

LL.B.4Sem.

Interpretation of statutes.  
"Delegatus Non Potest Delegare"

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Origin – The maxim *Delegatapotestas non potestdelegari* is a principle of constitutional and administrative law with the latin meaning a delegated authority cannot again be delegated. It has its origin in theCatholic Canon law but it was first articulated in Canada in 1943 by John Willis in the Canadian Bar Review. This principle is very well acknowledged in the United States, United Kingdom and India.

Explanation – The maxim can also be stated as “*Delegatus non potestdelegare*” which means no one to whom power is delegated cannot himself further delegate that power. In other words a

person to whom some power is delegated cannot sub-delegate that power to someone else. The reason why this principle is followed is very simple. One who has the power or authority from another person to do an act must do it himself or herself as this is a trust or confidence reposed in that person personally. It cannot be assigned to a stranger whose ability and integrity might not be known to the principal.

In general, whenever it is intended that an agent shall have a power to delegate his authority, it should be given to him by express terms of substitution. Thus no sub-delegation is done in a principal-agent contract without the consent and knowledge of the principal.

The principle laid down in the

maxim is followed in constitutional and administrative law, where a delegated power cannot be sub-delegated unless and until it is provided for by law or the person delegating the authority permits sub-delegation of authority.

### **Illustration**

‘A’ has been authorised to execute a will upon the death of the testator. Now ‘A’ cannot delegate the power to another person to divide the property amongst the heirs when the testator had appointed the authority to execute the will to ‘A’. If he does so, he will be delegating an authority which was already delegated to him. Here ‘A’ cannot sub-delegate his authority as



“*Delegatus non potest delegare*” applies.

## Case Reference

In the case of *Field v. Clark*<sup>[1]</sup>, the Supreme Court while upholding the constitutionality of the provisions of the McKinley Tariff, said, “*The Congress cannot delegate legislative power to the President is a principle universally recognised as vital to the integrity and maintenance of the system of government ordained by the Constitution. The Act in question does not invest the President with the power of legislation. He was the mere agent of the law making department to ascertain and declare the event upon which its expressed will was to take effect.*” This case

*will was to take effect.*” This case thus established the principle laid under the maxim, *delegatus non potest delegare*.

In the case of *United States v. Sav, Bank*<sup>[2]</sup>, the court held that the duty imposed by statute on the commissioner cannot be delegated to a collector.

In *Alexander v. Alexander*<sup>[3]</sup>, the Court stated, “*If there is a power to A, of personal trust or confidence, to exercise his judgment and discretion. A cannot say this money shall be appointed by the discretion of B for delegatus non potest delegare.*”

*A.K. Roy and anr. v. State of Punjab and anr.*<sup>[4]</sup> was the first case in India which established the principle that a delegated authority cannot again be delegated as laid down by the maxim *delegatus non potest delegare*. In this case the validity of sub-delegation of power under the Prevention of Food Adulteration Act, 1954 was questioned. Section 24(2)(e) of the Act enables the State Government to frame a rule for delegation of powers and functions under the Act, but it clearly does not envisage

Act, but it clearly does not envisage any sub-delegation. The maxim *delegatus non potest delegare* merely indicates that this is not normally allowable but legislature can always provide for sub-delegation of powers. Thus, in other words the principle laid down by the maxim is a general rule but legislature can or the authority making such law can provide for an exception by expressly allowing sub-delegation of powers.