PGS NATIONAL COLLEGE OF LAW

EVIDENCE ACT UNIT-4

1. Explain the Doctrine of Estoppels.

Ans- Estoppel is a principle of law by which a person is held bound by the representation, made by him or arising out of his conduct. If, for example, a person made a statement intending that some other person should act upon it, he will be estopped, that is, will be prevented, from denying the truth of his statement once the other person has altered his position on the basis of the statement. A person, while booking his consignment with a railway company, declared its value to be one hundred rupees. He was not permitted, when the packet was lost, to claim that its value was much more than that. A person sold certain property in the presence of his mother. The mother was not afterwards permitted to say that the property belonged to her and, therefore, her son had no right to sell. By remaining silent at that time she had made a representation that her son had the right to sell and the purchaser having acted on that representation, it was too late to deny the seller's right to sell. The foundation of the doctrine is that a person cannot approbate and reprobate at the same time.[1] Where a party refused to invoke the arbitration clause in the agreement saying that the matter in dispute was not arbitrable. He was not allowed subsequently to seek reference of the matter to arbitration. Refusal to refer parties to arbitration was held to be proper.[2]

The principle of estoppel is incorporated in section 115 of the Act.

In order to hold a person bound by estoppel under section 115, the requirements of the section should be met, and they can be grouped under two headings :

1. Firstly, there should be a representation that a certain state of thing is true, and

2. Secondly, the person to whom such a representation is made should have acted on the belief of it.

1. Representation

Section 115 itself says that a representation may arise from a declaration, act or omission. Statements, written or oral, conduct active or passive, may amount to representation in the particular circumstances of the case.

2. Reliance and alteration of position

The second condition necessary to create an estoppel is that the plaintiff altered his position on the basis of the representation and he would suffer a loss if the representer is allowed to resile from his statement. There must be knowledge of and injurious reliance upon the representation.

Promissory Estoppel

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The principle of promissory estoppel found its roots as an exception to the doctrine of consideration in the law of contract. Whenever a person holds out a promise of a favour or concession to another, and the latter changes his position by relying upon his words, he will not be permitted afterwards to say that his promise was without consideration.

No Estoppel against law or Statute

A rule of law cannot be nullified by resorting to the doctrine of estoppel.For example, where a minor has contracted by mis-representing his age, he still can afterwards disclose his real age. It is a rule of law of contract that a minor is not competent to contract and that rule would be defeated if a particular minor not permitted to disclose his real age. Hence there can be no estoppel against the provisions of a statute.

Bal Krishna v. Rewa University. Where it was pointed out that if a candidate has appeared at an examination by misrepresenting facts, the University will not be estopped from cancelling his examination if his candidature is against a rule of law.

No estoppel against Sovereign acts

The Supreme Court has laid down that it is well settled that there cannot be any estoppel against the Government in the exercise of its sovereign, legislative and executive functions.

No estoppel against unlawful transfer of property

A valid trust was created by the owner in respect of his property. the donating owner was himself one of the trustees. The donor owed a sum of money by way of income-tax for which reason the authorities seized the property and disposed it off by public auction to recover tax dues from sale proceeds. It was held that the trustees were not estopped from challenging the sale irrespective of the fact that they were aware of the Notification of sale.

Applications of doctrine of estoppel: Kinds of estoppel

The doctrine of estoppel becomes applicable in almost all legal branches producing varied results. Some of such applications are worthy of being noticed.

Estoppel by record

The doctrine of res judicata is an example of estoppel by record. Every party has a right of appeal against what he may consider to be a wrong decision. If he does not do so or having done so, loses appeal, he cannot afterwards rake up the same issue again and between the same parties.

Estoppel by deed

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Those who make themselves party to a deed, they and their privies cannot deny the factual basis on which the deed was entered into.

Estoppel in pais

Estoppel by conduct arises when a person takes a particular position by his conduct. Where a person induces another to enter into a contract with him on the basis of facts which are fraudulently or innocently misrepresented, he would be bound by his statements and would not be permitted to get rid of the contract by setting forth his own fraud etc.

Equitable estoppel

The Government caused delay in communicating adverse remarks to the employee. The employee also made a belated representation. The Government was held bound on equitable considerations to consider the representation on merits and not to reject it because of delay.

Estoppel by attestation

mere attestation of the document does not amount to knowledge of the document and there was no estoppels

Estoppel by pleading

Where no specific plea was taken in a writ petition, it was held that the same could not be raised at the hearing.

Estoppel of tenant and licensee

Section 116 provides for estoppel of a tenant as against his landlord and of a licensee as against his licensor.

