Indian Evidence Act

Synopsis

INDIAN EVIDENCE ACT 1872
ಭಾರತೀಯ ಸಾಕ್ಷ್ಯ ಅಧಿನಿಯಮ 1872

Latin word 'evidere' – means to show clearly, to make clear to the sight , to discover clearly, to make plainly certain, to ascertain, to prove.
ಸಾಕ್ಷ್ಯ ಎಂಬ ಪದದ ಅರ್ಥವು, ನಿಚ್ಚಳವಾಗಿ ಗೋಚರಿಸುವುದು, ನಿಖರವಾಗಿ ತೋರಿಸಿಕೊಡುವುದು, ನಿಶ್ಚಿತವಾಗಿ ಪತ್ತೆ ಹಚ್ಚುವುದು, ಸಿದ್ಧ ಮಾಡಿ ತೋರಿಸುವುದು, ಎಂಬ ರೀತಿಯಲ್ಲಿ ಅನ್ವಯಕಾರಿಯಾಗುತ್ತದೆ.

According to Blackstone, Evidence signifies that which demonstrates, make clear, or ascertains the truth of the facts or points in issue either on one side or the other.

Object: One great object of the Evidence Act is to prevent laxity in the admissibility of evidence, and to introduce a more correct and uniform rule of practice than was previously in vogue.
ಸಾಕ್ಷ್ಯ ಅಧಿನಿಯಮದ ಮೂಲ ಉದ್ದೇಶವು ಯಾವ ಯಾವ ಸಾಕ್ಷ್ಯಾಧಾರಗಳನ್ನು ಆಧರಿಸಿ ನ್ಯಾಯಾಲಯವು ತನ್ನ ನಿರ್ಣಯವನ್ನು ನಿರ್ಧರಿಸತಕ್ಕದ್ದು, ಮತ್ತು ಭಾರತ ಪ್ರದೇಶದ ಎಲ್ಲ ನ್ಯಾಯಾಲಯಗಳಲ್ಲಿ ಒಂದೇ ತೆರನಾದ ನಿಯಮಾವಳಿಯನ್ನು ಅನ್ವಯಕಾರಿಗೊಳಿಸುವುದು ಆಗಿರುತ್ತದೆ.

Principles of law of evidence:
1. evidence must be confined to the matter in issue;
2. hearsay evidence must not be admitted; and
3. best evidence must be given in all cases.

INTRODUCTION

Section 1: Short title, extent and commencement
It applicable to the whole of India except the Jammu and Kashmir and applies to all Judicial proceedings in or before any court including Court-Martial. It is not applicable to affidavits presented in any court or officer. Not applicable to proceedings before an Arbitrators

Judicial proceedings – An inquiry is judicial if the object of it is to determine a jural relations between one person and another, or a group of persons or between him and the community generally..

Section 3: Interpretation clause:
Court: includes all judges and Magistrates, and all persons except arbitrators, legally authorised to take evidence.
An Industrial Tribunal set up u/s 7 of the IDA is a court. The Coroner (A public official who investigates sudden, violent, and suspicious deaths) under the Coroners Act, 1871, is a Court.

‘Fact’ – means and includes-
1. anything, state of things, or relation of things, capable of being perceived by the senses;
2. any mental condition of which any person is conscious.

‘Relevant’: One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

‘Fact in Issue’ – means and includes-
any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceeding necessarily follows.

Explanation- Whenever, under the provisions of the law for the time being in force relating to civil procedure, any court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Document’-means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used or which may be used for the purpose of recording that matter.

“ Evidence” – means and includes-
1. all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;
such statements are called oral evidene.

2. All documents including electronic records produced for the inspection of the court;
such documents are called documentary evidence

Proved, Disproved and not proved:
Proved: a fact is said to be proved when, after considering the matter before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

Disproved: A fact is said to be disproved when, after considering the matter before it, the court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case to act upon the supposition that it does not exist.

Not Proved: A fact is said not to be proved when it is neither proved nor disproved

Section 4: “ May Presume” – Whenever, it is provided by this Act that court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.

“Shall Presume” :- Whenever, it is directed by this Act that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

"Conclusive Proof":- When one fact is declared by this Act to be conclusive proof of another, the court shall on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

Chapter II
Relevancy of facts

Section 5: Evidence may be given of facts in issue and relevant facts
- declared to be relevant.
Explanation- This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to civil procedure.

Section 6: Relevancy of facts forming of same transaction
"Doctrine of Res Gestae"
Ex: 1. A is accused of the murder of B by beating him. – said or done
2. A is accused of waging war
3. A sues B for a libel contained in a letter forming part of a correspondence.

Section 7: Facts which are the occasion, cause or effect of facts in issue.
Ex: 1. The question is, whether A robbed B. – fair with money
2. The question is whether A murdered B – struggle, marks on the ground

Section 8: Motive, Preparation, Conduct:-
Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceedings, or in reference to any fact in issue therein or relevant thereto, and conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1: The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2: When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant

Ramesh Baburao Devaskar V. State of Maharashtra (2008 SC)
it was held that proof of motive by itself may not be a ground to hold the accused guilty.

Section 9: Facts necessary to explain or introduce relevant facts:- Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an interference suggested by a

fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for the purpose.

Section 10:- Things said or done by conspirator in reference to common design.
Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable, anything said, done or written by anyone or such persons in reference to their common intention, after the time when such intention was first entertained by anyone of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Section 11:- When facts not otherwise relevant become relevant.
(i) if they are inconsistent with any fact in issue or relevant fat
(ii) if by themselves or in connection with other fats they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable

1. Alibi – is put forth by way of defence. It means the absence of the person charged with an offence from the place of occurrence at the time of the occurrence. (Gouri Shanker Sharma V. State of UP 1990 SC)

2. Non-access of husband to prove illegitimacy- 270 days
3. Crime was committed by a person other than that against whom it was alleged. Evidence admissible
4. Harm was inflicted by the affected person.

Section 12:- In suits for damages, facts tending to enable court to determine amount are relevant.
In suits in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded, is relevant.
- to increase or diminish
- Section 73 of Indian Contract Act- lays down the rule governing damages. S. 55of IEA lays down the conditions under which evidence of character may be given in civil cases.

Section 13:- Facts relevant when right or custom is in question.-
Where the question is as to the existence of any right or custom, the following facts are relevant-
(a) Any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied or which was inconsistent with its existence;

(b) Particular instances in which the right or custom was claimed, recognised, or exercised, or in which its exercise was disputed, asserted or departed from.
Right:- Gajju V. Fateh – Calcutta HC held that it includes only incorporeal rights. Bombay HC- Both corporeal and incorporeal rights including a right of ownership.

Custom:- Requisites of a valid custom
Ancient, continuous, Uniform, reasonable, certain, compulsory and not optional, peaceable, not immoral, and not contrary to justice, equity and good sense.

Section 14:- Facts showing existence of state of mind, or of body or bodily feeling.- Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill will or good will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or Body or bodily feeling, is in issue or relevant.

Explanation 1:- A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally but in reference to the particular matter in question.

Explanation 2:- But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Reg v. Prabhudas (1875) - West. J said: " The possession by an accused of several other article deposed to have been stolen would, no doubt, have some probative force on the issue….."

R V. Burrage (1997) Accused convicted of indecently assaulting his two grandsons and sentenced to 3 years imprisonment in 1996. He denied the allegation and appealed on the contention that the judge was wrong to admit evidence of magazines and his sexual proclivities(unmukate). It was held allowing the appeal, and quashing the convictions, that he magazines and accused's answers to related questions had no probative value except to propensity and evidence of them should not have been admitted.

Section 15: Facts bearing on question whether act was accidental or intentional-
When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Section 16. Existence of course of business when relevant-
When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

ADMISSIONS
Section 17: Admission defined –
An admission is a statement, [oral or documentary or contained in electronic form,] which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

John V. Returning Officer (1977 SC)
An admission, if clearly and unequivocally made, is the best evidence against the party making it and though not conclusive.

Sita Ram Bhau Patil V. Ramchandra Nago Patil (1977 SC) – it was held that an admission is relevant and it has to be proved before it become evidence

Admission must be clear, specific and unambiguous and in the own words of the person making it and has to be proved to be so.
An admission is a statement of fact, oral or written, which waives or dispenses with the production of evidence by conceding that the fact asserted by the opponent is true.
Admission by conduct.

In Sashidhara Kurup V. UOI (1994 Cr.L.J.)
it was held that the admissibility of plea of guilt can be determined only if the plea is recorded in the words used by the accused. The accused simply said that he was guilty of the charge. This did not constitute an admission of guilt.
Oral or documentary – Judicial or extra-judicial admission.
Admissions may be oral or contained in documents, ex: letters, depositions, affidavits, plaints, written statements, deeds, receipts, horoscopes.
Satish Mohan V. State of U.P. (1986 All) Admissions in pleadings are judicial admissions. They can be made the foundation of rights.

K.K. Chari V. R.M. Sheshadri (1973 SC) Dua J

Rajpati P. V. Kaushalya Kaur (1981 Pat)

Admissions may be implied.
Admissions in the written statement filed in some other case have been held by supreme court to be an important piece of evidence and an admission.
Voluntary – It must be voluntary

Section 18: 1. Admission- by party to proceeding or his agent.
2. Admissions by pleaders, solicitors and counsel.
3. Admissions by partners.
4. Admissions by guardians.
5. Admissions by co-defendants or co-plaintiffs
6. Admissions by persons from whom the parties have derived interest.

Section 19: Admissions by persons whose position must be proved as against party to suit.
Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, it such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Section 20: Admissions by persons expressly referred to by party to suit-
Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.
Ex: The question is, whether a horse sold by A to B is sound.
A says to B – "Go and ask C, C knows all about it". C's statement is an admission.

Section 21: Proof of admissions against persons making them, and by or on their behalf-
Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:-
(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons u/s 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.
(3) An admission may be proved by or on behalf of the person making it, if it relevant otherwise than as an admission.

Basant Singh V. Janki Singh , Queen-Empress V. Bhairab Chunder Chuckerbutty (1898

Mohd. Baksh V Crown (1914), Nazir Ahmad V. The King-Emperor (1936)

Pakala Narayana Swamy V. King-Emperor (1937) Pat.

Section 22: When oral admissions as to contents of documents are relevant-
Oral admission as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Shreedhar Govid Kamerkar V. Yesahwant Govind Kamerkar and Anr. 2006 SC

Section 22A: When oral admissions as to content of electronic records are relevant-
Oral admissions as to the contents of electronic records are not relevant, unless the genuiness of the electronic record produced is in question.
Section 23: Admissions in civil cases when relevant-
In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

interest rei publicae ut sit finis litium (it is for interest of the State that there should be an end of litigation)
"The law relating to communications without prejudice is of course familiar.."

Section 24: Voluntary confession:-
Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding:- A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise,

Law relating to confessions found in sections 24 to 30 of IEA and sections 162 and 164 of the Cr.P.C.

