

Laws prohibiting things to be done under a penalty - how interpreted?

term it null & void Exceptions without Necessity of Reduction. But Infringements granted contrary to Law must be taken away by a Pro-
-cess of Reduction, and are not annulled by Exception. In the Opinion of the Doctors (prosp. Faren. Fragm. Crim. part. 2. Argum. Actus contra Leges vel Statuta prohibitionem &c. n. 195.

Where Law prohibits a thing to be done under a certain penalty, the deed will stand good, and the penalty only be due. Thus with us, when Members of the College of Justice are prohibited to buy depend-
-ing Pleas upon Pain of losing their Places, and all the Privileges thereof Act. 216. Par. 14. J. 6. Rights taken by them to such Pleas are not null, but only a ground to deprive them of their Offices 30 July 1635. Richardson and L. Granston contra Kiddel and Sinclair 15 December 1713 Huime contra E. Huime. but this doth not hold ge-
-nerally true, that the prohibiting a thing to be done under a penalty doth only make the penalty due without annulling the Deed of Con-
-vention. For the any person who indites another, is forbid to be out his Office under the penalty of 10 pound Act. 50. Par. 3. J. 1. yet that Law would set the Inditer or Informer from being upon the Inditees Jury. M. Honzie Observ. on d. Act. 50. Again the Execution of an Inhi-
-bition was found null, for that it bore only three Knocks to have been given at the Door of the persons House, against whom the Letters were executed, and Law (Act 75. Par. 6. J. 5.) required the giving of six Knocks albeit there is a Certification therein of Imprisonment and an arbitrary Punishment against the Officer not observing that Formality 24 June 1707. Gordon of Auchintoul contra Duff of Drummuire.

When there seems to arise from a Law whereof the Meaning is well known, some Inconvenience, that cannot be avoided by a reasonable In-
-terpretation, we must presume that such a Law has nevertheless its Use-
-fulness and its Equity, founded upon some ^{view} of the publick good tho we
-be ignorant of its Motive l. 20. ff. de Legib. l. 51. s. 2. in fin. ff. ad L. Aquil.

The Law (which is of itself a dead Letter) falling often short of ex-
-pressing all Cases, and Emergencies, and the words thereof being frequently
-habito a double Entendre; Interpretation of Laws in the Application of them, was found necessary in two Cases. One is when we find in a
-Law some Obscurity, Ambiguity or other Defect of Expression. The o-
-ther is, when the Sense of a Law, how clear soever it may appear in the Words, would lead us to false Consequences, and to Decisions that would be unjust, if the Law were indifferently applied to every thing that is con-
-tain'd in the Expression. But at the same Time it must be regard that omnis Definitio in jure est periculosa l. 202. ff. de reg. jur. That there is great Danger of misapplying the Rules of Law without a very ample Knowledge of all the particular Rules, and of the several Views necessary

for interpreting and applying them aright. Interpretation is either Authentick and Authoritative, that is of univ-
-ersal Authority and equal Force with the Law, or it is Doctrinal. The former can only be used by the Legislative Power, or be drawn from
-Ancient immemorial Custom, which is equivalent to positive Law. This
-Kind of Interpretation is necessary or call'd for, when there arises from the
-Sense of a clear Law, Inconveniences to the publick good, for mitigating
-its Severity by a tolerable Explanation l. 1. l. 9. C. ult. s. 1. C. de Legib. Such an Authentick Interpretation was that of a Clause in the Abjuration
-Oath 12. 14. 3. cap. 2. 13. 14. 3. fep. 1. cap. 6. 1. R. cap. 22. 4. R. cap. 8. junct. i. J. 1. cap. 13. s. 1. c. 27. Custom is a good Interpreter of a Law l. 37. ff. de
-Legib. So that if the Difficulty which happens in the Interpretation of a
-Law, may be explain'd by Ancient Usage, that hath fix'd and confirm'd
-its Sense by a continued Series of uniform Decisions, we must adhere to the Sense declared by Usage.

Doctrinal Interpretation, is that which is made by Judges, de-
-claring the Mind of the Lawgiver in particular Cases between Man and Man. Which is of Force only in so far as it is agreeable to the Law itself, and regards merely the parties concerned: for alij's nec prodest nec nocet. A Judge in interpreting the Laws should observe the following Rules
-The Words of a Law must be taken in a legal and Natural Sense, so as to evite an Absurdity; and must be interpreted by reasonable Construction according to the Meaning of the Lawgiver, the Spirit and Design of the Law l. 7. l. 10. l. 19. ff. de Legib. l. 67. ff. de reg. jur. For if Laws were not like Oaths, to be taken according to the Imposers Meaning, every
-one would be his own Lawgiver and Judge.

If a Law whereof there is any Doubt or Difficulty, have Relation to
-other Laws, which can clear up its Sense, we must prefer before any other Interpretation, that which other Laws give Light to l. 26. l. 28. ff. de Legib. For after this Manner the Laws mutually support and explain one ano-
-ther.

It is natural to construe one part of a Statute with another (Coke 1. Inst. 11. b. 381. a. and in civile est, nisi tota lege perspecta una aliqua ejus par-
-ticulari proposita judicare l. 24. ff. de Legib. So understand the true Mean-
-ing of a Law, it must not be taken by Scraps and Pieces, or one part of it taken separately from the rest, and wrested to another Sense, than what it has when it is united to the whole: but it must be construed entire, and in the literal Coherence on Part has with the other. All the Words of a Law, and its Preamble, if there be any, are to be taken Notice of, that we may judge of it by its Motive, the Spirit of it, and the whole Tenor of what it prescribes: and the Sense of a Law is not to be limited to what may appear different from its Intention, either