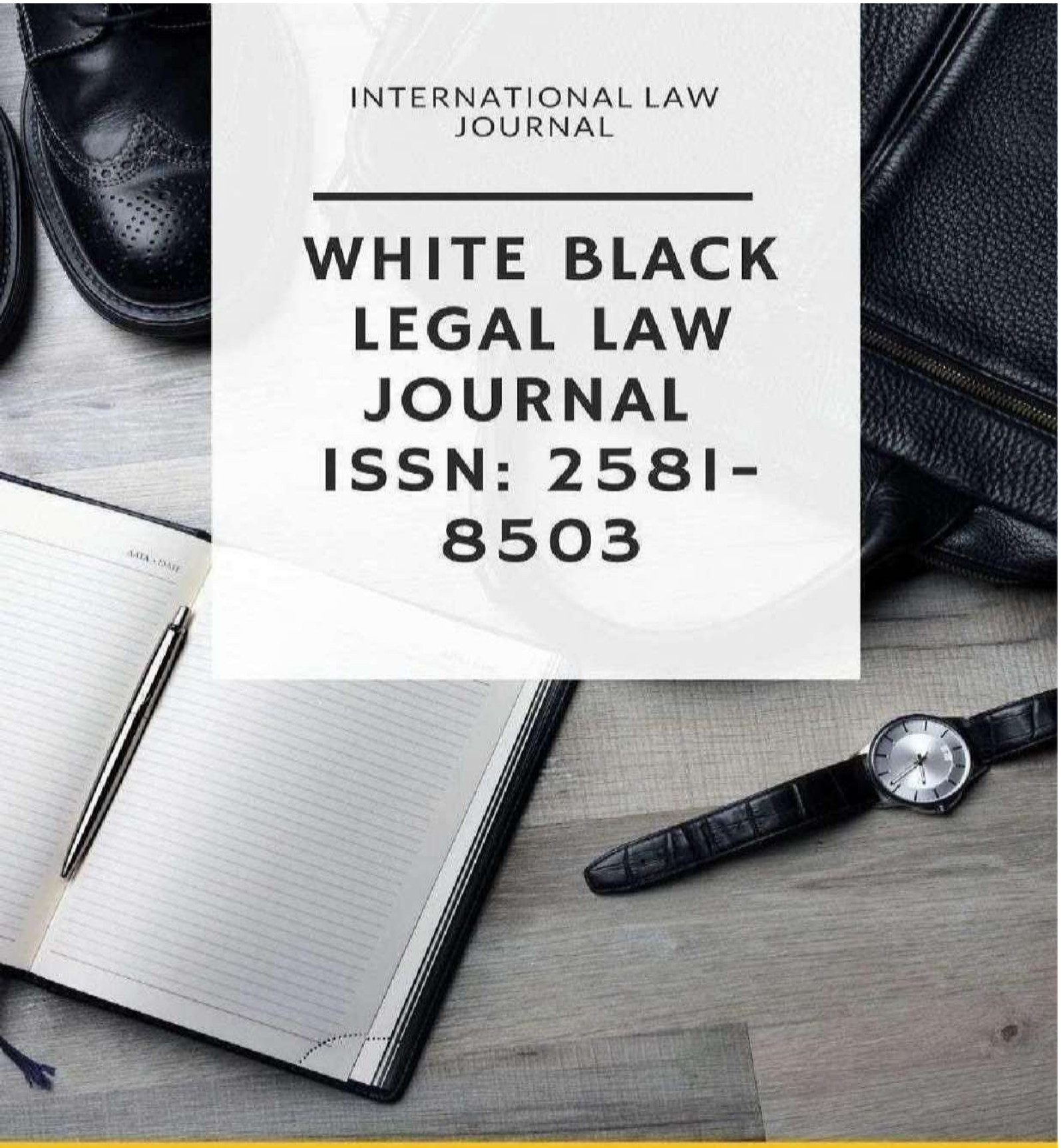

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

FACT VS FICTION: HOW LEGAL FICTION INFLUENCES PUBLIC'S PERCEPTION OF LAW.

CODE: PC-31

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FACT VS FICTION: HOW LEGAL FICTION INFLUENCES PUBLIC'S PERCEPTION OF LAW.

