

Welcome students.

Today we will be discussing

law of evidence and the law of

evidence will be discussing Unit 2.

The concept of presumptions and

kinds of presumptions. I am

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Today we will be learning presumptions.

The outline of today's lecture is first,

we will understand what is

the concept of presumption?

Then we'll go into the kinds of presumptions.

The learning outcomes if you

are attending today's lecture,

you will be able to understand whatever

concepts and kinds of presumptions

and why the court must raise these

presumptions and also you will

be able to evaluate the impact of

raising presumptions in law of evidence

by the court.

So let us start with the concept

of presumption.

In simple terms,

presumption means an inference

drawn. That means

a judge could draw a conclusion

based on certain facts,

so certain facts will be assumed

by the judge that they are true

and it will be used as evidence.

The presumptions are basically

they may affirm a particular fact

or they may disaffirm a particular fact.

Therefore presumption is nothing

but a process of probable reasoning

from the proof of facts.

So once we say that the court

can raise presumption,

what it does is basically it come to

a conclusion based on certain facts.

So these presumptions are based

on logical reasoning.

That means if fact number 1,2,3 happens,

the logical deduction would

be the fact number 4 happened.

So therefore whether fact number 4 happened or not,

the court presumes if fact

number 1,2,3 happened.

So what is the purpose of presumption?

The purpose of the presumption is

that once the court presumes the

existence of the fact it need not

be proved subsequently by the party

That means the presumption,

once raised by the court,

it may relieve the party from the proof.

Say,

for example,

the prosecution has to prove certain fact.

But once the court raises a presumption,

the burden is no more on the prosecution,

and the burden may be shifting to the
opposite party.

So that is the advantage of presumption.

There are various kinds of
presumptions. We could divide
presumptions on different parameters.

The first one is presumption of
fact and presumption of law.

Presumption of fact is based on
logical inference based on certain
facts where the presumption of
law, law tells the court to presume,
and mostly they are mandatory
presumptions.

So the difference between presumption
of fact and presumption of law.

Presumption of fact is based
on legal reasoning,
whereas presumption of law there
is no legal reasoning for that,
and because it is a presumption of fact,

it is always rebuttable.

That means the other party would

be given a chance to disprove it,

whereas if it is a presumption

by law they may be rebuttable,

or some of them are irrebuttable.

That means, for example,

in case of conclusive proof,

the court will not allow you to disprove it.

So the third distinction that we have

between these two is that the presumption of

fact based on the circumstances of the case.

That means whether the court

may raise a presumption or not,

depends upon the facts that

was produced before the court.

Whereas in the case of presumption

of law it is defined by the law,

therefore it is uniform, and the court.

must presume it. The second kind of

division is that the presumptions

are some of them are discretionary,

some of them are mandatory.

When I say discretionary presumption

The court may presume that means it is

left to the discretion of the court.

It may presume, or it can refuse to presume.

Whereas mandatory presumptions are,

it is must for the court to presume

it cannot refuse to presume. That

means there is no discretion given

to the court and the third kind

of presumption is rebuttable.

and irrebuttable presumption.

That means,

if it is a rebuttable presumption,

means the court,

once presumed the fact it will give the

chance to the other party to disprove it.

If the other party has more weightage

and more evidence to disprove it,

it is permissible.

Whereas in case of irrebuttable presumptions

once the court to draw a conclusion,

it will not allow the other party

to disprove so rebuttable other

party gets chance to disprove it.

But in case of irrebuttable you cannot do it.

The classical example is conclusive

proof is a irrebuttable presumption.

Now the Indian Evidence Act recognizes

three kinds of presumptions.

May presume, shall presume and

conclusive proof. May presume

is a discretionary presumption.

Shall and conclusive are mandatory

presumptions. May and shall are rebuttable

presumptions. Conclusive proof

is a irrebuttable presumption.

So what is this may presumption?

Section 4 of the Indian

Evidence Act defines that whenever

it is provided by the Act that the

court may presume a fact it may either
regard such fact as proved
unless until it is disproved
or my call for proof of it.

That means once the Act says that
court may presume certain facts,
court has two options.

Either it could presume yes,
the facts are proved or it could refuse
that the facts are proved.

Once it accept that the facts are proved
then it would accept that the facts
are proved until it is disproved by
the other party or the court may
simply reject saying that I'm not
going to presume because there
is no sufficient evidence.

In that case, the presumption is not
allowed. Section 86 to 88-A,
section 90 and 113A, 114 are the
examples of May presumption.

Let me take one example of this to
explain to you what is a presumption?

Now look at that section 88 A
presumption as to electronic message.

For example,

if I'm sending email to you
to your email address,
what I have typed in the email,
the same is communicated to you.

