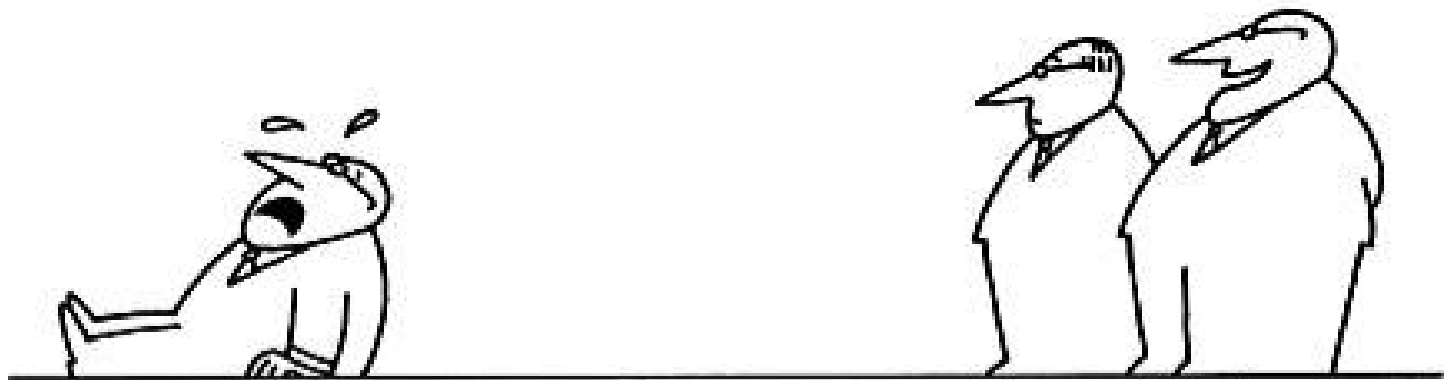


# De Jure

September 24, 2013

A BRIEF WRITE UP ON "DOCTRINE OF RELATION BACK"



*“Oh, sure, that could be us tomorrow,  
but it’s him today.”*

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## DOCTRINE OF RELATION BACK

"In practice, in certain scenarios the present act of the party will relate back to the earlier time for the purpose of determining the cause of action."

The "**Doctrine of Relation Back**" is the principle that an act done at a later time is deemed by law to have occurred at a prior time. In practice, in certain scenarios the present act of the party will relate back to the earlier time for the purpose of determining the cause of action.

The Black's Law Dictionary defines the term "**Relation Back**" to mean that an act done at a later time is, under certain circumstances, treated as though it occurred at an earlier time. According to the Law Lexicon the term "**Relation Back**" is where a thing or act constructively relates back to an antecedent thing or act.

The Doctrine of Relation Back has frequent application to contracts for sale of property wherein the parties to the sale enters into an agreement for sale and thereafter a sale deed is executed. In such case, the sale deed actually relates back to the agreement for sale.

In this Article, we have deliberated few provisions of some of the statutes, which deal with or provide for retrospective application of certain acts or deeds.

## COMPANIES ACT

"The scheme would have retrospective effect once the scheme is sanctioned by the High Court and the copy of the order is filed with the Registrar of Companies."

- Sections 391 to 394 of the Companies Act, 1956 (Companies Act) deals with compromises, arrangements and reconstructions, in a company with the approval of the High Court. The Companies Act under the said provisions pertaining to implementation of arrangements provides reference to two dates, i.e. the "**appointed date**" and the "**effective date**".
  - The term "**appointed date**" connotes the date from which the undertaking including assets and liabilities of the transferor company vest in the transferee company.
  - The term "**effective date**" means the date by which the last approval as per the arrangement shall have been obtained.
  - The appointed date can be the date prior to the effective date. However, the appointed date will be subservient to the effective date of the scheme of arrangement submitted with the High Court, which technically means that the scheme would have retrospective effect once the scheme is sanctioned by the High Court and the copy of the order is filed with the Registrar of Companies.
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## INSOLVENCY ACT

"Section 28(7) of the Provincial Insolvency Act, 1920 (Insolvency Act) provides that an order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made."

- Section 28(7) of the Provincial Insolvency Act, 1920 ("**Insolvency Act**") provides that an order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition on which it is made.
- The fact that a decree was passed subsequent to the date of the presentation of the petition will not amount to saying that there is no vesting of rights in the Court

unless an order to that effect was made prior to the date of decree.

- Simply put, for the purpose of enforcing the rights and obligations of the parties under the petition, the date of the presentation of the petition by such parties shall be taken into consideration, subject to the same being heard, decided by the Court and the Order for the same being passed by the Court.

## REGISTRATION ACT

"In this case, the substituted punishment imposed by the appellate order had to be counted from the date of the imposition of the original punishment order, which relates back to the earlier time."

- Section 47 of the Registration Act, 1908 ("**Registration Act**") provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.
- The object of Section 47 of the Registration Act is to decide, in case of two or more registered instruments in respect of the same property, which of the two or more registered instruments will have precedence.
- By way of an illustration, if two different documents are to be registered for the same property; one document executed on February 1, 2013 (Document 1) and the other document executed on March 31, 2013 (Document 2). The Document 1 is

registered on May 15, 2013, while the Document 2 is registered on April 1, 2013. In such case, the operative date of these documents shall relate back to the date of the documents. Thus, in the event of any claim made on the common property under Document 1 and Document 2, the claim under Document 1 shall prevail over Document 2.

- The Doctrine of Relation Back is also applicable in case of punishment imposed by the Disciplinary Authority which was then substituted and modified by the Appellate Authority. The substituted punishment in such case relates back to the date of the original punishment. In this case, the substituted punishment imposed by the appellate order had to be counted from the date of the imposition of the original punishment order, which relates back to the earlier time.

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## CONTRACT ACT

"The ratification of a lawful contract has a retrospective effect on the subject, and binds the principal from its date, and not only from the time of the ratification."

- The doctrine of relation back also comes into play in case of ratification covered under Section 196 to 199 of the Indian Contract Act, 1872 (**Contract Act**). When a person does any act on behalf of another without his knowledge or consent, such unauthorised but voidable act can be ratified by the principal. This gives the person on whose behalf the act is done an option either to adopt the act by ratification or to disown it.
- While the principal has the right to elect whether the principal will adopt the unauthorised act or not; but once an act is ratified, the ratification cannot be revoked or recalled, and the principal becomes bound as if the principal had originally authorised the act. The ratification of a lawful contract has a retrospective effect on the subject, and binds the principal from its date, and not only from the time of the ratification. Since the thing ratified relates back to prior occurrence, the ratification in such case relates back to the date of the act ratified.

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## OUR FINAL WORD



Law is dynamic in nature and is often subject to interpretation. Doctrines are framework, established through precedent in the common law, and often an aid through which judgments can be determined in a given legal case. The Doctrine of Relation Back though considered archaic by many, has frequent application.

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