"Property exists by grace of the law. It is not a fact, but a legal fiction"

\- Max Stirner

ABSTRACT: -

Legal fiction is a concept in law where something is assumed to be true for legal purposes, even though it may not be factually true. It's a tool used to help apply laws in certain situations or to achieve specific legal outcomes. This concept influences public opinion regarding laws by serving the purpose of aligning the law with practical realities and individual circumstances, ensuring fairness and justice. The purpose of this paper is to understand the concept of legal fiction. It also gives us an insight about the roots of legal fiction and how some famous and ancient legal philosophers viewed the concept of legal fiction. It tells also tells us that with time the concept of legal fiction changed and its now used as tool in legal field to established a law that is according to public opinion. This can be seen in the enactment of laws such as the Safety of Rwanda (Asylum and Immigration) Act 2024, which highlights the ongoing relevance and adaptation of legal fictions within constitutional and administrative law. Also understanding legal concept with examples of legal fiction and some cases based on it.

INTRODUCTION[1]:-

Legal fictions are legal rules, concepts or assumptions premised on deliberately false, or rather counterfactual assertions. They generally operate in the process of legal creation, modification or adaptation and may be used to selectively implement legal change without necessitating a broader legal reform. But legal fictions are also codified into statutes; as statutory fictions, they are usually not false in fact but only establish a true-false dichotomy within the law. Moreover, legal fictions are also employed in more abstract terms. They can come to act as legal meta- phors or make more abstract legal constructs such as 'person' or 'organ' tangible. In such in- stances, however, their status as 'legal fictions' is controversial. In theoretical discourse, the

1 Admin, & Admin. (2023, June 27). THE CONCEPT OF LEGAL FICTION - Legal vidhiya. Legal Vidhiya -. https://legalvidhiya.com/the-concept-of-legal-fiction/

term 'legal fiction' is also used derogatively, to denounce a legal ideology that appears patently false. Literary narrative or literary works that deal with law in some capacities are also frequently referred to as 'legal fictions. The term is rendered problematic given its broad and often unreflective application to a variety of different phenomena and purposes, as well as a lack of proper distinction between theoretical and practical-normative discourse. Legal fictions are prevalent in, if not limited to common law jurisdictions, particularly England.

HISTORICAL BACKGROUND: -

In the study of historical origin, the study of which is descriptive, the evolution of legal fiction to change the perception of the general public towards law must be explored. In the law of ancient Greece, legal fictions were neither analysed nor defined. This deficiency, together with the paucity of examples of the use of legal fictions, renders the conceptual analysis of legal fictions impractical in the Greek context (Olivier, 1973, 3). In this sub topic we would be following the tread from the ancient, to modern legal systems, in an attempt to discover how legal fiction impresses upon and continues to impress upon societal understandings and acceptance of law.

EARLY DEVELOPMENT AND ANCIENT ROOTS[2]:-

Legal fictions, however, is not a modern concept, it has its roots from ancient civilisations. As we know, roman law was extremely sophisticated and complicated, so often in order to fill gaps and loose ends in legal structure, they used legal fictions. A good example of an existing notion of this sort was 'capitis deminutio, where a person's legal status was changed without changing the person. with reference to 'Roman Law'- Roman law by contrast, made extensive use of legal fictions, even if the Romans were not inclined towards theorizing on the concept and practical usage (Oliver 1973,3). Procedural and legal fiction substances were resolved by Ro- mans through a means of operation and was denoted by name "fictio". There were two critical reasons for the ubiquity of fictions in the Roman law.: In 2nd century BCE a historical change took place regarding legal resources: a after this historical change the 'praetor' was

2 Admin, & Admin. (2023, June 27). THE CONCEPT OF LEGAL FICTION - Legal vidhiya. Legal Vidhiya -. https://legalvidhiya.com/the-concept-of-legal-fiction/

granted the power not only to hear cases but also take legal actions, this power was understood as a tool to circumvent statute law, without affecting any lasting impact on the legal statute itself (Ando 2015, 319). In fourth book the Gaiu's "*Institutions*", he provided enumeration of various ex- emplary fictions, few of them are:-

- **Actio servana**: An individual asserting possession of an estate's property could initiate a legal action as a fictitious heir. In the absence of this legal fiction, a buyer or potential possessor of a deceased person's assets would not have had the right to pursue a direct action under statutory law. They would be unable to claim ownership of items that previously belonged to the deceased or demand payment of debts owed to the deceased. By adopting the fiction of being the heir, the individual could present their claim in court as though they were the rightful heir to the property in question (Gaius Institutes 4.34).

- **Actio rutiliana**: A buyer or holder of property from a bankrupt estate could also act under the pretense of being the heir. By adopting this pretense, they could initiate legal action in the name of the deceased former owner to reclaim goods or collect debts. However, the defendants would be required to make payments to the purchaser's name. Consequently, the opposing party would be compelled to compensate the purchaser for the deceased's assets or any outstanding obligations (Gaius Institutes 4.35).

