

# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

---

Volume 2 | Issue 3

---

2020

© 2020 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Legal Science and Innovation**, kindly email your Manuscript at [editor.ijlsi@gmail.com](mailto:editor.ijlsi@gmail.com).

---

# Legal Fictions: Do they fit the Juristic Reality?

---

PARITA MASHRUWALA<sup>1</sup>

## ABSTRACT

*One of the most important agencies involved in the development of law is legal fictions. Legal fictions aid the interpretation of Law. Legal fictions are permeated within the law. This article explains the meaning of legal fictions, the way in which such meanings are to be derived into logical conclusions and has further included the extent to which the legal fictions can be applied. In this article the author has tried to explain the difference between legal fiction and presumptions. One cannot imagine law without legal fictions. Without them it becomes almost difficult to interpret the Law. In this article author has given some instances of legal fictions varying from common law to statutory law.*

## I. INTRODUCTION

Professor Lon Fuller, an eminent legal philosopher, has, in his *Locus classicus* Legal fictions, equated fictions with “false” statements which lawyers, Judges and Jurists often make. He preferred to call fictions “white lies of the law”. From the definitions it appears that legal fiction is a fact assumed to be true by courts which, in fact, is not the case, but is used to enable the courts to resolve matters before it or to apply a legal rule. Lawyers and judges often use expressions like “it is presumed”, “it is implied” and such other phrases or expressions which tend to bring in fictions, in a case, almost unnoticed.

## II. HISTORICAL ORIGIN OF LEGAL FICTIONS:

In the development of law, legal fictions have, indeed, played one of the most important and highly beneficial role. They were and are used as crutches or aid to the legal reasoning. Legal fictions were brought into vogue by the Roman Praetor. In ancient Rome, Praetor was the judicial officer who had authority in the cases of equity.<sup>2</sup> “Fictio”, in old roman law, was a false averment endorsed by the Praetor. It signified a false averment on the part of the plaintiff which defendant was not allowed to traverse.<sup>3</sup> The object of such a fiction was to extend a right of action beyond its intended scope.<sup>4</sup> In other words, Praetor extended or

---

<sup>1</sup> Author is a student at SVKM'S Pravin Gandhi College of Law, India.

<sup>2</sup> Britannica, <https://www.britannica.com/topic/praetor> (last visited Oct. 25, 2020).

<sup>3</sup> Henry Maine, *Ancient Law*, <http://www.thelatinlibrary.com/law/maine.html> (last visited Oct.26, 2020).

<sup>4</sup> Dictionary of Greek and Roman Antiquities 855 (William Smith et al. eds., 3d ed., London, John Murray 1891).

modified his jurisdiction to entertain a case, which was otherwise not justiciable, by employing legal fictions and assuming a certain state of affairs to exist when it did not.

Apart from Roman Law, English Common law is abounded by the legal fictions. Sir Henry Maine an eminent British jurist in his classic work said that there are three agencies by which law is brought into harmony with society, they are Legal Fictions, Equity and Legislations. He has placed them in historical order.<sup>5</sup> Thus, one can conclude that legal fictions are in existence since before the concept of equity.

According to Lon Fuller “the influence of the fiction extends to every department of the jurist’s activities”<sup>6</sup>.

The concept of legal fictions was criticized by few scholars like Blackstone and Jeremy Bentham. Blackstone appreciated legal fictions as “highly beneficial and useful”<sup>7</sup> but while appreciating their utility, Blackstone did not praise legal fiction as a method to obtain correct results. To quote Blackstone, “while we applaud the end, we cannot but admire the means” of such legal fictions.<sup>8</sup> The other critic of Legal fictions is Jeremy Bentham. Over one and a half century ago, Bentham virulently condemned “fictions”, especially as “resorted to by the judges in order to supplement” the law and advocated straight forward statutory provisions in preference to fictions employed as aids to legal interpretation. In fact, Bentham was so severe on fictions that he likened them to syphilis running in the veins of the law.

### **III. INSTANCES OF LEGAL FICTIONS**

Law is permeated with legal fictions. Fictions galore in common law as well as statutory laws. Some of the instances of the legal fictions are discussed here.

#### Writ of Quo Minus

The early common law is filled with fictions, often utilized to satisfy common pleas or jurisdictional requirements. One of such legal fiction is Writ of Quo minus. Quo minus was a writ and a legal fiction. It allowed the exchequer to usurp the jurisdiction of common pleas. As such, the legal fiction worked by having the plaintiff as the king’s debtor and the allegation was made that the defendant was in custody of the king’s marshal as a result of which the plaintiff could not pay his debt by reason of defendant’s default. The use of the

---

<sup>5</sup> Henry Maine, *Ancient Law*, <http://www.thelatinlibrary.com/law/maine.html> (last visited Oct. 26, 2020).

<sup>6</sup> Lon L. Fuller, *Legal Fictions*, 25 *ILL. L. REV.* 363, 363 (1930).