Section 24 excludes confessions caused by certain inducements, threats and promises.

Section 162 of CrPC forbids the use of any statement made by person to a police officer in the course of an investigation for any purpose at any enquiry or trial in respect of the offence under investigation

Veera Ibrahim V. St. of Maharastra to apply S.24 following facts must be established:

1. Statement in question is a confession;
   2. Such confession is made by accused person;
   3. It has been made to a person in authority;
   4. use of inducement, threat or promise;
   5. I,T, or P must in the opinion of court.
   Queen Empress V. Babu Lal 1884.
   Evidentiary value of confession:
   explained in Shankaria V. St. of Rajasthan1978 SC and applied double test:
   1. whether the confession was perfectly voluntary,
   2. if so, whether it is true and trustworthy.
   Classification of confessions:
   1. Judicial confessions; and
   2. Extra Judicial confessions.
   Judicial confessions are those which are made before Magistrate or Court in the course of Judicial Proceedings.
   Extra-Judicial Confessions are those which are made by the party elsewhere than before a Magistrate or Court.
   Pakala Narain Swami V. Emperor (1939)

   Section 25: Confession to police officer not to be proved –
   No confession made to a Police Officer, shall be proved as against a person accused of any offence.
   Section 26: Confession by accused while in custody of police not to be proved against him-
   No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.
   Section 27: How much of information received from accused may be proved
   Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Condition necessary for operation of Section 27
(a) discovery of materials
(b) Police custody
(c) so much of the information

Section 28: Confession made after removal of impression caused by inducement, threat or promise, relevant-

If such a confession as is referred to in Section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court, been fully removed, it is relevant.

Section 29: Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc –

If such a confession is otherwise relevant, it does not become irrelevant merely, because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

1. Promise of secrecy
2. Deception
3. Drunkenness
4. Confession in answers to Qn
5. Want of warning or caution

Section 30: Consideration of proved confession affecting person making it and others jointly under trial for same offence –

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is Proved , the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

Explanation – 'Offence' as used in this section, includes the abetment of , or attempt to commit the offence.

1. The accused must have been tried jointly.
2. The trial must be for the same offence.
3. The confession must affect the accused himself as well as other co-accused
4. It must be a confession.
5. The confession of guilt must be duly proved.

Kashmira Singh V. State of Madhya Pradesh 1952,

Section 31: may Admissions not conclusive proof, but estop – Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions here in after contained.

Section 32: Cases in which statement of relevant fact by person who is dead or cannot be found, etc, is relevant – Statements written or verbal, of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which, under the circumstances of the case, appears to the court unreasonable, are themselves relevant facts in the following cases:-

1. When it relates to cause of death.
2. or is made in course of business.
3. or against interest of maker.
4. or gives opinion as to the public right or custom, or matters of general interest. relationship.
5. or relates to existence or relationship.
6. or is made in Will or deed relating to family affairs.
7. or in document relating to transaction mentioned in S.13, cl. (a)
8. or is made by several persons and expresses feelings relevant to matter in question.

Uka Ram V. St. of Rajasthan (2001)

"*Nemo Moriturous Praesumitur Mentire"*

Queen Empress V. Abdullah

Krishna Ram Das V. The State (1964)

Om Prakash V. St. of Punjab(1993

Pakala Narayana Swami V. Emperor

Nijjam Farughi V. St. of WB 1998

Rattan Singh V. St. of Himachal pradesh 1997 SC. –

Khushal Rao V. St. of Bombay

1. Fitness certificate
   2. Magistrate, police, doctors can record the statement.
   3. It should be in their own language.
   4. It may be made of sign or verbal or written
   1. Language of dying declaration
2. Dying declaration recorded by Magistrates
   3. DD recorded by doctor
   4. DD recorded by police
   5. DD made to relatives.
   6.DD of rape victim :

Section 33 – Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.

1. when the witness is dead; or
2. when he cannot be found; or
3. when he is incapable of giving evidence.
4. when he is kept out of the way by the adverse party; or
5. when his presence cannot be obtained without unreasonable delay or expenses.

Section 34: Entries in the books of account including those maintained in an electronic form when relevant

Section 35: Relevancy of entry in public record made in performance of duty
An entry in any public or other official book, register or (record or an electronic record), stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or (record or an electronic record) is kept, is itself a relevant fact.

Section 36: Relevancy of statements in maps, charts and plans – state or central government-
section provides 2 kinds of maps:
1. published maps or charts generally offered for public sale; and
2. maps or plans made under the authority of the Government.

Section 37: Statements in Acts of Parliament of England or India.
Relevancy of statement as to fact to public nature (as to the existence of which the Court has to form an opinion) made in a recital contained in any Act of Parliament of the UK or in any Central or Provincial Act or a State Act are relevant facts.

Section 38: Law of a foreign country:
When the court has to form an opinion as to law of any country, - any statement of the law of the country contained in a book printed or published under the authority of the Government of such country and any report of a ruling of the Courts of such country, is relevant.

Section 39: How much of a statement is to be proved:
When any statement of which evidence is given-
(a) forms part of –
i. a longer statement, or
ii. A conversation, or
iii. An isolate document, or
(b) is contained in a document which forms part of a book, or
(c) is contained in part of an electronic record, or of a con
JUDGMENT OF COURTS OF JUSTICE,
WHEN RELEVANT
Section 40: Previous judgment relevant to bar a second suit or trial-The existence of any judgment, order or decree which by law prevents any court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such court ought to take cognizance of such suit, or to hold such trial.

- Res judicata
- nemo debet bis vexari prouna et eadem causa

General rules applicable to judgments
1. All judgments are conclusive of their existence as distinguished from their truth.
2. All judgments are conclusive of their truth in favour of the judge.
3. A domestic judgment in rem is, in Civil proceedings, conclusive evidence for or against all

persons, whether parties, privies or strangers of the matters actually decided.
4. A judgment in *personam* of a competent court in conclusive proof, in subsequent proceedings between the same parties or their privies, of the matters actually decided, as well as of the grounds or the decision where these can be clearly discovered from the judgment itself.
5. the judgments are never evidence of collateral matters.
6. All judgments are impeachable (on) certain grounds, eg.,
(a) that they were passed by the courts without jurisdiction; or
(b) that they were obtained by fraud or collusion; or (c) That they are not final; or
(d) That they are not on merits.

Section 41: Relevancy of certain judgment in probate, etc, jurisdiction
A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or take away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Kinds of Judgment :-
1. Judgment *in rem; and*
2. Judgment *in personam.*

Darshan Singh V. Kuldip Singh 1979 Punj

Scott V. Residence Ltd. 1956 Cal

Scope and principle of the section – S. 41 of the IEA deals with judgments in rem. Under this section, a judgment given by –
1. a probate court;
2. a matrimonial court;
3. an admiralty court; or
4. an insolvency court;
will be conclusive proof as to the legal character conferred on, or taken away from, any person or to which any person declared to be entitled. Scope and principle of the section – S. 41 of the IEA deals with judgments in rem. Under this section, a judgment given by –
1. a probate court;
2. a matrimonial court;
3. an admiralty court; or
4. an insolvency court;
will be conclusive proof as to the legal character conferred on, or taken away from, any person or to which any person declared to be entitled.

Section 42: Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41- relate to matters of a public nature relevant to the inquiry, but such judgments, orders

or decrees are not conclusive proof of that which they state.
Ex: Suit by trustees of a temple

Section 43: - Judgments, etc. other than those mentioned in section 40 to 42, when relevant –
1. the existence of such judgment is itself in issue; or
2. the judgment is relevant under some other sections of the IEA eg. Sections 11, 13 or 14.

Section 44: Fraud or collusion in obtaining judgment, or incompetency of court, may be proved. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40,41, and 42 and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or was obtained by fraud or collusion.

The adverse party can show against the admissibility of a judgment in a subsequent suit-
1. that it is irrelevant as not being between the same parties;
2. that it is not a judgment in rem;
3. that it does not relate to matter of public nature
4. that the court had no jurisdiction to deliver it; and
5. that the judgment was obtained by fraud or collusion

Section 45: Opinion of experts:- When the court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impression, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity or handwriting or finger impressions are relevant facts. Such persons are called experts.

State of Madhya Pradesh V. Sanjay Rai 2004 SC

State of HP V. Jai Lal 1999 SC

Proof of handwriting:
The handwriting or signature of the executant may be proved by the following methods:
1. by the opinion of an expert in handwriting; (45)
2. by calling as witness a person who wrote the document or saw it writing;

3. By the evidence of person acquainted with handwriting of the person by whom it is supposed to be written and signed; (S.47)
4. by comparison of the disputed handwriting with writing of the alleged writer. (73)

Medical opinion regarding age:- Margin of error in age ascertained by radiological examination is two years on either side. (Ram Prasad V. Shyamlal 1984)
Post-mortem
Mode of proof of thumb impression on a document
The opinion of fingerprint expert is relevant and admissible in evidence.
Ballistic experts

Section 45A: Opinion of examiner of electronic evidence.
When in a proceeding, the court has to form an opinion on any matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form. The

opinion of the Examiner of Electronic Evidence referred to in S.79A of the IT Act 2000 is a relevant fact.
Explanation: For the purposes of this section, an Examiner of Electronic Evidence shall be an expert.

Section 46: Facts bearing upon opinion of experts.
Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Folks v. Chadd 1872

Section 47: Opinion as to handwriting, when relevant.
When the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Section 47A: Opinion as to electronic signature when relevant - When the court has to form an opinion as to the (electronic signature) of any person, the opinion of the Certifying Authority which has issued the (Electronic signature Certificate) is a relevant fact.

Section 48: Opinion as to existence of right or custom, when relevant.
Section 49: Opinion as to usages, tenets etc.,, when relevant.
Ex: usage of trade, agriculture, mercantile custom.
Section 50: Opinion on relationship
Ex: Whether A and B were married
- treatment of their friends
-Whether A was the legitimate son of B

Section 51: Grounds of opinion
- An expert may give an account of experiments performed by him for the purpose of forming his opinion

CHARACTER WHEN RELEVANT

Section 52: In civil cases character to prove conduct imputed, irrelevant.
In civil cases, the fact that the character of any persons concerned is such as to render probable or improbable any conduct imputed to him, is irrelevant, except in so far as such character appears from the fact otherwise relevant.

Reputation means what is thought of a person by others and is constituted by public opinion.
Disposition: means the witness's opinion of character of a person.

Section 53: In criminal cases previous good character relevant –
In criminal proceedings, the fact that the person accused is of a good character, is relevant.

In criminal case, the evidence of good character of the accused is always relevant. A man's

character is often of the utmost importance in explaining his conduct and judging of his innocence or criminality.
Evidence of general reputation of the accused for the good character is relevant to the case for defence, if such evidence is applicable to the nature of the charge. Section 53: In criminal cases previous good character relevant –
In criminal proceedings, the fact that the person accused is of a good character, is relevant.