- **Actio publiciana**: A fictitious usucaption may be permitted for a claim made by a party lacking the complete legal title. If a party had obtained possession lawfully but had not yet fulfilled the required duration for usucaption, they would be unable to pursue legal action for the item under statutory law upon losing possession. In this scenario, parties were permitted to utilize the legal fiction that they had indeed completed the usucaption period, allowing them to initiate a lawsuit as if they were (fictitious) owners (Gaius Institutes 4.36).

  According to "Ando", there was no significant controversy surrounding legal fictions within the Roman context that we know od today, despite their ubiquitous presence (Ando,2015, 299). Apparently, it was indeed less controversial to extend the scope of application of legal norm for an exceptional case by means of a fiction while leaving legal principles of Roman law: at- least seemingly undisturbed. Roman jurists never discussed the nature of, or endeavoured to explain or define the c0necpt of legal fic-

tions., but deliberately employed them only to the context that they could serve a practical purpose. And like ancient Hindu law- in texts like "Manusmriti" – legal fictions were also used to grapple with complex social and legal issues. For instance," Niyogya", the practise of allowing a childless widow to bear a child by another man to keep the line of one dead husband alive is probably an instance of legal action. The early examples show that legal fiction has been an instrument to reconcile the rigidity of the law with the intense humanity of human life.

MEDIAEVAL LEGAL SYSTEMS AND THE CANON OF LAW[3]:-

Legal fiction was of great Importance still during the mediaeval period through the use of the legal fiction in the course of canon law. Since the Catholic church was an important factor in European society, legal fictions were often used to handle its ecclesiastically, and civily issues. A well-known example is the doctrine of 'transubstantiation' which is the insistence that during the Eucharist bread and wine change into the body and blood of Christ when being consumed, but still do not change in 'species' (i.e. physical properties). In fine, this theological fiction enabled the Church to traverse complicated doctrinal and legal pursuits while making certain that that faith didn't erode. As a matter of law, the English common law system, too, utilised legal fictions in order to deal with issues of various legal challenges. Constructive possession might be considered as one of the most classic examples- a person who is not physically present can still be considered in possession of property. Tis legal fiction made the administration of justice possible by producing a practical way to solve disputes about property rights, so the law could arrive at the realities of everyday life.

THE EVOULUTION OF LEGAL THOUGHT DURING THE ELIGHTEMENT: -

The emancipation brought by the Enlightenment of the period of Reason, individual rights and the operation of law was immense.' Montesquiue', Bentham and Blackstone were legal scholars and philosophers who critically examined the use of legal fiction crafting our common view of legal action. Some saw legal fiction as a necessary evil, others that it was destructive of

3 introduction. Enzyklopädie Recht und Literature. (2022, October 22). https://lawandliterature.eu/index.php/en/content-en? view=article&id=42&catid=10#d1e545

system, integrity and transparency, However, while these criticisms were voiced these did not stop legal fiction from continuing to be a fundamental means for dealing with legal complications, Among the many examples of this period we might reflect is the notion of 'corporate personhood'. The idea that corporations are indeed in legal persons, who gave rights and obligations similar to those of natural persons. The very concept of this legal fictions has enor- mous affect for the modern economic or legal landscapes, affecting every part taxation and regulation, corporate governance, share price and, more controversially liability.

THE PERIOD OF MODERN ERA AND CONTEMPORARY LEGAL SYSTEMS[4]:-

In the modern age, a concept of legal fiction still stands as an important function of moulding public perceptions of law. One of the best examples is the principle of 'implied consent', used generally in diverse legal settings including the treatment of that is the severe medical conditions or through police stops. AN example of that is the legal fiction that driving on public roads implies consent to sobriety testing: that balance individual rights with public safety. AN example of the contemporary is the handling of the digital asset and intellectual property in the legal field. IN this legal digital age, the notion and those digital files, that are without physical form, may be owned form, transferred and Protect under the law is a legal fiction of increasing importance. According to William Blackstone (1723–1780), the judge and jurist whose Com- mentaries on the Laws of England (1765–69) continue to provide the best-known description of the doctrines of English law available, perceived fictions as "highly beneficial and useful" in furthering growth in legal doctrine and avoiding mischief in the application of general rules. Blackstone came to the defence of legal fictions in several passages of the Commentaries, based on historical precedent, by demoting their impact, and emphasizing their utility. Due to the maxim that no fiction shall extend to work an injury, fictions, he thought, operated to prevent mischief or to remedy an inconvenience that might result from the general rule of law (Blackstone 1979, III 43). Despite his favourable view on legal fictions, Blackstone was irritated