<sup>7</sup> 3 William Blackstone, *Commentary on Laws of England*,

<sup>8</sup> Louise Harmon, *Falling Off the Vine: Legal Fictions and the Doctrine of Substituted Judgment*, <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=7300&context=ylij> (last visited on Oct.27, 2020).

writ continued into the 19th century, until all original writs were abolished in 1883.<sup>9</sup>

### Adoption

Section 12 of the Hindu Adoption and succession Act creates a legal fiction. According to section 12 “ An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family”<sup>10</sup>

Here the legal fiction has been created to give effect to the relationship between a child and his adoptive parents. This fiction confers a lawful right to the child adopted, to be considered and thereby treated as the real child born in the adoptive family for all purposes, including succession.

### Ignorance of Law is no excuse

Another example of legal fiction is a famous maxim *Ignorantia juris non excusat* which literally means “Ignorance of law is no excuse”. This maxim is based on a fiction that every person has knowledge of the law. The absence of such fiction would generate confusion making it impossible to enforce the law as everyone will claim his or her ignorance of law.<sup>11</sup>

### Separate Legal Existence

It is a well settled principle that the companies have a separate legal existence. In the thirteenth century, Pope Innocent IV espoused the theory of the legal fiction by saying that corporate bodies could not be ex-communicated because they only exist in abstract. This enunciation is the foundation of the separate entity principle.<sup>12</sup> The emphasis in this theory is that corporations are mere fictions introduced by the state authority for certain beneficial purposes of society or administration. Once the state has invested legal personality in a company it would ordinarily be difficult to prove that the crime has been committed and that the corporate personality of the company was used as a mere facade.

However, it does not mean that under no circumstances one can disregard the fictional or legal personality of an incorporated entity. In fact, courts have time and again pierce the corporate veil. The Supreme Court in the case of *Juggilal Kamlatpat V. CIT*<sup>13</sup> held that Income tax authorities were entitled to pierce the corporate veil and look at the reality of the

---

<sup>9</sup> Blog, <https://blog.shops-net.com/3144089/1/writ-of-quominus.html> (last visited on Oct.28, 2020).

<sup>10</sup> Hindu Adoption and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956(India).

<sup>11</sup> Jeremiah Smith, *Surviving Fictions II*, 27 YALE L.J. 317, 317 (1918).

<sup>12</sup> *Vodafone International Holdings BV V. Union of India*, (2012) SCC 613.

<sup>13</sup> *Juggilal Kamlatpat V. CIT*, (1969) 73 ITR 702.

transaction. In this case, the managing agency of a firm was terminated and a new company was formed which was an alter ego of the erstwhile firm. The compensation for the termination of the managing agency agreement given to the firm was treated as nothing but a managing agency remuneration as the managing agency agreement was taken to continue in the circumstance of the case. The Supreme Court held that the court had power to disregard the corporate entity if it was used for tax evasion or to perpetrate fraud or to circumvent tax obligations.

Thus, the facility of Incorporation which was designed for the betterment of society was not allowed to shield crime or fraud by abusing the provisions of law.

### Taxing Statues

In contemporary era, one of the greatest examples of legal fictions in statutory law is the taxing statute. Deeming provisions create legal fiction. Deeming provisions can be found in abundance in the taxing statues giving rise legal fictions. For example, Section 9 of the Income tax Act, 1961 creates a legal fiction. Generally, as per section 5 of the act, income would not really accrue or arise in India to a non- resident, but income is still deemed to accrue or arise in India if conditions laid down in section 9 are satisfied. Thus, section 9 establishes something which is not in existence unless deeming is invoked into play. This fiction comes into play only when the income is not charged to tax on the basis of receipt in India, as receipt of income in India by itself attracts tax whether the recipient is a resident or a non-resident. This fiction is brought in by the legislature to avoid any possible argument on the part of the non-resident vendor that profit accrued or arose outside India by reason of the contract to sell having been executed outside India.

However, not each and every deeming provision creates legal fictions. In this regard reliance is placed on the observation of Hon'ble Supreme Court in the case of Consolidated Coffee Ltd. & Another v. Coffee Board, Bangalore<sup>14</sup>:

*“The word “deemed” is used a great deal in modern legislation in different senses and it is not that a deeming provision is every time made for the purpose of creating a fiction. A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object the legislature has made such a deeming provision.”*

---

<sup>14</sup> Consolidated coffee Ltd. & Anr. V. Coffee Board Bangalore , (1980) 3 SCC 359.

#### IV. LEGAL FICTIONS DISTINGUISHED FROM PRESUMPTIONS

Fictions are “false” statements with a utilitarian content and serve specific purposes harnessed to the growth or development or interpretation of law. They should be distinguished from presumptions which are either conclusive or rebuttable in as much as the latter may possibly be true while the former is invariably false. Honourable Supreme Court in the case of *Bhuwalka Steel Industries limited and another V. Union of India and others*<sup>15</sup> held that:

*“One must understand the distinction between a legal fiction and the presumption of a fact. Legal fiction assumes existence of a fact which may not really exist. However, a presumption of a fact depends on satisfaction of certain circumstances.”*

And thus, held that Section 112 of the Indian Evidence Act does not create a legal fiction but provides for presumption.