Section 54: Previous bad character not relevant, except in reply – In criminal proceedings, the fact that the accused person has a bad character is Irrelevant, unless evidence has been given, that he has good character, in which case it becomes relevant.
Explanation 1- This section does not apply to cases in which the bad character of any person is itself a fact in issue.
Explanation 2: A previous conviction is relevant as evidence of bad character

Ram Lakhan Singh V. State of UP 1977 SC

Section 55: Character as affecting damage-In civil cases, the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.
Explanation – In sections 52, 53,54 and 55 the word "character" includes both reputation and disposition; but, (except as provided in S. 54), evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

ON PROOF
FACTS WHICH NEED NOT BE PROVED

Section 56: Facts judicially noticeable need not be proved – No fact of which the court will take judicial notice need be proved

Judicial notice: S. 56 provides that no fact of which the court will take judicial notice need be proved and S.57 enumerated the facts of which the court must take judicial notice.

Section 57: Facts of which court must take judicial notice –
1. All laws in force in the territory
2. All public Acts passed- UK
3. Articles of War of Army, Navy, AF
4. The course of proceedings of Parliament of the UK or Constituent Assembly of India….

5. The accession and the sign manual of the sovereign for the time being of the UK of Great Britain and Ireland;
6. All seals
7. The accession to office, names, titles functions and signatures of the person filling for the time being any public office in any state
8. The existence, title and notional flag of every state or Sovereign recognised by 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 Gaz.

10. The territories under the domain of the Govt. of India.
11. The commencement, continuance and termination of hostilities….

12. The names of the members and officers of the Court-all advocates, attorneys,
13. The rule of the road on land or at sea.

LIC of India V. S.S. Srivastava 1997

Shiva Nath V. Union of India 1965 SC

AACES Hyderabad V. MC of Hyderabad 1995 AP

Section 58: Facts admitted need not be proved – No fact need 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.

Vallaru V. Kolpparathi 1994 AP

ORAL EVIDENCE

Section 59: Proof of facts by oral evidence:-
All facts, except the contents of documents or electronic records may be proved by oral evidence.

Radha Kant Yadav V. State of Jharkhand, 2003

Section 60: Oral evidence must be direct- Oral evidence must, in all cases whatever, be direct, that is to say –
- If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;
- if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;
-if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;
- if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds;

Hearsay evidence - means and includes-
a) a statement made by a person not called as a witness;
b) a statement contained or recorded in any book, document or record whatever, proof of which is not admissible on other grounds – Stephen.

Taylor: " It is all evidence which does not derive its value solely from the credit given to the

witness himself but which rests also in part on the veracity and competence of some other person".

Grounds for exclusion of hearsay evidence – The reasons for the exclusion of hearsay evidence are given below:-
1. The original declarant from whom the evidence is derived had not the sense of responsibility which a witness would have, as the statement was not made on oath or subjected to cross to test its truth.
2. In the course of repetition, there is a danger of exaggeration, distortion and depreciation of truth.
3. Its admission would open the door to fraud.
4. Such evidence has the tendency to protract legal enquiries.
5. Its admission would encourage the substitution of weaker for stronger proof.

Exception to the rule against hearsay – S.60 aims at the rejection of hearsay evidence. Therefore hearsay, as a general rule, is excluded from legal evidence. But this general rule is subject to the following important exceptions, in which cases hearsay evidence is admitted on the grounds of necessity or expediency:-
1. Admissions and Confessions (Ss. 18-24).
2. Statements made by persons who cannot be called as witnesses (Ss. 32 & 33).
3. testimony in judicial proceeding.
4. Statements in books of accounts and in public records (Ss. 34 & 35).
5. Opinions of experts expressed in treatises offered for sale.

DOCUMENTARY EVIDENCE
Section 61: Proof of contents of documents – The contents of documents may be proved either by primary or by secondary evidence.
Section 3:- "Document"
"Content of documents" means what the document states and not the truth of what the document states (Om Prakash Berlia V. Unit Trust of India)

Om Prakash Berlia V. Unit Trust of India 1983. Bom.

Achuthan Pillai V. Marikar (Motors) Ltd. 1983

L.I.C. of India V. Narmada Agarwalla 1993

Section 62: Primary evidence – Primary Evidence means the documents itself produced for the inspection of the court.
Explanation 1: Where a document is executed in several parts, each part is Primary Evidence of the document:
Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is Primary Evidence as against the parties executed it.

Explanation 2: Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is Primary Evidence of the contents of the

rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Lord Esher in Lucus V. Williams (1892)

-Original document itself produced for inspection of court.
- Documents executed in several parts – counterpart.
-Documents made by uniform process –printing, lithography, cyclostyle or photography .

Section 63: Secondary evidence- means and includes:
(1) certified copies given under the provision hereinafter contained;
(2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(3) Copies made from or compared with the original;
(4) counterparts of documents as against the parties who did not execute them;
(5) oral accounts of the contents of a document given by some person who has himself seen it.

Rup Chand V. Mahabir Prasad 1956

Pratap Singh V. St. of Punjab 1964

Section 64: Proof of documents by primary evidence –
Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Joginder Kaur V. Surjit Sing 1993

Amar Singh V. Tej Ram 1982 P&H

Section 65: Cases in which secondary evidence relating to documents may be given –
(a) when the original is shown or appears to be in the possession or power –
of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;
(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) 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;
(d) when the original is of such a nature as not to be easily movable;

(e) When the original is a public document within the meaning of S.74.
(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India to be given in evidence;
(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court and the fact to be proved is the general result of the whole collection.

Krishna Kishori Chowdhrani V. Kishori Lal Roy 1887 Cal.

Stokes' Anglo-Indian Codes,

Section 65-A: Special provisions as to evidence relating to a electronic record.
Section 65-B: Admissibility of electronic records. –which is printed on a paper, stored, recorded or copied shall be deemed to be also a document

Conditions: 1. computer was used regularly to store or process information.
2. during the said period, information was regularly fed into the computer in the ordinary course of the said activities.
3. the computer was operating properly.

4. The information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

State (NCT of Delhi) V. Navjot Sandhu 2005 SC

State of Maharashtra V. Dr. Praful B. Desai

Section 66: Rules as to notice to produce – Secondary evidence of the contents of the documents referred to in S. 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases or in any other case in which the court thinks fit to dispense with it:-
1. when the document to be proved is itself a notice;
2. When, from the nature of the case, the adverse party must know that he will be required to produce it;

3. When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
4. When the adverse party or his agent has admitted the loss of the document;
5. when the person in possession of the document is out of reach of, or not subject to the process of the court.

Surendra Krishna Roy V. Mirza Mahammad Syed Ali Matwali 1935.

Section 67: Proof of signature and handwriting of person alleged to have signed or written document produced
If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Narbada Devi Gupta V. Birendra Kumar Jaiswal 2004

Section 67 A: Proof as to Electronic signature – Except in the case of a secure (electronic signature), if the (electronic signature) of any subscriber is alleged to have been affixed to an electronic record the fact that such (electronic signature) is the (electronic signature) of the subscriber must be proved.

(Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.)

Smt. Rameshwari Devi V. Shyam Lal, 1980

Section 69: Proof where no attesting witness found – If no such attesting witness can be found, or if the document purports to have been executed in the UK, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person Executing the document is in the handwriting of the person.

Following conditions are to be satisfied:
1. if no attesting witness is alive; or
2. if all or any of the attesting
witnesses who is alive, is incapable of giving evidence; or
3. if no attesting witness can be found; or
4. If the document purports to have been executed in the UK.

Uttam Singh V. Hukum Singh

Section 70: Admission of execution by party to attested document –The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

-attesting witness need not be called to prove.

Section 71: Proof when attesting witness denies the execution –If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

Section 72: Proof of document not required by law to be attested – An attesting document not required by law to be attested may be proved as if it was unattested.

Khurijam O.T. devi V. A.A. Singh, 1982

Section 73: Comparison of signature, writing or seal with others admitted or proved .
In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

State of Haryana V. Jagbir singh 2003 SC

Rakesh Bisht V. C.B.I. Delhi HC

Section 73A : Proof as to verification of digital signature –
1.that person or the
Controller or the Certifying Authority to produce the Digital Signature Certificate.
2. Verification of signature

PUBLIC DOCUMENTS
Section 74: Public documents – The following documents are public documents:
1. documents forming the acts, or records of the acts –
(i) of the sovereign authority;
(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the commonwealth or of a foreign country.
2. Public records kept in any state of private documents.
Kinds of documents – Documents are divided into the following two classes:
(1) Public documents and
(2) Private documents

-An electoral roll is public document. It requires no formal proof. Certified copies are enough proof. (Naladhar Mahapatra V. Seva Dibya 1991 Ori.)
- Marriage register is a public document. Certified copies are enough proof.
-Medico-legal report – not a public document
-School register – Age.
-Records of nationalised banks are public documents.
- Orders of civil court, FIR.
-Published Scheme under Statute – Public documents.

Private Documents:
-Income-tax return is not a public document. (Bombay HC)
- Certified copies of assessment or dues and order sheets are inadmissible in evidence.
(Calcutta HC)
- Income-tax return or a statement filed in support of it is a public document and certified copies will be admissible under S. 65(c).
- Memorandum of Association of a company is a public document
-Wakf deed and sale deep – Pvt. Documents.

Section 75: Private documents –
All other documents are private.

Contract, Power, letter and deed, etc. are private documents. Sale-deed is not a public document as it does not come within any of the descriptions of a public document given in section 74.

Section 76: certified copies of public documents- Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the payment of the legal fees therefor, together with a certificate written at the foot of such a copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title and shall be sealed, whenever such officer is authorised by law to make use of a seal; and such copies so certified shall be called certified copies.

Explanation – Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

Khadim Ali V. Jagannath

C. Thimmappa v. Mariyappa 2008

Tulsiram Sanganeria V. Anni Bai 1963

Section 77: Proof of documents by production of certified copies – Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Collector of Gorakhapur v. Ram Sunder
The certified copies are, by statute, deemed to be originals.

Section 78: Proof of other official documents –
1.Acts, orders or notifications of the Central Government..
2. the proceedings of the legislatures..
3. proclamations, orders or regulations issued by Her Majesty..
4. the acts of the Executive or the proceedings of the Legislature of a foreign country, Journals …

5. The proceedings of a municipal body in a State- by a copy of such proceedings, certified by the legal keeper or by a printed book.
6. public documents of any class in a foreign country

Presumptions as to documents

Section 79: Presumption as to genuineness of certified copies – The court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of J&K who is duly authorized thereto by the Central Govt.

This section proceeds upon the maxim *omnio praesumuntur rite esse acta (* all acts are presumed to be rightly done). Ss. 79 to 90 are founded upon this principle.

Mohmedbhai rasulbhai Malek V. Amirbhai Rahimbhai Malek 2001 Guj

Bishwanath V. R. 1948

Section 80: Presumption as to documents produced as record of evidence – Whenever any document is produced before any court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence or to be a statement or Confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by judge or Magistrate or by any such officer as aforesaid, the court shall presume-

That the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.