4 Boyte, A. N. (2014). THE CONCEITS OF OUR LEGAL IMAGINATION: LEGAL FICTIONS AND THE CONCEPT OF
DEEMED AUTHORSHIP [Journal-article]. Mississippi College School of Law, 17, 708–760.https://nyujlpp.org/wp- content/uploads/2014/11/Ng-Boyte-The-Conceits-of-Our-Legal-Imagination-17nyujlpp707.pdf

by the strange logic on which they depend and considered their tendency to confuse and annoy a drawback (Blackstone 1979, III 43). Blackstone thus conceded that fictions tend to result in an administrative or doctrinal "labyrinth", nevertheless he deemed these complications a necessary consequence of a long-established and complex system of jurisprudence (Blackstone 1979, III 268). Blackstone's generous and somewhat sentimental attitude towards legal fictions is perhaps best preserved in his well-known metaphor of the common law as a Gothic castle, "erected in the days of chivalry, but fitted up for a modern inhabitant", while to Blackstone it is a construction "magnificent and venerable" in its "useless" embellishments, both "cheerful and commodious" even if the approach is "winding and difficult" (Blackstone 1979, III 268).

According to Rudolf von Jhering: - A German legal scholar, Rudolf von Jhering (1818–1892) famously categorized legal fictions into historical and dogmatic, the former serving as instruments for changing the law, whereas the latter arrange and classify existing law, often in new or creative ways. The category of historic fictions is to some degree a deceptive one; while the fiction's purpose is changing the law, the specific means of operating this change by use of a fiction simultaneously sets out to conceal that very aspect (Demos 1923, 44). The best-known instance of a dogmatic fiction is a corporation's rendering as a person, whereby it can assume a nationality, be treated as alien enemies, or be granted diplomatic protection. There is no metaphysical consideration involved here, but a legal concept is merely extended in the scope of its application. To Jhering, the primary function of all fictions is just such an analogical exten- sion, thus he famously called them 'crutches' (Jhering 1924, 297). The foundation of this legal constructs serves their function by ensuring that technological advancements do not create vac- uum spaces which the law cannot fill and define rights and responsibilities clearly in this ever- changing landscape.

LEGAL FICTION AND PUBLIC PERCEPTION[5]:-

There is a complicated and multifaceted interaction of legal fiction and public perception. On the one hand, it allows us to simplify the complex, facilitating the public's understanding and its understanding and acceptance of the law as a legal fiction. Sometimes a legal fiction is the only way to maintain fundamental principle of justice and due process, as illustrated, for

5 Mar, M. D. (2015). Legal Fictions in Theory and Practice. springer.

example, by the legal fiction of 'innocent until proven guilty.' The main risk of legal fictions, however, is that they may conceal the real nature of legal principles and practises to the point of ambiguity and distrust. For example, 'separate but equal'—property of legal metaphor that was widely employed in the United States to justify racial segregation—speaks to the ways that legal constructs are deployed to perpetuate injustice and inequality. Eventually, through land mark case such as Brown v. In doing so, Board of Education helps us to see how the principles of justice and equity continue to fight for reconciliation with legal fictions.

EXAMPLES OF LEGAL FICTIONS: -

Chapter twelve Introduction to Fictions, the first place where the fiction of the corporation as a person of this specific kind is the one written by Lind's where the fiction of the corporation and the fiction of the 'personality of the ship', are discussed extensively. Schauer is a contributor to the book, who among others, gives an example of skepticism about the corporation-as-person being a creation of the human imagination. He posits that 'at least for some purposes' it is because money is one of the circumstances. For example, in 'Minorca,' a term which is also sanctioned not by words but by the law itself— (see Schauer, Chap. 6, below, p. 123, n. 17).

1. Referring to Vaihinger's examples which are, in turn, criticized by Kelsen for not falling into the fictional category is also helpful. For instance, Vaihinger takes his example from Article 347 of the German Commercial Code, where it is stated that 'a good is considered to be returned to the sender if it is returned no longer than the terms agreed were … and so … the receiver approves and accepts this good'. Kelsen (see Chap. 1 below, p. 9), however, thinks that there is no fiction as such, because what is being done here is (whether there is similarity with physical properties or not) the setting down a rule of conduct where 'neither actuality nor anything else is meant to be understood'. On the same note, the rule which makes the child of an adulterous wife become the husband's, says Kelsen, is invalid as a 'claim that under certain conditions the husband is the father … the law does not assume a matter of fact … Rather it only regulates for certain reasons and to certain ends, that under certain circumstances the husband has the same duties and rights in relation to a child which was conceived by his wife in an adulterous relation and that this child has the same duties and rights in relation to this husband as they exist between the husband and his own children which were conceived in wedlock'. (Kelsen, Chap. 1 below, pp. 10–11).

