be subject to the decision of the superior court.

Case Study

*Director of Settlements, Andhra Pradesh, and Others v. M.R. Apparao and Another*⁹

The case involved principles emanating from Article 141 of the Constitution of India. In the instant case, the appellants had assailed a decision of the High Court of Andhra Pradesh relating to the issue of the writ of mandamus. The High Court had issued a writ of mandamus in favour of the respondents based on the fact that its earlier decision directing payment of compensation in favour of the respondents had not been contested in appeal and therefore, a right vested in the respondents. The appellants had contended the Supreme Court had reversed the decision on the basis which the High Court had originally awarded compensation. Therefore, the right of the respondents to compensation was defeated. The respondents contended that their right was protected by *res judicata*.

The Supreme Court *inter alia* had to determine whether its decision reversing an earlier case would apply to the case of respondents or would the respondents benefit from the principle of *res judicata*.

⁶ C. P. C. §15 (1908).

⁷ Cr. P. C. §177(1973).

⁸ C. P. C. §10 (1908)

⁹ AIR SC 1598 (2002)

The Supreme Court held that a decision reached by the Court upon merits and answering a question of law would amount to settled law within the ambit of Article 141. By Article 141, all the High Courts and Subordinate Courts in India are bound to follow the law as laid down by the Supreme Court. The doctrine of *stare decisis* means that lower courts are precluded from going into merits of questions of law that have been settled by the Supreme Court.

The appellate jurisdiction, revisional jurisdiction and the supervisory powers of the Supreme Court and the High Courts all embody the maxim *in praesentia majoris cessat potentia minoris*. In application of these, the powers of the subordinate courts are stopped in their tracks in respect of the specific subject matter.

Administrative Action

The modern bureaucracy is based on a carefully maintained hierarchy of civil servants and a chain of command which determines the power and responsibility vesting in respective posts. For the convenience of administration, the executive power of the state is delegated and vested in its officers. Nevertheless, a Superior Officer, as a matter of general rule has all the powers of his subordinates alongside the power to supervise said subordinates. Section 36 of the Code of Criminal Procedure, 1973 is an example of such vesting of power in the superior police officer.¹⁰ The Service Rules notified by the Union Government and respective State Governments have provisions detailing the nature and extent of supervisory powers vested in the superior public servants.

The supervisory power vested in superior officers means that they have the power to countermand the exercise of the executive power by their subordinates. The superior officers are vested with the power to ensure that their subordinates act by the law. To that effect, they have the power to reverse the abuse of power, the irregular exercise of power or non-exercise of power by the subordinate officers. Furthermore, they can initiate disciplinary action against the erring subordinates.

Delegated Legislation

The rigours of modern times are such that the ordinary legislatures, the Parliament and the State Legislatures, are often ill-equipped to deal with many matters in a timely and effective fashion. In consideration of the ease of administration certain legislative power is often

¹⁰ Cr. P. C. §36 (1973).

delegated to the executive, Union Government or respective State Government, with the appropriate legislature retaining overall control and supervision. In the case of delegated legislation, there is the provision in the principal statute itself to allow for the exercise of powers under the statute by the appropriate Government. The Government is answerable to the legislative body for its exercise of power and the legislature can ratify or disallow the exercise of the delegated power. The Central Excise Act, respective State Excise Acts, Registration Act 1908, and many other statutes have a provision allowing for delegation of power. Nevertheless, the exercise of all delegated powers is always subject to the principal statute and the delegating authority's overall control.

Proprietary Rights

The modern laws have created a vast bundle of rights in movable and immovable property that can be transferred or assigned by contract between the parties that defy the traditional concept of ownership and possession. The recognition and development of intellectual property rights have expanded our understanding of proprietary rights and created a new field for the operation of the maxim *in praesentia majoris cessat potentia minoris*.

Under property law, an owner of a property has the absolute right of transfer subject to certain restrictions imposed by the law. The contract law allows parties to create rights and liabilities among themselves by agreement subject to certain restrictions imposed by the law. The parties can create contracts in respect of properties in such a manner to separate their ownership from their exploitation. While in most cases the contracts can stipulate for all the contingencies, the courts are called upon to resolve disputes that arise due to some lacuna in the contract or a difference in interpretation of the provisions of the contract. Section 10 of the Transfer of Property Act, 1882 which deals with condition restraining alienation, and Section 11 of the same which deals with restriction repugnant to interest created by way of the exceptions carved out give effect to the principle *in praesentia majoris cessat potentia minoris* as they protect the rights of the owner from the exercise of rights of the lessor/tenant.

Case Study

*IPRS v. Eastern India Motion Pictures*¹¹

¹¹ 2 SCC 820 (1977)

This case involved the conflict between the intellectual property rights of the producers of cinematographic films, and composers and lyricists contracted by them for creating the soundtrack for the movies. The Indian Performing Rights Society had claimed copyright to several songs and claimed licence fees and royalties upon the public performance of the copyrighted songs. The Association of Cinematographic films objected to this before the Copyright Board. The parties finally found themselves before the Supreme Court. There are statutory rights vested for the economic exploitation of a copyrighted product, and separately there is a moral right in being accredited with the creation of a copyrighted product.

The issues before the Court were: whether the future or existing rights of composers and lyricists could be assigned under the provisions of the Copyright Act; and whether the producer of a cinematographic film can defeat the right of a composer by engaging him. The Court found that the Copyright Act permitted the assignment of existing and future rights of the composer. Furthermore, the Court held that if the producer hires for valuable consideration a composer or a lyricist to compose music or write songs to be incorporated in a film, the copyright would vest in the producer and he could defeat the rights of a composer or a lyricist. Thus, the producer by engaging a composer for consideration is vested with the superior right which defeats the right of the composer.

Relevance of the Maxim in present time in India

In India, the maxim *in praesentia majoris cessat potentia minoris* sees application in public and private law. On the judicial side of things, the hierarchy of courts is strictly enforced and the principles of stare decisis, res sub judice, appellate jurisdiction, revisional jurisdiction, supervisory powers and writs of prohibition and certiorari are examples where the superior authority of the High Courts and the Supreme Court restrains the exercise of the judicial power of the subordinate judiciary. The power of the Union Government and the State Governments to frame rules under the Constitution and various statutes is ultimately subject to the overall control and authority of the originating legislature, the Parliament and the State Legislature, as the case may be. Furthermore, in cases of legislation on the matters of the Concurrent List of the Seventh Schedule of the Constitution of India the exercise of legislative powers by the state legislature is subject to the power and authority of the Parliament. The public servants are subject to a strict hierarchy of posts where subordinate officers are under the constant supervision of the superior officers.

Conclusion

The maxim *in praesentia majoris cessat potentia minoris* guides the operation of law in various fields. It helps in ascertaining the principal actor in a particular subject matter and to assign any legal advantage or liability accordingly. Depending upon a particular case, a party could either incur a disadvantage or escape liability or become entitled to any right.