



FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB VI Semester

SUBJECT: Law of Property

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Lecture-4



Notice

Section 3 of Transfer of Property Act states that "a person is said to have notice" of a fact when he actually knows that fact, or when, but for willful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I: Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

PROVIDED that-

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (16 of 1908), and the rules made thereunder,

(2) the instrument of memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II : Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III: A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

PROVIDED that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud

Thus when a person actually knows any fact, it is understood as he has notice of that fact.

Kinds of notices:

Section 3 of Transfer of Property Act enumerates three kinds of notices—

(a) **Actual or expressed notice:** If a person actually knows a particular fact it is considered he has actual notice. The knowledge of fact must be received in the course of negotiations of the property.

(b) **Constructive or implied notice:** If it can be assumed if a person 'may know a particular fact' due to the circumstances, so it will be presumed that he knows the fact. It is said that the person could have had actual notice if he would have inquired reasonably. In this, the court also presumes that the person shall have knowledge of a fact and it cannot be proved that it was not obtained.

For example, X agrees to sell his property to Y. There are tenants of that property that pay rent to Z. It is presumed that Y will have notice of the fact that the tenants pay the rent to Z and hence he cannot claim that he was devoid of knowledge of this fact.

Legal presumption of knowledge is considered when it is prima facie understood that a fact can come to the notice of a prudent person but because of wilful abstention from an inquiry or search, a person does not have the knowledge of that fact.

Gross negligence is a concept that is used in the constructive notice. It is different from negligence which means mere carelessness or omission to do an act. The doctrine of constructive notice applies when there has been gross negligence which means a high degree of carelessness or neglect. Mere negligence is not punished as seen in the case of *Hudson v. Vincy*, where the

court defined gross negligence as a degree of negligence so gross that a court may presume it to be some kind of fraud. Hence it can be understood, that only gross negligence is punishable.

MULTIPLE CHOICE QUESTION

1. If a person actually knows a particular fact it is considered he has

- (a) actual notice
- (b) Constructive notice
- (c) can not say
- (d) None of the above

2. Which section of the Transfer of Property Act defines Notice

- (a) 2
- (b) 3
- (c) 4
- (d) None of the above

3. Which of the following is kind of Notice

- (a) Actual notice
- (b) Constructive notice
- (c) Both (a) and (b)
- (d) None of the above

4. If a person 'may know a particular fact' due to the circumstances, so it will be presumed that he knows the fact. It is

- (a) Actual notice
- (b) Constructive notice
- (c) Can not say
- (d) None of the above

5. If the agent fraudulently conceals the fact, the principal shall

- (a) not be charged with notice
- (b) be charged with notice
- (c) Can not say
- (d) None of the above