According to Fullet, *“A distinction commonly taken between the fiction and the legal presumption runs something as follows: a fiction assumes something which is known to be false; a presumption (whether conclusive or rebuttable) assumes something which may possibly be true. This distinction is regarded as being reinforced, as it were, in the case of the rebuttable presumption because such a presumption assumes a fact which probably is true.”*<sup>16</sup>

One of the examples distinguishing legal fiction and presumption is under Indian Penal Code wherein ignorance of law is not an excuse is a legal fiction and a child below the age of 7 years being incapable of committing an offence under section 82 is a presumption of law.

##### **Logical Conclusions of Legal Fictions inescapable:**

However, one’s imagination must not boggle and must be prepared to take a fiction to its logical conclusion so that the purpose for which the fiction was introduced is achieved.

For this proposition of law reliance is placed on the case of *CIT V. S.Teja Singh*<sup>17</sup> wherein the Hon’ble Supreme Court observed that:

*“In construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate. The supreme court emphasized the fact that a construction which defeats the very object sought to be achieved by the legislature must, if possible, be avoided.”*

---

<sup>15</sup> *Bhuwalka Steel Industries limited and another V. UOI and ors.*, (2017) 5 SCC 598.

<sup>16</sup> Fullet, L.L., “Legal Fictions”, *Illinois Law Review* (Vol. XXV No. 4, December 1930).

<sup>17</sup> *CIT V. S.Teja Singh*, [1959] 35 ITR 408.

Likewise, in the case of Bhavnagar University V. Palitana Sugar Mill Pvt. Ltd. & ors.<sup>18</sup> it was held:

*"The purpose and object of creating a legal fiction in the statute is well-known. When a legal fiction is created, it must be given its full effect."*

Lord Asquith, J. In East End Dwelling Co. Ltd. v. Finsbury Borough Council,<sup>19</sup> stated the law in the following terms:

*"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*

It is now a well-settled principle that a legal fiction must be carried to its logical conclusion and full effect must be given to the legal fiction so as to achieve the purpose for which it was introduced. Once the legal fiction under the Act is taken to its logical corollary, the conclusion is inescapable.<sup>20</sup>

### **Legal Fictions not to be extended beyond their field or purpose:**

After realising the necessity of carrying fictions to their logical conclusion, at the same time it is necessary to remember that legal fictions must not be stretched beyond the purpose for which they are inducted. In other words, they must be confined to the field of their operation.

In this regard reliance is placed on a decision of the Hon'ble Supreme Court in the case of *Joint family of Udayan Chinubhai v. Commissioner of Income Tax Gujarat*<sup>21</sup> wherein it was observed that:

*"Though full effect must be given to a legal fiction, it should not be extended beyond the purpose for which the fiction has been created and all the more when the deeming clause, itself, confined as in that case, the creation of a fiction for only a limited purpose as indicated therein."*

The principle that a legal fiction must be limited to the purpose for which it is created was

---

<sup>18</sup> Bhavnagar University V. Palitana Sugar Mill Pvt. Ltd. & ors., (2003) 2 SCC 111.

<sup>19</sup> East End Dwelling Co. Ltd. V. Finsbury Borough Council, (1951) 2 All.E.R 587.

<sup>20</sup> Commissioner of wealth tax V. Trustees of HEH, (2003) 1 SCC 214.

<sup>21</sup> Udayan Chinubhai V. Commissioner of Income Tax Gujarat, AIR 1967 SC 762.

also reiterated by N. H. Bhagwati J. in Bengal Immunity Company Limited V. State of Bihar<sup>22</sup> where the learned judge observed:

*"A legal fiction presupposes the correctness of the state of facts on which it is based and all the consequences which flow from that state of facts have got to be worked out to their logical extent. But due regard must be had in this behalf to the purpose for which the legal fiction has been created."*

Thus, one must not stretch the meaning of a fiction beyond its legitimate field or engraft one fiction upon another unless the legislature has specifically provided for such a course of action. The twin principles of construction governing "legal fiction" include one requiring the fictions to be taken to their logical conclusion and the other confining them to their legitimate field - have to be harmonised dexterously.

## V. CONCLUSION

Legal fictions thus, have played an important role in bringing out such interpretation of law, encompassing the best interests of all people, resulting in development of the legal system. Laws are stable but society is progressive. Over a period of time some fictions flourished and others died because new laws were enacted and thus legal fictions are in advance of the law. Wherever fictions have been found to operate to the detriment of society or perpetrate crime, fraud or injustice, their field of operation has been cut down suitably by the courts so as to preserve the beneficial and progressive role of fictions in the field of law.

\*\*\*\*\*

---

<sup>22</sup> Bengal Immunity Company Limited V. State of Bihar, AIR 1955 SC 661.