A Dying declaration, which has been recorded by a Magistrate, is admissible in evidence without the Magistrate being called to prove it.

Ramadhar V. State of Bihar 1986
Where a chart of test identification is not proved by the Magistrate who held the Test of Identification parade and full particulars of the identification are not given by him, such report is no evidence of the identification. Conviction of accused on basis of such report is illegal.

Section 81: Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.
The Court shall presume the genuineness of every document purporting to be the London Gazette or any Official Gazette, or the Government Gazette of any colony, dependency, or possession of the British Crown, or to be a newspaper or journal, or to be a copy of a private Act of Parliament of the UK printed by the Queen's Printer and or every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Harbhajan Singh V. State of Punjab 1961

Laxmi Raj Shetti v. State of T.N. 1988 SC

Ravinder Kumar Sharma V. State of Assam 1999 SC

Binod Kumar Jain v. Gauhati Municipal Corpn. 1994

Section 81A: Presumption as to Gazettes in electronic forms.
The court shall presume the genuineness of every electronic record purporting to be the Official Gazette, or purporting to be the official Gazette, or purporting to be electronic record directed by any law to be kept by any person, if such electronic record is kept substantially in the form required by law and is produced from proper custody.

Section 82: Presumption as to document admissible in England without proof of seal or signature.
When any document is produced before any court, purporting to be a document which, by the

law in force for the time being in England or Ireland, would be admissible in proof of any particular in any court of justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims;

Section 83: Presumption as to maps or plans made by authority of Govt.
The Court shall presume that maps or plans purporting to be made by the authority of the Central Government or any State Government were so made, and are accurate; but maps or plans made for the purpose of any cause must be proved to be accurate.
Section 84: Presumption as to collections of laws and reports of decisions.
The court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country;
and of every book purporting to contain reports of decisions of the courts of such country.

Section 85 : Presumption as to Power of Attorney –
The Court presume that every document purporting to be a Power of Attorney, and to have been executed before, and authenticated by a Notary Public or any Court, Judge, Magistrate, India Counsel or Vice-Counsel, or representative of the Central Government, was so executed and authenticated.

Section 85A: Presumption as to electronic agreements-
The court shall presume that every electronic record purporting to be an agreement containing the (electronic signature) of the parties was so concluded by affixing the (electronic signature) of the parties.

Section 85B: Presumptions as to electronic records and (e-signature)-
1. In any proceedings involving a secure electronic record, the court shall presume unless contrary is proved, that the secure electronic record has not been altered since the specific point of time to which the secure status relates.
2. In any proceedings, involving secure (electronic signature), the court shall presume unless the contrary is proved that-

a) the secure (electronic signature) is affixed by subscriber with the intention of signing or approving the electronic record;

(b) Except in the case of secure electronic record or a secure (electronic signature), nothing in this section shall create any presumption relating to authenticity and integrity of the electronic record or any (electronic signature).

Section 85C: Presumption as to (Electronic Signature Certificate):
The Court shall presume, unless contrary is proved, that the information listed in a (electronic signature certificate) is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.

Section 86: Presumption as to certified copies of foreign judicial records:-
The Court may presume that any document purporting to be a certified copy of any judicial record of any country and not forming part of India or of Her Majesty's dominions is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Central Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Section 87: Presumption as to books, maps, and charts.
The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.

Section 88: Presumption as to telegraphic messages.
The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to person by whom such message was delivered for transmission.

Sri Kishore Chandra Singh Deo V. Babu Ganeshi Prasad Bhagat 1954 SC.

Pisipati Punnakotiah V. Kallapalli Kilikamba 1967.

Section 88-A: Presumption as to electronic messages:
The Court may presume that an electronic message forwarded by the originator through an electronic mail server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; but the Court shall not make any presumption as to the person by whom such message was sent.

Explanation: for the purposes of this section, the expression "addressee" and "original" shall have the same meanings respectively assigned to them in cl. (b) and (za) of sub-section (1) of S. 2 of the IT Act 2000.

Section 89: Presumption as to due execution, etc. of documents not produced.
The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.

Section 90: Presumption as to documents 30 years old-
Where any document, purporting or proved to be 30 year old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation- Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom they would naturally be; but no custody is improper if it

is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

Basant V. Brijraj 1935 the court held that the presumption enacted in section 90 of the Evidence Act can be raised only with reference to original documents and not to copies thereof.

Harihar Prasad Singh V. Munishi Nath Prasad 1956 SC The SC has held that there is no presumption of genuineness in favour of certified copies of documents u/s 90 nor does this section authorize the raising of a presumption as to the existence of authority of an agent to act for another.

Kirpal Singh V. Aas Kaur 1997 P&H

S.90-A: Presumption as to electronic records 5 years old:
Where any electronic record, purporting or proved to be 5 years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the (electronic signature) which purports to be the (electronic signature) of any particular person was so affixed by him or any person authorised by him in this behalf.

Explanation: Electronic records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable also.

EXCLUSION OF ORAL BY
DOCUMENTARY EVIDENCE
Section 91: Evidence of terms of contracts, grants and other dispositions of property reduced to form of document – When the forms of contract or of a grant or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in case in which secondary evidence is admissible under the provisions hereinafter contained.
Exception 1: When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

Exception 2: Wills admitted to probate in India may be proved by the probate.

Explanation 1: This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2: Where there are more originals than one, one original only need be proved.
Explanation 3: The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

It is a cardinal rule of evidence that where written documents exist, they shall be produced as being the best evidence of their own contents.

Section 92: Exclusion of evidence of oral agreement : When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to , or subtracting form, its terms:
Proviso 1: Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.
Proviso 2: The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document.
Proviso 3: The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.
Proviso 4: the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to registration of documents.
Proviso 5: Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved provided that the annexing of such incident would not be repugnant to, or inconsistent with the express terms of the contract.
Proviso 6: Any fact may be proved which shows in what manner the language of a document is related to existing facts.

The grounds of exclusion are :
1. that to admit inferior evidence when the law requires superior would be to nullify the law; and
2. that when the parties have deliberately put their agreement into writing, it is conclusively presumed between themselves and their privies that they intended the writing to form a full and final statement of their intentions, and one which should be placed beyond the reach of future controversy, bad faith, or treacherous memory.

T.N. Electricity Board V. N. raju Reddiar (1996)

Benami transaction:
Richard taylor V. Rajah of Parlakimadi (1909)
This section applies only to the terms of a transfer and does not preclude the admission of any evidence to show the benami character of the transaction.

Niranjan Kumar V. Dhyan Singh (1976 SC), Raj Ballav Das V. Haripada (1985 Cal)

Balkishen V. Legge, Sathyanarayan Shah V. Star Co. (1984)

Hanif-un-nisa V. Faiz-un-nisa (1911 Bom), Badhawa Mal V. Hira (1883)

Section 93: Exclusion of evidence to explain or amend ambiguous document – When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Section 94: Exclusion of evidence against application of document to existing facts – When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was meant to apply to such facts.

Section 95: Evidence as to document unmeaning in reference to existing facts – When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense. Section 95: Evidence as to document unmeaning in reference to existing facts – When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

Section 96: Evidence as to application of language which can apply to one only of several persons.
When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

Section 97: Evidence as to application of language to one of two sets facts, to neither of which the whole correctly applies – When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence maybe given to show to which of the two it was meant to apply.

Section 98: Evidence as to meaning of illegible character, et., - Evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

Section 99: Who may give evidence of agreement varying terms of document – Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

Section 100: Saving of provision of Indian Succession Act relating to wills – Nothing in this chapter contained shall be taken to affect any of the provisions of the Indian Succession Act as to the construction of Wills.

Section 101: Burden of proof- Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. 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 term Burden of Proof is used in two distinct meanings-
1. The burden of establishing a case, whether by preponderance of evidence or beyond a

reasonable doubt, and
2. The burden of introducing evidence.

.(Drigpal Singh V wife of Laldhari ojha (1985), T.S. Kotagi V. Tahasildar (1985)

Madhusudan Das V. Narayani Bai (1983), Jarnail Singh v. State of Punjab (1996)

M.S. Reddy V. State Inspector of Police, A.C.B., Gurubachan Singh V. State of Maharashtra (1993)

Statutory provision imposing burden of proof on accused
Plea of Alibi – one who take the plea
Food Adulteration- Food Inspector - sample
Election Petition- one who makes allegation
Constitutionality- one who challenges
Reasonableness of restrictions- State has to prove
Matrimonial cases- preponderance of probability
Adoption- one who challenges the adoption
Benefit of doubt- should be given to the accused.
Blank Signature- initially on plaintiff
Motive – civil – Plaintiff, Criminal – Prosecution
Proof of Good faith –
Burden of Proof and Onus of Proof

in Robins V. National Trust Co. (1927)

Section 102: On whom burden of proof lies – the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Shifting of onus of proof:
The phrase "burden of proof" has two meanings
(1) the burden of proof as a matter of law and pleading, and
(2) the burden of establishing a case.
The first one is fixed as a question on the basis of the pleadings and is unchanged during the entire trial.
The second one is not constant but shifts as soon as the party adduces sufficient evidence to raise a presumption in his faviour. (Kundan Lal V. Custodian, Evacuee Property 1961)

Raghavamma V. Chenchamma 1964, Krishna S v. State of Karnataka (1998)
Periyaswamy V. Inspector, vigilance and Anti Corruption (1999 Mad)

Chuni Kuar v. Udai Ram (1883), Ram Chand v. Chhunnu Mal (1925)

Section 103: Burden of proof as to particular fact – the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Section 104: Burden of proving fact to be proved to make evidence admissible –The burden of proving any fact necessary to be proved in order to enable a person to give evidence of any other fact is on the person who wishes to give such evidence.

Principle: Whenever it is necessary to prove any fact, in order to render evidence of any other fact admissible, the burden of proving that fact is on the person who wants to give such evidence.
Kalooram V. Mangilal (1984)
A person seeking to recover possession has to prove that he was dispossessed within 12 years.
Hoovayya K. Shetty V. Renuka (1984)
A father admitted that the girl whose legitimacy was in question was his daughter but that she was illegitimate. There being a presumption of legitimacy, burden lay upon father to prove otherwise.

Res Ipsa Loquitur:
Sumati Debnath V. Sunil Kumar Sen (1994)
Where the vehicle suddenly went off the road, overturned and killed the victim, doctrine of *res ipsa loquitur* was attracted and onus was shifted from the claimant to the driver to prove his non-negligence or vigilance

Section 105: Burden of proving that case of accused comes within exceptions –
When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the IPC, or within any Special exception or proviso contained in any other part of the same code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances.

Solanki C.B. V. Srikanta Parashaar (1997), Subodh Tiwari V. State of Assam (1988)

Babu Lal V. State of UP (1960), Sharad V. State of Maharashtra (1984 SC)

Right of Private Defence, Plea of insanity, Presumption of innocence

Woolmington V. DPP (1935)

Section106: Burden of proving fact especially within knowledge When any fact is especially within knowledge of any person, the burden of proving that fact is upon him.

