E-lecture.

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UNIT:

CHAPTER :III.

FACTS WHICH NEED NOT TO BE PROVED .

SECTION 56: Fact judicially noticeable need not be proved.

SECTION 57: Facts of which court must take judicial notice.(both sections to be read together)

For establishing any fact in the court of law we need to prove that fact with the help of witnesses through proper procedure as is mentioned in evidence act. Any fact which is so notorious court takes Judicial notice of that fact. Judicial notice occurs when a trial court accepts a fact as true without requiring either party to introduce evidence supporting the noticed fact. Judicial notice is generally intended to save the parties, the court and the jury the time and effort associated with proving facts that are a matter of common knowledge. The party opposing the judicial notice should be given an opportunity to present evidence disputing the noticed fact. Moreover, in a criminal case, judicial notice cannot preempt the jury's authority to make its own factual findings. Phipson Evidence in 14th edition quotes,"Judicial notice is the cognizance taken by the court itself for certain matters which are so notorious or clearly established that evidence of their existence is deemed unnecessary.''It is mandatory to take judicial notice of facts which is mentioned in list of section 57 but discreation lies with court to

take judicial notice of any fact which is not mentioned in list of section 57 which differs from case to case.

The Court shall take judicial notice of the following facts:—

(1) All laws in force in the territory of India;]

(2) All public Acts passed or hereafter to be passed by Parliament 2[of the United Kingdom], and all local and personal Acts directed by Parliament 2[of the United Kingdom] to be judicially noticed;

(3) Articles of War for 3[the Indian] Army, 4[Navy or Air Force]; 5[(4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any law for the time being in force in a Province or in the State;]

(5) The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;

(6) All seals of which English Courts take judicial notice: the seals of all the 6[Courts in 7[India]], and all Courts out of 5[India] established by the authority of 8[the Central Government or the Crown Representative]: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by 9[the Constitution or an Act of Parliament of the United Kingdom or an] Act or Regulation having the force of law in 7[India];

(7) The accession to office, names, titles, functions, and signatures of the persons filling for the time being any public office in any State, if the fact of their appointment to such office is notified in 10[any Official Gazette];

(8 The existence, title and national flag of every State or Sovereign recognized by 11[the Government of India];

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Official Gazette;

(10) The territories under the dominion of 11[the Government of India];

(11) The commencement, continuance, and termination of hostilities between 11[the Government of India] and any other State or body of persons;

(12) The names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it;

(13) The rule of the road, 12[on land or at sea]. In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference. If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so, unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

"Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. No court therefore insists on formal proof , by evidence of notorious facts of history, past or present. The date of poll, the passing away of man of eminence and events that have rocked the nation need no proof and are judicially noticed. Judicial notice, in such matters, takes the place of proof and is of equal force. Infact , as a means of establishing notorious and widely known facts it is superior to formal means of proof''. Chief justice M.Monir. Judicial notice is a rule in the law of evidence that allows a fact to be introduced into evidence if the truth of that fact is so notorious or well known, or

so authoritatively attested, that it cannot reasonably be doubted. This is done upon the request of the party seeking to rely on the fact at issue. Facts and materials admitted under judicial notice are accepted without being formally introduced by a witness or other rule of evidence, and they are even admitted if one party wishes to lead evidence to the contrary. Judicial notice is frequently used for the simplest, most obvious common sense facts, such as which day of the week corresponded to a particular calendar date or the approximate time at sunset. However, it could even be used within one state to notice a law of another state—such as one which provides average baselines for motor vehicle stopping distances. Court taking judicial notice is different in civil and criminal trials. In Commonwealth Shipping Representative v P and O Branch Services, 1[1923] AC 191 at 212] Lord Sumner defined judicial notice as to refer facts which a judge can be called upon to receive and act upon either from his general knowledge of them, or from inquiries to be made by himself for his own information from sources to which it is proper for him to refer. It can be argued therefore that the doctrine of judicial notice binds courts to accept certain facts before it without need to have the same proved by the parties in evidence. This doctrine is further said to be the law's oldest doctrine and that it trace its origin from the common law tradition though some civil jurisdictions have adopted it. In this regard, the court in Hollard v Jones[1917] 23 CLR 149 held that the doctrine of judicial notice "*is based on the common law and its main concern is that whenever a fact is generally known that every ordinary person may reasonably presumed to be aware of it, the court "notices" it, either simpliciter or if it is at once satisfied of the fact without more, or after such information and*

investigation as it considers reliable and necessary to consider eliminate any reasonable doubt."