The section provides that a person who comes into an immovable property taking possession from a person whom he accepts as the landlord, is not permitted to say as against his landlord that he had no title to the property at the commencement of the tenancy.[1] Similarly, a person who comes upon any immovable property with the licence of the person in possession, is not permitted to say afterwards that his licensor had no right to the possession of the property.

Estoppel of acceptor of a bill of exchange, bailee and licensee

An acceptor of a bill of exchange is not permitted to say as against the holder of the bill that the drawer had the authority to draw or to endorse the bill. But he can show that the bill was not really drawn by the person whose signature it purports to bear. In other words, it can always be shown that the drawer's signature was forged.

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A bailee of goods is not permitted to say as against the demand of the bailor for the return of the goods that they belong to some other person. He cannot say that the bailor had no right to bail or has no right to take them back. But where some superior owner has already recovered the goods from the bailee, the bailee may show that such person had a better right to the goods than the bailor.

Where a person admits that he executed a promissory note, a presumption immediately arises that he must have done so for consideration. Burden lies on him to show that there was no consideration.

2. What is meant by burden of proof? On whom burden of proof lies in the following cases?

(i) Legitimacy (ii) Whether a person alive or dead (iii) ownership

Ans-**(i) Legitimacy**

Presumption of legitimacy

An illustration of a conclusive presumption of law is to be found in the provisions of Section 112. It deals with the presumption of the legitimacy of a child. The effect of the provision is that a child born to a married parents is conclusively presumed to be their child. The same presumption arises where the marriage was dissolved and the child was born within 280 days after dissolution, the mother remaining unmarried in the meantime.

The essential conditions for the presumption to arise are:

1. The child should have been born during the continuance of a valid marriage, or if the marriage was dissolved, within 280 days after its dissolution, the mother remaining unmarried.

2. The parties to the marriage should have had access to each other at any time when the child could have been begotten.

During subsistence of valid marriage.-Both these requirements are fully satisfied by the very fact of marriage and of living together. "The presumption of legitimacy is a presumption of law, not a mere inference to be drawn from a process of logical reasoning from the fact of marriage and, birth or conception during wedlock. It is a presumption founded upon public policy which requires that every child born during wedlock shall be deemed to be legitimate unless the contrary is proved.

Access to each other. The presumption of legitimacy largely depends the presumed fact that the parties to a marriage have necessary access upon the to each other. That is why the presumption is allowed to be over-thrown by proving that there was no access of husband to his wife at about the time when the child could have been begotten. But it has been pointed out by the Supreme Court **in Chilkuri**

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Venkateshwarlu v. Venkatanarayana,that as the of legitimacy is highly favoured by law it is necessary that proof of non-access must be clear and satisfactory. In this case the husband tried to show that he had provided separate residence to his second wife and thereafter never visited her. The wife alleged visits by the husband and the husband being not able to prove his allegation, a child born by the second wife was presumed to be a legitimate child.

(ii) Whether a person alive or dead

SURVIVORSHIP AND DEATH

Presumption of Survivorship or Burden of Proving Death [Sec. 107]

There is a general presumption of continuity of things. Once a thing is shown to exist, the law presumes that it continues to exist until the contrary is shown. This applies to continuity of life also. Section 107 accordingly provides that when a person is shown to have existed within the last thirty years, the presumption is that he is still alive and if anybody alleges that he is dead, he must prove that fact.

Burden of proving Death

This presumption is, however, not a very strong one. It may not only be rebutted by a slight evidence to the contrary, for example, seven years' absence, but the court may not act upon it until positive proof of his being alive is offered.

Presumption of death [Sec. 108]

Section 108 materially qualifies the operation and effect of the presumption raised by S. 107. The essence of the section is that if a person is not heard of for seven years, the presumption is that he has died, and, if anybody alleges that he is still alive, he must prove that fact. Thus seven years' absence creates rebuttable presumption of death.

Presumption of death simpliciter

The condition for this presumption is that the man who has disappeared and about whom the question arises whether he is alive or dead, must have remained unheard of for seven years by those who would naturally have heard of him if he were alive. The presumption then arises that he is dead so that the burden of proving that he is still living lies upon the man who says so.

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No presumption as to time of death

It should further be noted that there is a simple presumption of death and not of the time of death. If the time of death is a vital fact during the period of seven years, then those who allege that death should be taken to have occurred at a particular time will have to prove that fact.

(iii) ownership

Proof of ownership

Possession of anything is a symbol of ownership, so that if a person is shown to be in possession of something there is the presumption that he is the owner. If any body alleges that the party in possession is not the owner, he must prove that fact. Section 110 incorporates this principle. Where a carrier of goods, who was sued for loss, contended that the plaintiff, who consigned the goods, was not the owner, the Calcutta High Court required him to prove that fact. The possessor of property, real or personal is presumed prima facie to be full owner of it.