This section applies only to parties to a suit.(Mahabir Singh V. Rohini Ramanadhwaj Prasad Singh (1933)
Principle: Where the knowledge of the subject-matter of an allegation is peculiarly within the province of one party to a suit the burden of proof must lie there also.
Burden of proving negligence and res ipsa loquitur – on plaintiff
Professional qualification – Doctor …
Taking away dead body –
Dowry death
Murder of wife
Death in Custody
Maintenance, payment of rent, Alibi.

Section 107: Burden of proving death of person know to have been alive within 30 years
When the question is whether a man is alive or dead, and it is shown that he was alive within 30 years, the burden of proving that he is dead is on the person who affirms it.

Section 108: Burden of proving that a person is alive who has not been heard of for 7 years –
Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

State of Punjab v. Bachan Singh (1956), Presumption of survivorship- Burden of proving death [Section 107].
Surjit Kaur V. Jhujhar Singh (1980) , R. V. Lumley (1869), (H.J. Bhagat V. L.I. Corporation (1965)

Parikhit Muduli V. Champa Dei (1967) ,

Section 109: Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.
When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

Partners:
Liladhar ratanlal v. Holkarmal (1958 Bom)

Landlord and tenant:
Rango Lall Mundal V. Abdool guffoor (1878 Cal

Section 110: Burden of proof as to ownership-
When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Ram chand V. Bhana Mal (1900), Jadh Singh v. Sundar Singh (1882),

Longer the possession, stronger the presumption.

Vatticherukuru village panchayat V. Nori venkatarama Deekshithulu (1991).

Possession has a two-fold value:
1. it is evidence of ownership; and
2. is itself the foundation of a right to possession.

Section 111: Proof of good faith in transactions where one party is in relation of active confidence –
Where there is a question as to the good faith of a transaction between parties, one of whom

stands to the other in a position of active confidence, the Burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Principle: The principle of the rule embodied in this section which was called
"the great rule of the court" is "he who bargains in a matter of advantage with a person placing confidence in him is bound to show, that a reasonable use has been made of that confidence; a rule applying to trustees, attorneys, or any one else."
(Gibson V. Jeyes (1801)] Principle: The principle of the rule embodied in this section which was called
"the great rule of the court" is "he who bargains in a matter of advantage with a person placing confidence in him is bound to show, that a reasonable use has been made of that confidence; a rule applying to trustees, attorneys, or any one else."
(Gibson V. Jeyes (1801)

. Active confidence- These words indicate that the relationship between the parties must be such that one is bound to protect the interests of the other. This had been held to apply to a trustee, an executor, an administrator, a guardian, an agent, a minister of religion, a medical attendant, an auctioneer, and attorney.
Pardanashin ladies:-
Sudisht Lal V. Musummat Sheobarat Koer, (1881) In the case of deeds and powers executed by *pardanashin ladies*, it is requisite, that those who rely upon them should satisfy the court that they had been explained to, and understood by those who executed them.
The expression 'paradanashin" is not to be confused with a lady observing pardah. The word has special legal significance and means one who is unable to understand the transaction by virtue of the manner in which she has been brought up. (Andhi Kuer v. Rajeshwar Singh (1972)]
The pardanashin lady accused will not be exempted from personal attendance at court as a matter of right.

Blind:
Shivamma V. Abdur Rahman (1952)
Mere signature of a blind person on the sale-deed cannot have any force. Where an illiterate and blind woman is alleged to have executed a sale deed, the execution of which denied by her, a heavy burden is laid on the purchaser to prove that she not only agreed to sell but she knew what was being written and the document was in accordance with the terms of the agreement.

Section 111A: Presumption as to certain offences –
(1) Where a person is accused of having committed any offence specified in sub-section (2), in-
(a) any area declared to be a disturbed area under any enactment, for the time being in force, making provision for the suppression of disorder and restoration and maintenance of public order, or (b) Any area in which there has been , over a period of more than one month, extensive disturbance of the public peace.
And it is shown that such person had been at a place in such area at a time when firearms or explosives were used at or from that place to attack or resist the members of any armed forces or the forces charged with the maintenance of public order acting in the discharge of their duties, it shall be presumed, unless the contrary is shown, that such person had committed such offence.

2. the offences referred to in sub-section(1) are the following Viz., (a) An offence u/s 121, 121A, 122 or 123 of the IPC.
(b) criminal conspiracy or attempt to commit, or abetment of, an offence u/s 122 or s. 123 of the IPC

Section 112: Birth during marriage, conclusive proof of legitimacy – The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within 280 days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the Legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Principle: The section is based on the principle that when a particular relationship, such as marriage, is shown to exist, then its continuance must *prime facie* be presumed. Under the section the fact that any person was born:-
1. during the continuance of a valid marriage between his mother and any man; or
2. within 280 days after its dissolution, the mother remaining unmarried.

The maxim *pater est quem nupital demonstrant* (he is the father whom nuptials show) is based on this principle

Umra V. Muhammad Hayat (1907), Ranganath Parmeshaw P. Mali V. E.G. Jykjarbu (1966 SC)

Alpana V. Mohanlal (1993), Paternity of child-Blood test:-

Goutam Kundu v. State of WB (1993 SC)
Gomathi v. vijayaraghavan (1995 Mad) and Tushar Roy V. Sukla Roy (1993 Cal)

Sajeera V. P.K. Salim (2000 Ker), Sayed Mohd. Ghouse v. Noorunnisa Begum (2001 AP)

Ningamma V. Chikkaiah (2000 Kant), Sadashiv M. Kheradkar V. Nandini s. Kheradkar (1995 Bom)

Rahmat Ali v. Musst. Allahdi (1883), Ghulam Mohy-ud-din Khan V. Khizar Hussain (1928)

Narendra V. Ram govind (1901), Palani v. Sethu (1924), Pai Singh v Jagir (1926)

(Bhagwan Bakhsh Singh v. Mahesh Bakhsh Singh 1935), Trilok Nath Shukul v. Mussammat Luchhman Kunwari (1903), Jagannatha Mudali V. Chinnaswami (1931), Razario V. Ingles (1893), Russell V Russell

Mayandi Asari v. Sami Asari (1931),

Law Reform (Miscellaneous Provisons) Act, 1949, S.7 which says that notwithstanding any rule of law the evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did not take place between them during any period.

Sibt Muhammad V. Muhammad Hameed (1926), Nur-ul-Hassan v. Muhammad Hasan (1910)

Section 113: Proof of cession of territory –
A notification in the Official Gazette that any portion of British territory has (before the commencement of Part III of the Govt. Of India Act, 1935) been ceded to any Native State, Prince or Ruler, shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Section 113A: Presumption as to abetment of suicide by a married woman
When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of 7 years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.
Explanation – For the purpose of this section, "cruelty" shall have the same meaning as in S. 498A of IPC.

(Krishan Law v. Union of India 1994), Ramesh Kumar. State of Chatisgarh (2001)

Amarjit Singh V State of Punjab (1989), Jagadish Chander V. State of Haryana 1988)
Suresh Raghunath Kochare V. State of Maharastra (1992), P.P. Rao V. State of UP (1994),

Devakinandan V. State of MP (2003), State of West Bengal V. Orilal Jaiswal (1994)

Lakhjit Singh v. State of Punjab (1994), State of Punjab V. Iqbal Singh (1991)

Section 113B: Presumption as to dowry death –
When the question is whether a person has committed the dowry death of a women and it is shown that soon before her death, such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation: for the purpose of this section, "dowry death" shall have the same meaning as in S. 304B of the IPC

State of Punjab V. Iqbal Singh (1991), Amarjit Singh v. State of Punjab (1989)

Hem Chand V. State of Haryana (1995),

S. 113B of the Evidence Act being procedural, it has been held that it is retrospective in operation.

Kans Raj V. State of Punjab (2000), Mahesh Kumar V. State (2001 All)

Acquittal u/s 302,IPC and presumption:
Alamgir Sani V. Shamlal (1997), No presumption against wife where husband commits suicide
Alka Grewal V. State of M.P. (2000),

Section 114: Court may presume existence of certain facts –
The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Deivendran V. St. of TN (1998 SC) an explanation of the circumstances in which presumption of this kind can be drawn.

Deivendran V. St. of TN

Section 114A: Presumption as to absence of consent in certain prosecutions for rape –
In a prosecution for rape under cl (a) or (b) or (c) or (d) or (e) or (g) of sub-section 2 of S.376 of IPC where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.
(Criminal Law (Amendment) Act 1983 inserted the section 114A)

Nawab Khan V. State (1990), Rafiq V. State of UP (1981), Ramacharan V. State of M.P. (1993)

Shatrughna V. State of M.P (1993), State of UP V. Padam Singh (1996), Gagan Bihari Samal V. State of Orissa (1991), Dev Kishan V. State of Rajasthan (2003), Tukaram V. State of Maharastra (1979 SC)

ESTOPPEL
Section 115: Estoppel – When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, or deny the truth of that thing.

Principle: Estoppel is based on the principle that it would be most inequitable and unjust that if one person, by a representation made, or by conduct amounting to a representation, had induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement, to the loss and injury of the person who acted on it. The estoppel is a rule of evidence by which a party is precluded from denying the existence of a state of things which he has previously asserted to exist, or which he has either by words or conduct induced another party to believe in or to act on such belief.

B. Coleman & Co. V. P.P. Das gupta (1970 SC), Pickard V. Sears (1837), Municipal Corporation of Bombay V. Secretary of State (1904 Bom). Banwari Law V. Sukhdarshan (1973 SC),

Estoppel is based on the maxim, *allegans contraria non est auidendus* (a person alleging contradictory facts should not be heard

Sukdev Singh V. UOI 1989

Estoppel and Res Judicata:

Estoppel differs from res judicata:

1) Estoppel a part of the law of evidence and proceeds upon the equitable principle of altered situation; the doctrine of res judicata belongs to procedure and is based on the principle that there must be end of litigation.

2) Estoppel prohibits a party from proving anything which contradicts his previous declarations or acts, to the prejudice of party, who, relying upon them, altered his position; *res judicata prohibits the Court from enquiring into a matter already adjudicated.*

3) Estoppel shuts the mouth of a party; res judicata ousts the jurisdiction of the Court.

Kinds of estoppel:

1. Estoppel by deed,
2. Estoppel by conduct, and
3. Estoppel by matters of record.

Baidyanath Mahapatra V. St. of Orissa (1989), Jacob Philip V. Union of India (1985)

Bajrang Industries V. General Manager, DIC, Vizianagaram (1994), Dasarathi V. A.P. (1985)

Bhim Singh V. Haryana (1980), Gopi Chand Television V. Director, Doordarshan Kendra, Hyderabad (1995), Dhampur Sugar Mills V. UOI (1985), Shanmugraja V. Superinending Engineer (2002),

Section 116: Estoppel of tenant; and of licencee of person in possession:-

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.

