



## FACULTY OF JURIDICAL SCIENCES

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# Lecture-4



## **Presumption-**

Presumption generally means a process of ascertaining few facts on the basis of possibility or it is the consequence of some acts in general which strengthen the possibility and when such possibility has great substantiate value then generally facts can be ascertained. A presumption in law means inferences which are concluded by the court with respect to the existence of certain facts. The inferences can either be affirmative or negative drawn from circumstance by using a process of best probable reasoning of such circumstances. The basic rule of presumption is when one fact of the case or circumstances are considered as primary facts and if they are proving the other facts related to it, then the facts can be presumed as if they are proved until disproved. Section 114 of Indian Evidence Act specifically deals with the concept that ‘the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of (a) natural events, (b) human conduct, and (c) public and private business, in their relation to the facts of the particular case’.

## **May presume-**

It is a condition when the court enjoys its discretion power to presume any/ certain/ few facts and recognize it either proved or may ask for corroborative evidence to confirm or reconfirm the presumption set by the court in its discretion. Section 4 of the Indian Evidence Act provides that a fact or a group of facts may be regarded as proved, until and unless they are disapproved. The concept is defined under Section 4 of this Act that ‘May Presume’ deals with rebuttable presumption and is not a branch of jurisprudence.

## **Shall presume-**

It denotes a strong assertion or intention to determine any fact. Section 4 of Indian evidence Act explains the principle of ‘Shall Presume’ that the court does not have any discretionary power in the course of presumption of ‘Shall Presume’, rather the court has presumed facts or groups of facts and regard them as if they are proved until they are disproved by the other

party. Section 4 of the Indian Evidence Act explains that the concept of 'Shall Presume' may also be called 'Presumption of Law' or 'Artificial Presumption' or 'Obligatory Presumption' or 'Rebuttable Presumption of Law' and tells that it is a branch of jurisprudence.

### **Conclusive Presumptions/ Proofs-**

It can be considered as one of the strongest presumptions a court may assume but at the same time the presumptions are not completely based on logic rather court believes that such presumptions are for the welfare or upbringing of the society. With regards to Conclusive proofs, the law has absolute power and shall not allow any proofs contrary to the presumption which means if the facts presumed under conclusive proofs cannot be challenged even if the presumption is challenged on the basis of probative evidence. This is the strongest kind of all the existing presumptions whereas Section 41, 112 and 113 of the Evidence Act and S. 82 of the Indian Penal Code are one of the most important provisions related to the irrebuttable form of presumptions or Conclusive Presumption.

The general definition of Conclusive Proof is a condition when one fact is established, then the other facts or conditions become conclusive proof of another as declared by this Act. The Court in its consideration shall regard all other facts to be proved, only if one fact of the case is proven without any reasonable doubt. And if the other facts are proved on the basis of proving of one fact that the court shall not allow any evidence contrary to other facts which are presumed as conclusive proofs

### **Illustration**

A and B married on June 1 and the husband left home to his work for 6 months later he discovered that her wife is pregnant he divorced the wife and challenges that he is not liable for paying damages either to his wife or to his illegitimate son. And also explains that he never consumed his marriage as just after one day of marriage he left his home for his work. But in this case, the court will conclusively presumed that the son born out of his wife is legitimate because he was with his wife for at least 1 day and shall not allow any proof contrary to the conclusive proof even if he provides probative evidence.