In Onkar Nath & Ors vs The Delhi Administration on 15 February, 1977

The courts below were justified in assuming without formal evidence that the railway strike was imminent on May 5. 1974 and that a strike intended to paralyse the civic life of the nation was undertaken by a section ofworkers on May 8, 1974. The purpose of s. 57 of the Evidence Act is to provide that the court shall take judicial notice of certain facts rather than exhaust the category of facts of which the court may in appropriate cases take judicial notice. Recognition of facts without formal proof is an act of expediency. Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. No court insists on a formal proof by evidence of notorious facts of history--past or present and events that have rocked the nation need no -roof and are judicially noticed. judicial notice in such matters takes place of proof and is of equal force. Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. No Court therefore insists on formal proof, by evidence, of notorious facts of history, past or present. The date of poll, the passing away of a man of eminence and events that have rocked the nation need no proof and are judicially noticed. Judicial notice, in such matters, takes the place of proof and is of equal force. In fact, as a means of establishing notorious and widely known facts it is superior to formal means of proof. Accordingly, the Courts below were justified in assuming, without formal evidence, that the Railway strike was imminent on May 5, 1974 and that a strike

intended to paralyse the civic life of the Nation was undertaken by a section of workers on May 8, 1974. In Debasish Kar Gupta And Anr. vs State Of West Bengal And Ors. on 19 July, 1999.By this writ petition the petitioners herein being two guardians of their two respective wards, viz., Anewsha Kar Gupta and Rupsa Basu, have challenged the decision of the Managing Committee of the secondary stream of Brahmo Balika Shikshalaya being the respondent No. 4 (hereinafter referred to as the said school) and a notice of the Headmistress dated 13 August, 1998 of the aforesaid stream for holding admission test of the wards of the petitioners. K.J.V. Sengupta, J,". I can take judicial notice that the State Government alone cannot make effective measure for imparting education to the children of this country. '' Section 57, it could only take such notice if unimpeachable books or documents are put before it or are otherwise accessible for its reference. Under the last paragraph of the section the Court is given the discretion to refuse to take judicial notice of any fact unless such person calling upon the Court to take judicial notice of such fact produces any such book or document as it may be necessary to enable it to do so. In this case no such book or document was placed before the lower Court for its reference to enable it to satisfy itself that such order or notification was in existence. In its discretion the lower Court refused to take judicial notice as not then the orders nor the documents showing the publication of such orders were placed before it. It is therefore impossible to say that the discretion exercised by the lower Court is either perverse or illegal. In the result all the appeals were dismissed.

SECTION 58: **Facts admitted need not be proved. —**No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed

to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Section 58 applies to admission in pleadings and not to evidentiary admissions(section 17 to 30).Admission in section 58 is conclusive and admission previously discussed i.e, evidentiary admissions are only relevant.

Facts admitted by the parties or their agents need not be proved. Section 58 lays down that if the parties to the proceeding or their agents agree to admit a fact at the hearing or which they agree to admit by writing under their hands before hearing or which by any rule of pleading in force at the time, they are deemed to have admitted by their pleading, it need not be proved. "They be themselves can be made the foundation of the rights of the parties." Even implied admission cannot be allowed to be withdrawn by way of amendment of written statement. Admission is the best evidence that can be relied upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous. Judicial admission means an admission made by a party in a judicial proceeding relating to an opposing party's assertion, or a failure to officially dispute an assertion. Generally, judicial admission is treated as an incontrovertible fact in the remaining court proceedings. Further, it relieves the opposing party from having to prove the admitted fact and bars the party who made the admission from disputing it. It is also called a solemn admission, admission in judicio, or true admission. 'pleadings' means plaint or written statement and an admission in pleadings means the admission of an averment by the opposite party. But a denial, in general terms imposes on the plaintiff an specifically alleged by a party in a plaint and are not denied by the other party, the party who fails to deny is deemed to have admitted the facts, which are alleged in the plaint. Order VIII, Rule 5 of CPC says that every

allegation of fact in the plaint, if not denied specifically or by necessary implications should be taken to be admitted except as against persons under disability.

Facts admitted by a party in a pleading are admissible against him without proof, but however, where he takes recourse to an amendment made in the pleading, the party cannot be permitted to go beyond his admission.

It is interesting to note that in Modi Spinning and Weaving Mills Company Ltd. And another v. Ladha Ram and Co., apex court opined that when an admission has been made in the pleadings, even an amendment thereof would not be permitted.

According to Section 58 if the parties to a proceeding or their agents agree to admit, they are deemed to have been admitted:

(a) At the hearing, or

(b) By writing before the hearing, or

(c) Which by any rule of pleading in force they are deemed to have admitted by the pleading, need not be proved by the opposite party.