Section 117: Estoppel of acceptor of bill of exchange, bailee or licensee – No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his bailor or licensor had, at the time when the bailment or licence commenced, authority to make such Bailment or grant such licence.

Explanation 1: The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

Explanation 2: If a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

OF WITNESSES

Section 118: Who may testify – All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those question, by tender years, extreme old age, disease, whether of body or mind, or

any other cause of the same kind. Explanation – A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

Oath:- It has been held that an omission to administer oath under the Oaths Act 1969 does not affect the admissibility of evidence unless the judge considers the witness to the otherwise incompetent (Bhagwania V. St. of Rajasthan 2001).

Once the child witness is found competent, his inability to take or understand oath or omission in administering it, neither invalidates the proceedings nor renders his evidence inadmissible. (Ghewar Ram V. St. of Rajasthan 2001).

Child witness:
With respect to children, no precise age is fixed by law within which they are absolutely excluded from giving evidence on the presumption that they have not sufficient understanding. The intellectual capacity of a child to understand questions and to give rational answers thereto is, the sole test of his testimonial competency and not any particular age. (Santhosh Roy V. St. of West Bengal 1992).

St. of M.P. V Deoki Nandan (1987), Suresh V. St. of UP (1981SC), Mohamed Sugal V. The King (1945)

Jarina Khatun V. St. of Assam (1992),

It is a sound rule in practice not to act on the uncorroborated evidence of a child whether sworn or unsworn, but this is a rule of prudence and not of law (Zafar V. St. of UP 2003).
State of Karnataka V. Ningappa Bhimappa (2000)

Nagam Gangadhar V. St. of AP 1998),

Expert evidence on competence of child and admissibility of video taped interview.

Gibson v. Director of Public Prosecution (1997 All)

Lunatic:
Person with partial insanity will be admissible witness if the Judge finds him upon investigation capable of understanding the subject in respect of which he is required to testify. (Hill's Case 1851).

Dhanraj V St. of Maharashtra (2002).

Section 119 : Dumb witnesses – A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open court. Evidence so given shall be deemed to be oral evidence.

Under this section, if a witness is unable to speak, he may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs, but such writing must be written and signs made in open court. Such evidence if properly taken is admissible.

Section 120: Parties to civil suit, and their wives or husbands or wife of person under criminal trial –

In all civil proceedings, the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses. In criminal proceedings against any person, the husband or wife of such person, respectively, shall be a competent witness In civil proceedings parties to the suit are competent witnesses. Husbands and wives are competent witness for or against each other in civil as well as criminal proceedings.

In Aidan V. State of Rajasthan (1993)

it was held that truthfulness of the statement of wife could not be disbelieved merely because her emotional reaction was different from what it should have been, in the opinion of the court.

Section 121: Judges and Magistrates – No judge or Magistrate shall, except upon the special order of some court to which he is subordinate, be compelled to answer any questions as to his own conduct in court as such judge or Magistrate, or as to anything which came to his knowledge in court as such judge or Magistrate, but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Section 122: Communication during marriage – No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication, unless the person who made it or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.

Under this section a married person shall not be

(1) compelled to disclose any communication made to him during marriage by any person to whom he is married; and

(2) permitted to disclose any such communication, except-

(a) when the person who made it or his representative in interest consents, or

(b) in suits between married persons, or

(c) in proceedings in which one married person is prosecuted for any crime committed against the other.

Section 123: Evidence as to affairs of State – No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of the State, except with permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

This section involves two things:

(1) That the document is an unpublished official record relating to any affairs of State, and

(2) that the officer at the head of the department concerned may give or withhold the permission for giving the evidence derived therefrom.

On grounds of public policy, evidence derived from unpublished official records of State cannot be given, except with the permission of the head of the department concerned. The court is bound to accept without question the decision of the public officer.

Bench of seven Supreme Court Judges in S.P. Gupta V. Union of India (1982)

"Meaning and scope of S. 123 cannot remain static. It must be interpreted keeping in view our new democratic society wedded to the basic values enshrined in the Constitution."

Section 124: Official communication- No public officer shall be compelled to disclose communication made to him in official confidence, when he considers that the public interests would suffer by the disclosure .

Section 125: Information as to commission of offences – No Magistrate or Police Officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue Officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation – " Revenue Officer" in this section means any officer employed in or about the business of any branch of the public revenue.

Section 126: Professional communications – No barrister, attorney, client's pleader or vakil shall at any time be permitted, unless with his express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:
Provided that nothing in this section shall protect from disclosure –

1. Any such communication made in furtherance of any illegal purpose.
   2. Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.
   It is immaterial whether the attention of such barrister, pleader, attorney or Vakil was or was not directed to such fact by or on behalf of his client.
   Explanation – The obligation stated in this section continues after the employment has ceased.
   Section 127: Section 126 to apply to interpreters, etc, -
   The provisions of section 126 shall apply to interpreters, and the clerks or servants of barristers, pleaders, attorneys and vakils.

   This section extends the privilege given by S. 126 to interpreter, clerks, or servants of lawyers. It extends to a communication made to a Pleader's clerk the same confidential character that attaches to a communication to the pleader direct u/s 126.

Section 128: Privilege not waived by volunteering evidence

If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and, if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

Waiver of privilege:

The privilege belongs to the client and therefore he alone can waive it. The privilege is not lost by calling the legal adivser as a witness, unless the party having the privilege question him relating to confidential matter.

Section 129: Confidential communication with legal advisers – No one shall be compelled to disclose to the court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.

Section 130: Production of title-deeds of witness, not a party – No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property; or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

Section 131: Production of documents or electronic records which another person, having possession, could refuse to produce.- No one shall be compelled to produce documents in his possession, or electronic records under his control, which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last mentioned person consents to their production.

Section 132: Witness not excused from answering on ground that answer will criminate – A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or they tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind.

Proviso – Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be provided against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Section 133: Accomplice – An accomplice shall be a competent witness against an accused person, and a conviction is not illegal because it proceeds upon the uncorroborated testimony of an accomplice.

An accomplice means a guilty associate or partner in crime, or who, in some way or the other, is connected with the offence in question, or who makes admissions of fact showing that he had conscience hand in the offence.

A *participes criminis* : An accomplice is a person who participates in the commission of the actual crime charged against an accused. He is to be a participes criminis. But there are two cases in which a person has been held to be an accomplice even if he is not a participes criminis .,-

1. Receivers of stolen property are taken to be accomplices of the thieves from whom they receive goods, on a trial for theft.

   2. Accomplice in previous similar offences committed by the accused on trial are deemed to be accomplices in the offences for which the accused is on trial, when the evidence of the accused, having committed crimes of identical type on other occasions, be admissible to prove the system and intent of the accused in committing the offences charged.

   (Davies V. Director of Public Prosecutions 1954 ; Krishna Dalmia V. Delhi admininstration 1962)

   Queen Empress V. Maganlal , Naryan Chetan Ram Choudhary V. St. of Maharashtra

   S. 133 of IEA expressly provides that an accomplice is a competent witness and the conviction is not illegal merely because it proceeds on an uncorroborated testimony of an accomplice.

Section 134: Number of witnesses – No particular of witnesses shall in any case be required for the proof of any fact.

It leaves solely to the discretion of the court to say whether the evidence is sufficiently in each particular case and the only restriction is that it must be satisfied beyond reasonable doubt that the crime has been established against the accused. No hard and fast rule can be laid down as to how many witnesses would be sufficient for the purpose.

Numerical superiority should not be the test of credibility of a party's evidence.

Single witness is enough to convict a person but he must be honest and truthful.

OF THE EXAMINATION OF WITNESSES

Section 135: Order of production and examination of witnesses – The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating, to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the court.

Civil Proceedings- In civil suits, the plaintiff has the right to begin (Order XVII, rule 1, CPC). The other party has then to state his case and produce evidence. The plaintiff may then prove his case in rebuttal, if any (O XVII, r 3). In civil appeals, the appellant is first heard. If the court does not dismiss the appeal at once, the respondent is hear against the appeal and in such cases the appellant is entitled to reply. (O XLI, r 16)

Criminal Proceedings – In criminal proceedings, it is the complainant or the prosecutor that has the right to begin and the accused may then lead evidence if he so chooses. In criminal appeals, the appellant begins, and if necessary, the other side is then heard.

Section 136: Judge to decide as to admissibility of evidence – When either party proposes to give evidence of any fact, the judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise.
If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned, fact must be proved before evidence is given of the fact first-mentioned unless the party undertakes to give proof of such fact and the court is satisfied with such undertaking.
If the relevancy of the alleged fact depends upon another alleged fact being first proved, the judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Section 137: Examination-in-chief-
The examination of a witness by the party who calls him shall be called his *examination-in-chief.*
Cross-examination – The examination of a witness by the adverse party shall be called his cross-examination.

Re-examination- The examination of a witness, subsequent to the cross-examination by party who called him, shall be called his re-examination.
What questions can be asked in cross-examination:
1. Any relevant question which need not be confined to facts deposed to in the examination-in-chief (S.138)

2. Any leading question (S. 143)
3. Any question as to his previous written statements for two purposes, viz., it may be to test his memory; and have the very object of his testimony be defeated if the writing were placed in his hands before the questions were asked; or it may be to contradict him (S. 145)

4. Any question to test his veracity.
5. Any question to discover who is and what is his position in life;
6. any question to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly, to expose him to a penalty for forfeiture. (S. 146)

Badhna Kharia V. St. of Assam (1988), Tej Prakash V. St. of Haryana (1996), Pritosh Ghosh V. Ashwin kumar Gupta (2003), Kartar Singh V. St. of Punjab (1994), State of Rajasthan V. Ani (1997)

Section 138: Order of examination-
Witnesses shall be first examined-in-chief, then (if the adverse party so desire) cross-examined, then (if the party calling him so desire) re-examined.
The examination and cross-examination must relate to relevant facts but the cross-examination

need not be confined to the fact to which the witness testified on his examination-in-chief.
Direction of re-examination- The re-examination shall be directed to the explanation of matters referred to in cross-examination; if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter. The examination of witnesses is *Viva voce (*O. XVIII, R. 4)
It is always in the form of question and answers.
The deposition is usually taken down in the form of a narrative formed out of the answers (O. XVIII, R.5).
Where a question is objected to and yet allowed by the court to be put, the question and its answer are taken down *Verbatim* (O. XVIII, R.10)
At the end of the deposition, it is read out to the witness and signed by the presiding officer (O. XVIII, R.5)

Section 139: Cross-examination of person called to produce a document.
A person summoned to produce a document does not become a witness by the mere fact that he produce it and cannot be cross-examined unless and until he is called as a witness.