That means once I type the
message and clicked on
sent the message goes through.
the digital area and will reach to you.

So what I have typed the
same thing you have received

That is, the court may presume,
but the court may not presume
who sent it because on my name
somebody can send you the message,
so the presumption is only that
what is the content of

the message sent to you

So it is being a may

presumption court either may

presume or refused to presume

if the court presumes that it

is proven fact that the message

I sent is received by you.

Similarly, under Section 114,

say for example a watch of mine

was stolen and soon after the

theft the watch is in your

position. According to Section 114,

the court may presume that

either you are a thief

or you knowingly purchased

a stolen watch. Again

it is being may presumption court

may presume or court may refuse to presume.

So if the court presumes,

then I need not prove that you are a thief.

And you have to prove

that you are not a thief.

That is the impact of

accepting a presumption.

These are the two cases.

In the first case,

when the Doctor was prosecuted for

negligence by not performing the

operation in T.T Thomas case.

Doctor took a plea that the patient

refused to sign the document consent form.

The court said that,

it may presume that natural

things that happens will happen.

They are ready to sign.

The doctor has to prove that

the patient has not signed.

The second one is shall presume

so whenever the Act directs that

the court shall presume and it shall

regard the fact as proved unless it is

disproved. That means it is a mandatory

presumption court must presume.

And it is a rebuttable presumption.

Therefore, the court must presume,

till the other party, disprove it,

so these are the sections

under the Indian Evidence Act,

which may make it mandatory for

the court to presume.

I would take few examples.

Say for example Section 81 says

that any matter published in the

Official Gazette shall be true.

That means the court,

whenever Official Gazette is

produced before the court

they must presume that whatever printed in

that is true until unless it

is disproved by the other party.

It also extended to newspapers.

But in Rajasthan versus Union of India

The Supreme Court refused to accept

that anything printed in the newspaper

as a shall presumption on the court.

Similarly, if you look at Section 114 A,

presumption has to consent in

certain prosecutions of rape.

That means,

if rape of a woman was committed

under the clause A,B,C.D and E,G,

of Section 2 of Section 376

of Indian Penal Code,

mostly talking about gang rape

and rape in the police station,

hospital, etc.

if in the open court,

the woman says that she

has not given consent,

then the court shall presume

that there is no consent

given by the women. That means

it becomes a burden on the accused

to prove that there was a consent.

The third one is a conclusive proof.

Conclusive proof means it is irrebuttable

presumption that means it says if the

Act declares that a particular fact is

a conclusive proof of another,

the court shall proof of 1 fact

regarding another one as proved and

will not allow evidence to disprove it.

Say for example Section 41, 112 and 113 deals

with that you could see in the square.

Suppose that is fact number one if

the fact number one is a conclusive proof of

fact number 2.

So once you prove fact number one

then the court must presume that

two is conclusively proved and it will

not allow anybody to disprove.

Just to give an illustration,

section 82 of the Indian Penal Code says

a child under the seven years of age

cannot commit an offense.

So therefore what is the fact number

one suppose a child committed murder?

Now the fact number one we have to prove

before the court is the age of the child.

Once the age of the child

was shown as seven years,

the fact number two that she's incapable

of committing the offense is conclusively

proved so the prosecution cannot prove

that the child is very intelligent,

has a highest IQ, etc.

So that is the advantage

of the conclusive proof.

Section 41 says any judgment given

in probate, matrimonial, admiralty

or insolvency jurisdiction,

that judgment is a conclusive proof.

Similarly,

Section 112 talks about birth during marriage.

What does it says it says if a child

was born during the continuity

of a valid marriage.

Or within 280 days after its dissolution

he is a legitimate son of that man.

That means if the fact number one,

anyone of that has proved the fact number 2 is

conclusively proved that the child is

legitimate son of the man.

So therefore hear

the man cannot go to the court

and say that he is impotent.

He is sterile.

He cannot consummate, not allowed,

because once it is established,

the fact one,

the fact is conclusive.

Only thing is that suppose the party

will be allowed only to see whether

they have access to each other at the

time when he could have begotten the child.

That's the only thing that you could.

rebut it

that means whether the man and
woman is so far away that it is
impossible for them to consummate.

Then only that.

You could disprove it,

but otherwise,

once you prove that there is

a continuation of marriage,

you are illegitimate son

the last 113 section talks about

proof of cessation of territory,

whether a particular part of India

is separated from India or not a

notification issued in the Official

Gazette shall be conclusive proof.

Therefore to understand

presumptions are nothing but drawing

conclusions, drawing inferences.

But there could be rebuttable,

irrebuttable, discretionary, and mandatory.

Each one has its own value,

so these are the references

for you. Thank you.