

## Quadrant II - Notes

**Paper Code: PIN0301**

**Module Name: Legal effects of Recognition and Stimson's Doctrine of non-recognition**

**Module No: 12**

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### Legal Effects of Recognition

1. Acquires the right of suing in the courts of law of recognising State.

**Carl Zeiss Stiftung v. Rayner and Keeler (1965) Ch. 596, (1965) All ER 300**

The State of German Democratic Republic was a satellite State of the USSR after the Second World War. The question before the Court was to consider the validity of title to property based on legislative and administrative acts of German Democratic Republic. At the time of the case, German Democratic Republic (GDR) was not recognized by the U.K. who considered the State being under the de jure control of USSR. The Court of Appeal refused to apply East German law since GDR was not recognized by U.K.

**In appeal, the House of Lords, held that-**

- a) In some circumstances English Courts should recognize the administrative acts of a non-recognised State.
  - b) The Court relied on a legal fiction that East German regime was an administrative or subordinate authority controlled by USSR. As USSR was recognised by U.K., English Courts could grant recognition to the acts of its local authority, i.e. the East German government. It is therefore, possible to accept the acts of the unrecognised GDR as being those of a subordinate authority of the USSR.
2. Effect may be given by the Courts to its legislative & executive acts both past & future.  
**Luther (A M) v. James Sagor & Co.[1921] 3 KB 532; (1921) All ER Rep 138.**

In 1920, the defendant company bought a quantity of wood from the new Soviet government of USSR. The Plaintiff Russian Company claimed title to the wood on the ground that it came from a factory which belonged to it in the USSR that had been owned by it before being nationalised by a 1919 decree of Soviet Government. The Plaintiff argued that the decree should not be recognized by an English Court inter alia because the Soviet Government had not been recognised by U.K.

In the year 1921, during the appeal UK granted de facto recognition to Soviet Government in 1921. This recognition was with retrospective effect from 1917 when the new government was came into force.

It was held that de facto recognition is as conclusively binding as that of de jure recognition. In both cases, the Government in question acquires the right to be treated as an independent sovereign State.

Points of law from Luther v. Sagor Case

1. Recognition once given is retroactive in effect from the time the recognised government established itself.
2. It also confirms that British Courts will not recognise or enforce the laws or other public acts of an unrecognised government. An unrecognised government lacks locus standi to bring a suit in a British Court nor is it entitled to sovereign immunity.
3. **Claim immunity** from suit in regard its property & its diplomatic representatives/envoys.

▪ **[Government of Republic of Spain v. The Aranzazu Mendi [1939] AC 256; (1939) 1 All ER 719**

This case involved conflict of rights between the legitimate and the insurgent government in Spain during the Spanish Civil War between 1936-1938. The insurgents had won a greater part of the territory of Spain. The U.K. had granted de jure recognition to the Republican Government and de facto recognition to the insurgent government. Proceedings were initiated by the de jure government against in the British admiralty Court for recovering of possession of a ship. De facto government claimed immunity from proceedings being a fully sovereign State. A writ against insurgent government must be set aside as the government is a sovereign State and was entitled to immunity.

Argument of the de jure government that the de facto government is not a fully sovereign State since it did not occupy whole of Spain was rejected.

4. A recognized State or Government becomes entitled to demand & receive **possession of, or to dispose of property** situated within the jurisdiction of a recognizing State which formerly belonged to a preceding government.

▪ *Haile Selassie v. Cable & Wireless Ltd. (No.2) (1939) Ch. 182*

The emperor of Abyssinia was in exile in England. Cable and wireless Ltd. Entered into a contract in 1935 with the Director General of Posts, telegraphs and Telephones of Abyssinia. Pursuant to the contract a sum of money became due to public revenue of Abyssinia. The Emperor filed a suit in England for an account to be taken of the money due to him under contract and pay the same after accounting. Meantime the Italian conquest of Abyssinia occurred in 1936. The Company admitted its liability but urged that the amount is now payable to the Italian Government as they received a letter from Italian ambassador in London. The Court held that his majesty's government was no longer recognized Haile Selassie as de jure emperor. The King of Italy was the de jure ruler and entitled by succession of Public property of State of Abyssinia. The de jure recognition granted by U.K. dated back to the date when Italy was granted de facto recognition. i.e. December 1936. Therefore, the Plaintiff's title to sue is necessarily divested.

Henry Stimson- Secretary of State (USA)-'**Doctrine of Non-Recognition.**'-1931. This doctrine was stimulated due to the Japanese invasion of Manchuria, 1931, in violation of Pact of Paris (Kellogg-Briand Pact) of 1928. Meaning- *Doctrine of not recognising any situation, treaty or agreement brought about by non-legal means*. The doctrine was Incorporated by resolution of the Assembly of League of Nations.

In Practice until the WW II was not encouraging

- i. Italian Conquest of Abyssinia (Ethiopia) was recognised.
- ii. German takeover of Czechoslovakia was accepted.

- iii. Soviet Union annexation of Lithuania, Latvia, Estonia, & Finland, Bessarabia in 1940-recognised de facto over the years by the western powers.

Doctrine was re-examined anew after 1945. The doctrine found place in **Article 52** of Vienna Convention on Law of Treaties, 1969.

**Instances:** Rhodesia, TRNC –occupied by Turkey in 1975- SC resolution deplored this act and termed Turkish Cypriot-“*legally invalid.*”