Although under section 58 admission made by the parties and their agents need not require to be proved. Section 58 postulates that things admitted need not be proved. It may operate as estoppels(already discussed in llb 5th sem in section 17 etc.). Under Order 12, Rule 6 of the CPC the court is not bound by admission of the parties and their agents. The court may exercise its discretion to demand some other proof. In Mahendra Munilal Nanavati v Sushila Nanavati the Supreme Court held that there was no good reason for the view that the court cannot act on admissions of the parties in proceeding under the Act. Admission in civil cases may be accepted or rejected as a whole. Attempt to resile from admission by way of an amendment is not punishable. A will which was neither registered nor its alteration proved, was not allowed to be used in evidence even though it was

admitted. This section vests discretion in the court to require any fact so admitted to be proved otherwise than by such admission. Where a sub-tenant was kept by the tenant who admitted the fact, the court held that a mere admission is not enough, some further proof should be insisted upon. It is a settled law that the formal admission which was not contradicted is binding in subsequent proceeding. n Nagindas Ramdas v. Dalpatram Ichharam alias Brijram, for a three judge bench of the apex court has held,

"……. Admissions, if true and clear are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under section 58 of the evidence act, made by the parties or their agent at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions is fully binding on the party that makes them and constitutes a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions, which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."

Since pleadings include both plaint as well as written statement, the decision, in Nagindas Ramdas, makes it clear that an admission, in the pleadings, or judicial admissions in the pleadings or judicial admissions are fully binding on the party, which makes such an admission, and constitute waiver of proof thereof. The admission in the pleadings or judicial admissions would obviously include both express admission as well as implied admission.

In the backdrop of the decision in Nagindas Ramdas and Lohia Properties Pvt. Ltd., when the decision, in Modi Spinning and Weaving Mills Co. Ltd. Is carefully analyzed, there remains no escape from the conclusion that when an implied admission, made in a written statement, is binding on the party making the admission, such admission constitute waiver of proof and cannot be allowed to be

withdrawn by way of amendment of the written statement, particularly, when the admission seeks to displace a plaintiff from the admission made by the defendant in his written statement. A party having once denied cannot subsequently admit the fact. An admission of fact on a particular ground is not binding in a other case. Admission made in affidavit unless explained furnishes best evidence. It is well settled rule that admission made previously can be allowed to be explained in order to know that it was erroneous. In criminal cases the rules of evidence are that the prosecution is under duty to prove the case against the accused and that they should not rely upon admission made by him in the course of the trial for convicting him. An accused cannot be convicted upon the admission of his pleader. An admission by the accused in answer to question put by the court under section 313, Cr. PC cannot be utilized to fill up a gap in the evidence for the prosecution. Where a magistrate tries a warrant case as a summons case, a conviction on accuser's own admission without taking evidence and not framing charge, will be set aside. A judge cannot supplement the evidence from the stock of his personal knowledge was held in R (Giant's Causeway etc. Tramway Co.) v/s Antrim justices ,1895.Court can take judicial notice of constitutional matters e.g,the existence of title,flag etc. According to Proviso the Court by its discretion requires some order evidence to support the admitted facts. If the court is convinced that the admission was obtained by fraud, collusion or there is suspicion about admission it may require the fact to be proved otherwise than by such admission. In the matter of a petition for divorce by the husband on the ground of adultery of the wife, the proviso will enable the court to insist on proof even when adultery is admitted.The proviso to section 58 clearly gives discreation to court to require the facts admitted to be proved otherwise than by such view of this, it is quite clear that the court at no stage can act blindly or mechanically.Post mortem report filed by prosecution under section 294(1) of cr.p.c whose geniuineness is not disputed(i.e, without

proof of signature of the person by whom it purports to be signed) may be read as substantive evidence. This section dispenses with proof of every document when it becomes formal on its genuineness not being disputed.

SECTION 59.

Proof of facts by oral evidence.—All facts, except the 1[contents of documents or electronic records], may be proved by oral evidence..'' When witness gives evidence orally before court provided such statements fulfills the conditions laid down in section 3 of definition of evidence is called as oral evidence. According to Section 59 all facts except the contents of document including electronic records may be proved by oral evidence. It is cardinal principle that where documentary evidence is available it shall be produced as being it is the best evidence.Oral evidence does not always mean that the words spoken must come out from lips of the witness. There are other methods of communicating thought provided the courts permit. A statement may be made by signs when the witness is unable to speak, "a deaf-mute may testify by signs, by writing or through interpreter." In Chandrasekera alias Alisandiri v/s The King 1937 AC 220. A Woman whose throat had been cut was unable to speak owing to the nature of the wound.She was fully conscious and able to understand what was said to her, to make signs and to nod her head slightly.She was asked whether it was accused who had cut her throat, and she nodded her head. She died afterwards.It was held that evidence as to signs made in answer to questions put to her was admissible.In an election petition it was alleged that the votes were solicited on caste basis, it was held that the statement of the petition was not correct without substantive evidence. When the entire case is based on construction of insurance policy the question of adduction of any oral evidence would be irrelevant.Any type of evidence whether that is oral evidence,documentary evidence or evidence of deaf witness is to be properly appreciated and corroborated in the court of law.