A witness summoned merely to produce a document does not become a witness for purposes of cross-examination, since he may either attend the court personally or may depute any person to produce the document in court. (CPC, O. XVI, R6; Cr.P.C. S. 91)
If he intentionally omits to produce the document, he commits the offence punishable u/s 175 of the IPC, or S. 345 of the Cr.P.C. 1973. This section must be read with S. 162.

The wife of a partner was called upon to produce the deed of dissolution of the firm. She was not permitted to be examined as a witness.
(Parmeshwari Devi V. State 1977)
Where a witness denies, on oath, that he has the possession or means of producing a particular document, he can, if he has been guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding.

Section 140: Witnesses to character- witnesses to character may be cross-examined and re-examined.

Section 141: Leading question- Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

When leading questions may be asked :-
1. In examination-in-chief, leading questions can only be asked with the permission of the court in certain matters (S.142);
2. Leading questions may be asked in cross-examination (S. 143);
3. A party may be allowed to cross-examination its witness and to put leading questions to him when the witness is hostile to the party calling him, i.e., takes upon adverse attitude to him. (S.154);
4. When the object of the leading question is to contradict another witness as to the expressions used by him but which he denies having used, the witness may be asked leading question;
5. When the witness has a defective memory, it may be agitated by a few leading questions.

Section 142: When they must not be asked – Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the court.

The court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.
Leading questions can only be asked in examination-in-chief with the permission of the court when they refer to matters which are –
(a) introductory; or
(b) Undisputed ; or
(c) sufficiently proved.

Section 143: When they may be asked – Leading questions may be asked in cross-examination .

Leading question can be freely asked in cross-examination. "First and principally, on the supposition that the witness has a bias in favour of the party bringing him forward, and hostile to his opponent.
Secondly, that the party calling a witness has an advantage over his adversary, in knowing beforehand what the witness will prove, or at least might interrogate in such a manner as to extract only so much of the knowledge of the witness as would be favourable to his side, or even put a false gloss upon the whole".- Best.

The reason why leading questions are allowed to be put to an adverse witness in cross-examination is that the purpose of a cross-examination being to test the accuracy, credibility and general value of the evidence given and to shift the facts already stated by the witness, it sometimes becomes necessary for a party to put leading questions in order to elicit facts in support of his case, even though the facts so elicited may be entirely unconnected with the facts testified to in an examination-in-chief. Where a general order is made that no leading questions shall be allowed in cross-examination, the order is illegal and vitiates the trial. (Lalta Prasad V. Inspector-General of Police)

Section 144: Evidence as to matters in writing – Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to given secondary evidence of it.

Explanation- A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts

Section 144 refers both to examination-in-Chief and cross-examination. It merely lays down the manner by which the provisions of sections 91 and 92 as to the exclusion of oral by documentary evidence may be enforced by the parties to the suit.

Section 145: Cross-examination as to previous statements in writing – A witness may be cross-examined as to previous statement made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to Contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

In a way this section is an exception to the general rule forbidding all use of the contents of a written document until the document itself be produced.
Resort to this section is necessary only if a witness denies that he made the former statement.
Object: This section indicates one of the modes in which the credit of a witness may be impeached.

Section 146: Questions lawful in cross-examination – When a witness is cross-examined, he may, in addition to the questions herein before referred to be asked any questions which tend-
1. to test his veracity;
2. to discover who he is and what is his position in life, or
3. to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to expose him to a penalty or forfeiture.

(Provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character).

Sections 146 to 152 deal with questions which can be put to a witness with a view to shake his credit by damaging his character. These sections along with S. 132 embrace the entire range of questions which can possibly be put to a witness.

Section 147: When witness to be compelled to answer – If any such question relates to a matter relevant to the suit or proceeding, the provisions of S.132, shall apply thereto.

Section 148: court to decide when question shall be asked and when witness compelled to answer – If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the court shall have regard to the following consideration :-
1. such questions are proper if they are of such a nature that truth of The imputation conveyed by them would seriously affect the opinion of the courts as to the credibility of the witness on the matter to which he testifies;
2. such questions are improper if the imputations which they convey relate to the matters so remote in time, or of such a character, that The truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies;
3. such questions are improper if there is a great disproportion between the importance of the Imputation made against the witness's character and the importance of his evidence;

4. the court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

Object: Ss. 148-152 are intended to protect a witness against improper cross-examination-a protection which is often very much required. But the protection offered by S. 148 is not very effectual, because an innocent man will be eager to answer the question, and one who is guilty will by a claim for protection merely confess his guilt. Nor does the threat contained in S. 149 and this section carry the matter much further.

The object of this section is to prevent the unnecessary raking up of the past history of a witness, when it throws no light whatsoever on the questions at issue in a case. It protects a witness.

Section 149: Question not to be asked without reasonable grounds No such question as is referred to in s.148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

Section 150: Procedure of court in case of question being asked without reasonable grounds – If the court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any barrister, Pleader, vakil or attorney, report the circumstances of the case to the High Court or other authority to which such barrister, pleader, vakil or attorney is subject in the exercise of his profession.

Section 151: Indecent and scandalous questions – The court may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

Section 152: Questions intended to insult or annoy – The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

Section 153: Exclusion of evidence to contradict answers to questions testing veracity – when a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence.
Exception 1 – If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2 – If a witness is asked any question tending to impeach his impartiality, and answers it by denying the facts suggested, he may be contradicted.

Section 154: Question by party to his own witness –
(1) The court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party.
(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness.

Where a party calling a witness and examining him discovers that he is either hostile or unwilling to answer questions put to him, he can obtain permission of the Court to put questions to him which may be put to him by way of cross-examination.
The section does not say that a person who calls a witness may cross-examine him in certain circumstances, but he might put questions to him which might be put in cross-examination by the adverse party. That is not the same as cross-examination.
[Bikuram Ali Pramanik V. Emperor (1929)

A discretion given to the Court to allow or not to allow a person to cross-examine his own witness as hostile. The witness may be asked leading questions (s. 143); or questions as to his previous statements in writing (s. 145); or any questions under S. 146; or his credit may be impeached (s. 155).

HOSTILE WITNESS:
A hostile witness is one who from the manner in which he gives evidence shows that he is not desirous of telling the truth to the Court. (Panchanan Gogai V. Emperor 1930).
In Shatruhan V. St. of MP (1993) a hostile witness is not necessarily a false witness. Merely because one part of the statement of a witness was not favourable to the party calling him, the Court should not readily conclude that he was suppressing the truth or that his testimony was adverse to that party. Hostility of a witness is to be judged from the answer given by him.

R.R. Chandak V. St. of Maharashtra (1995)
Where death of a woman took place by burning while she was in the custody of her-in-laws, it was held that the accused in-laws were under obligation to give plausible explanation as to cause of her death.
A witness who is unfavourable is not necessarily hostile (Luchiram Motilal Boid V Radha Charan Poddar, 1921)
A witness who is gained over by the opposite party is a hostile witness. The mere fact that at a Session trial a witness tells a different story from that told by him before the Magistrate does not necessarily make him hostile.

Section 155: Impeaching credit of witness
The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:-
(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to the unworthy of credit;
(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;
(4) ********
Explanation- A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but be may be asked his reasons in cross-

examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

Section 156: Questions tending to corroborate evidence of relevant fact admissible
When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

Section 157: Former statement of witness may be proved to corroborate later testimony as to same fact.
In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

Section 158: What matters may be proved in connection with proved statement relevant u/s 32 or 33 – Whenever any statement, relevant u/s 32 or 33, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Section 159: Refreshing memory – A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to he correct.
When witness may use copy of document to refresh memory – whenever a witness may refresh Memory by reference to any document, he may, with the permission of the court, refer to a copy of such document:
Provided the court be satisfied that there is sufficient reason for the non-production of the original.
An expert may refresh his memory by reference to professional treaties.

Section 160: Testimony to facts stated in document mentioned in s.159 – A witness may also testify to facts mentioned in any such document as is mentioned in s. 159 although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Section 161: Right of adverse party as to writing used to refresh memory – Any writing referred to under the provisions of the two last preceding section must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Section 162: Production of documents – A witness summoned to produce a document shall, if it is in his possession or power, bring it to the court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided by the court.

The court, if it seeks fit, may inspect the document, unless it refers to matters of the state, or take other evidence to enable it to determine on its admissibility.
Translation of documents – If for such purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence, and, if the interpreter disobeys such direction, he shall be held to have committed an offence u/s 166 of the IPC.

The court, if it seeks fit, may inspect the document, unless it refers to matters of the state, or take other evidence to enable it to determine on its admissibility.
Translation of documents – If for such purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence, and, if the interpreter disobeys such direction, he shall be held to have committed an offence u/s 166 of the IPC.

Section 164: Using as evidence, of document production of which was refused on notice – When a party refuses to produce a document which he had had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the court.

Section 165: Judge's power to put questions or order production – The judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question:
Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:
Provided also that this section shall not authorize any judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce u/s 121 to 131, both inclusive, if the questions to be relevant, and duly proved:
Provided also that this section shall not authorize any judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce u/s 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the judge ask any question which it would be improper for any other person to ask u/s 148 or 149; nor shall he dispense with primary evidence of any document, except in the case herein before excepted.

Section 166: Power of jury or assessors to put any questions – In cases tried by jury or with assessors, the jury or assessors may put any questions to the witnesses, through or by leave of the judge, which the judge himself might put and which he considers proper.

OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE

Section 167: No new trial for improper admission or rejection of evidence – The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, if ought not to have varied the decision.

Questions and synopsis

1. S.3 of the Indian Evidence Act, 1872
 - Definition
 - synonyms word ‘ proof’
 - Phipson “Evidence” means the testimony whether oral, documentary or real, which may legally received in order to prove or disprove some fact in dispute.
- kinds of evidence- 1. oral evidence 2. documentary evidence (includes electronic evidence)
 3. circumstantial evidence.
- Oral evidence- statement of witnesses
- Documentary evidence – all documents produced for the inspection of the court.

- circumstantial evidence – It is one of the established principles of law that a witness may lie but not the circumstances. However the court has to take cautious steps.
- Supreme Court guidelines

Cases:
1. Reg. V. Hodge (1838)
2. Hanumant Govind Narjundkar V. St. of M.P.(1952)
3. Chenga Reddy V. State of A.P. (1996)
4. Gulshan Kumar V. State (1993)

Qn. 2: Proved; Disproved; Not proved.
- Definitions
- Standard of proof – reasonable man's conclusion
- proof of beyond reasonable doubt.
The proof of a fact depends upon the degree of probability of its existence. The standard required for reaching the supposition is that of a prudent man acting in any important manner concerning him. (Narsinga Rao V. St. of AP (2001)
- Explain 'Matter before it'
- Difference between evidence in civil and criminal proceedings

3. Res gestae:
- S. 6 of the IEA
- write illustrations
- Principle + explanations
- cases

4. Motive, Preparation and previous or subsequent conduct.
- S. 8 of the IEA
- Illustrations
- Principle
- Explain- Motive, Preparation, Conduct
- cases

5. Relevancy of judgments
- Sections 40, 41, 42, 43 & 44
- Scope of the section
- Judgment in rem, Judgment in personam
- case laws

6. Opinion of third person or opinion of Expert
- Section 45 of the IEA
– foreign law, science, art, identity of handwriting or finger impression
- illustration
- Folokes V Chadd (1782) – value of expert opinion given in this case.
- peculiar skill acquired by years of research, study and experience.
- Hollington V. Hewthorn (1943) Goddard L.J.

