

Quadrant II - Notes

Paper Code:IST 0318

Module Name: Construction to prevent evasion or abuse and Equitable construction

Module No: 18

Construction to prevent evasion

- ☐ Statutes are made with a purpose . Some statutes impose obligations and liabilities.
- ☐ To carry out the object of the law effectually, the Courts construe a law so as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner, that which it has prohibited or enjoined.
- ☐ Courts will not allow one to do something indirectly what is prohibited directly.
- ☐ Courts will not allow persons to escape the net of the law by using various kinds of deceptive means.
- ☐ In such situations (i) Courts will suppress the mischief and advance the remedy .(ii) Courts will go beyond the form and look at the substance of transaction .

Day v. Simpson

- ☐ Theatres Act 1843- prohibited under penalty the performance of a play without licence.
- ☐ Players did not come on stage.
- ☐ But acted from a chamber below –figures being reflected by mirrors- as if on stage.

Held: It would extend to these performers also.

Lafone v. Smith

- ☐ Statute required in certain circumstances, the insertion in a newspaper of an apology for a libel.

- ❑ Defendant made an apology which though suitable in terms was printed in a manner as to escape the attention of ordinary readers.
- ❑ Held: Provision had not been complied with.

M.V. Joshi v. Shimpi

- ❑ Appellant convicted under the Prevention of Food Adulteration Act, 1954 for selling adulterated butter.
- ❑ Contended it was not butter within the rules – as butter means butter made from milk and he made butter from curd.
- ❑ Held: butter is butter whether made from milk or curd.

Construction to prevent abuse of power

- ❑ There are enactments which confer power on authorities.
- ❑ Courts can look into the *bonafides* of the exercise of statutory power .
- ❑ Lord Wrenbury-” It does not empower a man to do what he likes...but what he ought.”
- ❑ He must act reasonably while exercising his powers.
- ❑ Lord MacNaghten,”one must take care not to exceed or abuse the powers conferred.”

Equitable Construction

- ❑ Law of Equity developed to set aside the rigours/harshness of common law.
- ❑ Construction adopting principles of justice, fairness and reasonableness is said to be an equitable construction.
- ❑ According to it, courts might vary the explicit meaning of the text whenever by supposed equity such meaning ought for the sake of justice to be extended or restricted.
 - ❑ Commonly used in old statutes.
 - ❑ Discrepancy between the intention of the legislature and words of the statute.
 - ❑ Lack of precision in drafting of statutes and the inability of the law –makers to set down all cases in express terms, resulted in its use.
 - ❑ It enlarges or diminishes the letter of the law.

Case 1

- Statute gave a man power to try all causes that arise within the manor of Dale.
- Held: If a cause should arise in which he himself is a party, the Act to be construed not to extend to that case.

Re Sigsworth

- ☐ A grandfather prepared a will in favour of his grandson
- ☐ Grandfather got married for a second time
- ☐ The grandson fearing that the grandfather would exclude him from the property killed him.
- ☐ At the time, there was no law that if someone murdered a relative, he would be excluded from the property.
- ☐ Court applied rule of equity in this case and held the son would be disqualified from inheriting the property.

Equitable Construction

- ☐ Courts not inclined to use equitable construction to modern statutes.
- ☐ Municipal Board v. State Transport Authority, Rajasthan
- ☐ S.T. Authority had changed location of bus stand.
- ☐ Invited objections from public within 30 days from date of order to the Authority u/s 64 A Motor Vehicles Act, 1939.
- ☐ Application moved after 30 days from date of order. Contention -30 days from knowledge of order.

Held: No place for equitable considerations when language is plain.

Conclusion

- ☐ Courts adopt a construction to prevent the evasion of the statute in order to give effect to the Intention of the Legislature.
- ☐ Courts are keen in preventing the object of the law from being defeated by those who do something indirectly which is prohibited directly by the statute.