2. Bentham divides fictions into specific categories[6].. The first is the 'legal/moral false entities'. Examples are obligation and power. The next step is to use procedural or linguistic expedients, which courts use and are jurisdictional examples. Roman citizens are treated as if they were foreigners by these courts.? Roman law is responsible for this, and we have reached the third level. The final category. They're fallacies. We also have theoretical fictions. Several arguments have been made that judges are incapable of making laws, while the second category is our most intriguing focus. A significant number of authors have contributed to this publication in their respective fields. Jurisdictional fictions of this type are frequently mentioned. The case of "Mostyn V Fabrigas (1773)" is frequently mentioned, and Lord Mansfield pointed out that denying jurisdiction would leave the wrongful party without any legal recourse. This was one of the most important points in this context. He deduced that Minoca was a constituent of London. He concluded this action to serve the purpose of the action, as explained by Schuauer in Chapter 6. According to him, 'That Conclusion was plainly false'. But it did result in an equitable outcome. He goes further to say to "Schuer considers this to be a classic case of using fiction as if it were the means by which equity could have accomplished its goals in earlier times. The distinction seems to lie in whether the term is used by a theorist or scientologist. The way in which the term is used can determine whether it aligns with reality. A theorist or scientist who uses it may be deemed to be using a form of fiction. A judge however would not. This volume contains additional references, including those by Kletzer Schauer and Samuel. Additional information can be found here. Bentham's explanation of these Fiction is also discussed in greater detail in another place. In this volume, Roman law jurisdictional fiction is referred to as Ando. The insertion of Middlesex fictions and the latitat procedure is crucial. This method appeared to have been planned on false arrests and was very effective when used by the King's Bench. The bench's activity grew by ten times in one year. The period was 1560–1640.

6 Mar, M. D. (2015). Legal Fictions in Theory and Practice. springer.

3. A captivating group of illustrations falls within the category of' metaphysical'. me.? Facts are a part of Lobban's argument that courts treat events as if they had occurred at different times, or at some other time.". An entity which ceased to exist was acknowledged as having a continued ex- istence. (Lobban, Chap.10. 200). Lobban primarily uses examples from this area.'...? Dodderidge[7] J presented a list in 1625 that encompassed acceptance, con- nection, symbolism and re-engagement. Mitter, and presumption' (Lobban, Chap.10. 204). For example, the. Metaphysical treatment of a husband and wife as one person is an example.? Fiction of 'representation'. "The concept of remitter en- abled a method to be established." Additionally, A person who possessed both an old and a new title of property, but also had inherited ownership. Enter the new title that was faulty and allowed to be held by its owner. "The virtue of the older and more seasoned status" (Lobban, Chap.). 10. 205).

Conclusion: -

The goal of this paper is to understand what exactly legal fiction means and how it is used in the field of law and how it affects public perspective for the present law. Through a comprehensive analysis of historical contexts and specific examples, this study elucidates how legal fictions—defined as assumptions or constructs that are accepted as true for the sake of legal argument or reasoning—serve to shape not only the framework of legal discourse but also the collective consciousness regarding the law itself.

The findings underscore that legal fictions are not merely theoretical constructs; they actively influence public perception by framing legal realities in ways that can either empower or obscure the true nature of justice. Whether legal fictions are beneficial or harmful ultimately depend on whether they serve as support structures that make the language of the law more logical and accessible or as blindfolds that deprive the scholar, the practitioner, and the public from truly understanding the law and what it stands—or should right-fully stand—for. The problems that come with the use of legal fictions are real, and one must always recognize that the fiction

7 Mar, M. D. (2015). Legal Fictions in Theory and Practice. springer.

is a deviation from reality, even when many of us are so quick to attribute objective truth to that fiction, a mere intellectual construct that allows thought to "Manipulate and elaborate what is given. "The "formal processes of thought" and the "objec- tive reality of external events" are not the same thing. Forgetting that legal fictions are false pretences will cause problems to arise when we think that these fictions are real and forget that they are actually "the creations of our own minds." As long as the fiction of the deemed author is used with caution, there should be no fear of the danger Fuller warned of.

In conclusion, this research has elucidated the intricate relationship between legal fiction and public perception of law, revealing how historical narratives and fictional constructs shape so-cietal understanding of legal principles.

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