- Mobarik Ali Ahmed V. St. of Bombay (1957)
- Who is an expert?
- role of expert opinion

7. What is an admission? Who can make admission?

ಅಂಗೀಕಾರ ಎಂದರೇನು? ಅಂಗೀಕಾರವನ್ನು ಯಾರು ಮಾಡಬಹುದು?

- S 17 – Definition of an admission
- R. V. Erdheim (1986)
- E.C.T. Farming Society case (1974)- depends upon the circumstances.
- Judicial admission / Extra-Judicial admission.
- Voluntary – no compulsion
- S. 18 – who can make admission.
- party, agent, counsel, pleader, attorney, co-defendants, co-owners, partner, principal and surety, Guardian
- cases.

8. Discuss the provisions relating to the confessions and explain extra judicial confession with illustration.

ತಪ್ಪೊಪ್ಪಿಗೆ ಸಂಬಂಧಿಸಿದ ಉಪಬಂಧಗಳನ್ನು ಚರ್ಚಿಸಿ ಮತ್ತು ಉದಾಹರಣೆ ಸಹಿತ ನ್ಯಾಯಾಂಗೇತರ ತಪ್ಪೊಪ್ಪಿಗೆಯನ್ನು ವಿವರಿಸಿ.

- Ss. 24-30 of the IEA
- S. 164, 281 and 463 of Cr.P.C.
- Principle – According to the section a confession by an accused is irrelevant if it is caused by (1) inducement; (2) threat; or (3) promise.
- Judicial confession / Extra-Judicial confession
- Pakala Narain Swami V. Emperor (1939)
- to be accepted as a whole or rejected as a whole
- confession to police officer not to be proved. (S 25)
- Confession by accused while in custody of police not to be proved (S.26)
- How much of information received from accused may be proved (S.27)
- Confession made after removal of impression caused by inducement, threat or promise, relevant (S. 28)
- Confession otherwise relevant not to become irrelevant because of promise of secrecy etc., (S. 29)
- Consideration of proved confession affecting person making it and other jointly under trial for same offence.

9. Explain the relevancy of character evidence under the Indian Evidence Act.

ಸಾಕ್ಷ್ಯ ಅಧಿನಿಯಮದಲ್ಲಿ ನಡತೆಯ ಸಾಕ್ಷ್ಯದ ಸುಸಂಬದ್ಧತೆಯನ್ನು ವಿವರಿಸಿ.

- Ss. 52 – 55 of the IEA
- in civil cases character to prove conduct imputed, irrelevant (52);
- in criminal cases previous good character relevant (S.53);
- Previous bad character not relevant except in reply (S. 54)
- Character as affecting damages. (S. 55)

- Meaning of good character and bad character
- cases.

10. What is secondary evidence? When it may be given?.

ದ್ವಿತೀಯಕ ಸಾಕ್ಷ್ಯ ಎಂದರೇನು? ಇದನ್ನು ಯಾವಾಗ ಅಂಗೀಕರಿಸಬಹುದು?

- S. 63 of IEA – certified copies, copies made from the original by mechanical process, copies made from or compared with the original, counter parts , oral accounts of the contents
- Illustration
- refer Ss. 61,& 62 – primary evidence
- explanation of clause 1 to 5 with case laws
- A document insufficiently stamped
- recorded tape
-Newspaper reports

11. Define burden of proof. On whom does it lie?

ಋಜುವಾತಿನ ಹೊಣೆಯನ್ನು ವ್ಯಾಖ್ಯಾನಿಸಿ. ಅದು ಯಾರ ಮೇಲೆ ಇರುತ್ತದೆ?

- S. 101 of the IEA
- The burden of proof means two different things.

It means sometimes that a party is required to prove an allegation before judgment can be given in its favour; it also means that on a contested issue one of the two contending parties has to introduce evidence.

- one who desires to get judgment as to any legal right or liability must prove that those facts exists.
- illustrations
- Burden of proof in civil and criminal proceeding
- cases

12. Define presumption. Explain various kinds of presumption.

ಪೂರ್ವ ಭಾವನೆಯನ್ನು ವ್ಯಾಖ್ಯಾನಿಸಿರಿ. ವಿವಿಧ ಬಗೆಯ ಪೂರಭಾವನೆಗಳನ್ನು ವಿವರಿಸಿರಿ.

- "Presumption may be defined to be an inference, affirmative or disaffirmative of the truth or falsehood of a doubtful fact or proposition, drawn by a process of probable reasoning from something proved or taken for granted"- Best.
- A presumption means a rule of law that courts and judges shall draw a particular inference from a particular fact, or from a particular evidence, unless and until the truth of such inference is disproved.
- May presume, Shall presume, and Conclusive presumption.
- S. 114 needs explanation.

13. Explain the provisions relating to privileged communication under the IEA.

ಸಾಕ್ಷ್ಯ ಅಧಿನಿಯಮದಂತೆ ಸವಲತ್ತಿನ ಸಂವಹನದ ಬಗ್ಗೆ ಇರುವ ಉಪಬಂಧಗಳನ್ನು ವಿವರಿಸಿ.

- S. 126 of the IEA Professional communication
- illustrations

- Principle – This section is based upon the principle that if communication to a legal adviser were not privileged, a man should be deterred from fully disclosing his case, so as to obtain proper professional aid in a matter in which he is likely to be thrown into litigation.
Ss. 126 to 129 deal with the privilege that is attached to professional communication between the legal adviser and the client, interpreters, clerks or servants of legal advisers, law officers …
- Waugh V. British railways Board
- other cases.

14. Define 'Estoppel'. Explain the kinds of estoppel.

"ವಿಬಂಧ" ವ್ಯಾಖ್ಯಾನಿಸಿ. ವಿವಿಧ ರೀತಿಯ ವಿಬಂಧ ಗಳನ್ನು ವಿವರಿಸಿ.

- S. 115 of IEA – Definition
- Illustration
- Principle – if someone misrepresent, it is inequitable and unjust hence allowed to claim
- The burden of proving the ingredients of this section lies on the party claiming estoppel
- This section is founded upon the doctrine laid down in Pickard V. Sears
- It precludes a person from denying the truth of some statement previously made by himself.
- Kinds- (1) estoppels by matter of record (2) Estoppel by deed (3) estoppel in pais by conduct.
- Promissory estoppel
- case laws

16. Discuss the law relating to proof of public documents.

ಸಾರ್ವಜನಿಕ ದಸ್ತಾವೇಜುಗಳ ರುಜುವಾತು ಬಗ್ಗೆ ಇರುವ ಕಾನೂನನ್ನು ಚರ್ಚಿಸಿ.

- S. 74 of the IEA – acts or records of sovereign authority, of official bodies and tribunals, of public officers, legislative, judicial and executive; public records kept in any State of private documents.(Electronic records also)
- Documents are divided into two categories: public and private.
- published scheme under Statute: ex: Electricity
- Orders of civil court, FIR – all public documents
- School admission register
- Marriage register
- Medico legal report
- Records of nationalised banks

17. Explain the law relating to presumption as to abetment of suicide by a married woman under section 113 A of the IEA.

ಭಾರತೀಯ ಸಾಕ್ಷ್ಯ ಅಧಿನಿಯಮದ ಕಲಂ ೧೧೩-ಎ ಪ್ರಕಾರ ವಿವಾಹಿತ ಮಹಿಳೆಯ ಆತ್ಮಹತ್ಯೆಗೆ ಚಿತಾವಣೆಯ ಬಗ್ಗೆ ಇರುವ ಪೂರ್ವಭಾವನೆಗಳ ಬಗ್ಗೆ ವಿವರಿಸಿ.

- S. 113-A: abetment of suicide by husband or his relatives
- Cruelty as in S. 498-A
- State of West Bengal V. Orilal Jaiswal
-Retrospective application
- Cases
- Legislative intent.

18. Discuss the scope of cross-examination and explain the questions lawful in cross-examination.

ಪಾಟೀ ಸವಾಲಿನ ವಾಪ್ತಿಯ ಬಗ್ಗೆ ಚರ್ಚಿಸಿ. ಪಾಟೀ ಸವಾಲಿನಲ್ಲಿ ಕೇಳಬಹುದಾದ ಪ್ರಶ್ನೆಗಳ ಬಗ್ಗೆ ವಿವರಿಸಿ.

- S. 137 – What is cross-examination
- S. 138 – Write the section and then scope – to test the witnesses veracity, discover his position in life, to shake his credit
- Maharaja of Kolhapur V. S. Sunderam Ayyar; Ahmad Ali V Joti Pd.; Horli kumar V. Rajab Ali
- Cross-examination is the most effective of all means for extracting truth and exposing falsehood (Meer Sjad Ali Khan Nawab Dowla Bahadoor v Lalla Kasheenath Doss 1886)
- A skillful cross-examination is the highest attainment of an advocate's art. It is difficult to frame any rules governing it; its technique can be acquired only by natural instinct or by long practice. The Act has, however, laid down some rules of guidance.
- lawful questions shall be asked.

19. Who is an Accomplice? Discuss the relevancy of his evidence.

ಸಹ ಅಪರಾಧಿ ಯಾರು? ಈತನ ಸಾಕ್ಷ್ಯದ ಸುಸಂಬದ್ಧತೆಯ ಬಗ್ಗೆ ಚರ್ಚಿಸಿ.

- Accomplice means a guilty associate or partner in crime.
- An accomplice by becoming an approver become a prosecution witness.
- S. 133 of the IEA – An accomplice shall be a competent witness against an accused person..
- Principle – The evidence of an accomplice, though it is uncorroborated, may form the basis for a conviction.

This section is the only absolute rule of law as regards the evidence of an accomplice.

- Dagdu v. State of Maharashtra
- An approver's evidence has to satisfy a double test: (1) his evidence must be reliable and (2) his evidence should be sufficiently corroborated (Shankar V. St. of TN)
- court has to take a great deal of caution and scrutiny
- he is to be *participes criminis*

21. What are leading questions? When they may be asked?

ಉತ್ತರ ಸೂಚಕ ಪ್ರಶ್ನೆಗಳು ಎಂದರೇನು? ಅವುಗಳನ್ನು ಯಾವಾಗ ಕೇಳಬಹುದು?

- S. 141 of the IEA- Any question suggesting the answer which person putting it wishes or expects to receive is called a leading question.

S. 142: Leading questions must not be asked in an examination- in- chief and re-examination

S. 143: Leading question may be asked in cross- examination

- cases laws

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