Where a corporation had exercised exclusively the right of pasturage over certain lands for a long period of time and when ultimately the question arose whether the right was exclusive or in common with others, it was held that the long exclusive enjoyment was evidence of exclusive ownership of the right although in the relevant documents, the right was described to be a common right. Where the Customs Authorities seized in the course of a search wrist-watches concealed in the assessee's bed-room, it was held that the onus was on the assessee to prove that he was not the owner. In a suit for recovery of possession of a plot of land and declaration of title, where the defendant denied the existence of any such plot or plaintiff's possession, it was held that an acknowledgment in a sale-deed of the adjacent land that the plot existed and was in plaintiff's possession was held to be relevant. The court observed that proof of possession varies with the nature of the property.

The expression "burden of proof" is defined in section 101 in these words: When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

The question is which out of the two parties has to prove a fact. The answer to this question decides the question as to burden of proof. The burden of proof means the obligation to prove a fact. Every party

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has to establish facts which go in his favour or against his opponent. And this is the burden of proof. The Act lays down some principles of general nature.

Initial burden on one who takes affirmative of the issue

The facts which have to be proved in a case can, from the point of view of burden of proof, be put in two categories, namely, those which positively

affirm a fact and those which deny it. The first general principle is that a party who asserts the affirmative of an issue, the burden of proof lies on him to prove that fact. The reason for the rule is that it is easy to prove the affirmative than to prove the negative.

On whom burden of proof lies -Sec 102

The section tries to locate the party on whom the burden of proof lies. The burden of proof lies upon the party whose case would fail if no evidence were given on either side. If A sucs B to recover damages for breach of contract and if neither party gives evidence, A would lose his case. Therefore, burden lies upon A to prove that there was a contract between him and B which B has broken. If B admits the contract, but says that his consent, was caused by fraud and if neither party gives evidence B's case would fail and, therefore, burden lies upon B to prove the fraud.

Burden of proving a particular fact-Sec 103

The principle of the section is that whenever a party wishes the court to believe and to act upon the existence of a fact, burden lies upon him to prove that fact. If a party wishes the court to believe that his opponent has admitted a fact, burden lies upon him to prove the fact of admission.

3. The general rule is that “A written instrument shall be proved by the writing itself”. Discuss the rule and state its exceptions.

Ans- Proof by primary Evidence [Sec 64]

The section embodies one of the underlying principles which is that a document must be proved by its primary evidence. The meaning of the expression "primary evidence" has been explained in S. 62. But lest technical considerations should defeat substantial justice, the following section, namely, S. 65, embodies situations which would sanctify secondary evidence.

Secondary evidence is allowed only in the circumstances mentioned in the Act. Any one of the grounds on which secondary evidence becomes admissible would have to be proved in the first place. A certified copy of a registered document was not allowed to be proved in evidence where no account was given of the absence of the original document. The original document was such that it would naturally be in the custody of the person who was producing certified copy because it was executed in his favour! The fact

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that documents can be made falsely, a document which has been questioned has to stand the test of genuineness before it can be put to any use as the proof of a fact.

Objection to proposed mode of proving document to be raised at trial

It has been held in several decisions that objections, if any, as to the mode of proving a document should be at the trial stage itself. If no objection is taken at that stage, subsequently at the stage of appeal, it would be too late and would not be allowed. Where, however, a copy of the insurance policy and not the original document was produced before the Tribunal, the other party making no objection then, an objection before the appellate court was allowed so as to exclude the evidence.

Original lying in another suit in same court.-The certified copy of the original sale deed was not admitted. The original was lying in another suit in the same court. The Court said that the sale deed in question was not a public document. The only remedy of the plaintiff was to summon the file of the civil original suit in which the original sale deed was filed.

When secondary evidence can be given

The circumstances in which secondary evidence can be given are strictly regulated by the Act. Such circumstances are listed in section 65.

In substance, the section provides that secondary evidence can be given in the following cases:

1. When the original is shown or appears to be in the possession or power

(a) of a person against whom the document is sought to be proved, or

(b) of any person out of reach of, or not subject to the process of, the court, or

(c) any person legally bound to produce it, and although due notice has been given to him in accordance with the terms of section 66, he does not produce it.

2. When the existence, condition or contents have been proved to be admitted in writing by the party against whom the document is to be proved or by his representative-in-interest.

3. When the original has been destroyed or lost, or when the party offering evidence of its contents, cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time.[1]

4. When the original is of such a nature as not to be easily movable. This would include cases of bulky documents.

5. When the original is a public document within the meaning of section 74.

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6. When the original is a document of which the Evidence Act or any other law of the country permits certified copies to be given in evidence.

7. When the original consists of numerous accounts or other documents which cannot be conveniently examined in the court and the fact to be provided is the general result of the whole collection.

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