

LAW OF EVIDENCE

BHARATIYA SAKSHYA ADHINIYAM, 2023

Objectives:

The course is designed to enable the students to understand how principles of evidence are applied in real world of litigation and advocacy. The course also intends to acquaint the students with the skills of accuracy and reliability in the presentation and evaluation of evidence.

UNIT-I

Introduction: Distinction between substantive and procedural law- Evidence in customary law systems- 'Basic Principles of Evidence'- Evidence under Civil and Criminal Procedures; Salient features of the Bharatiya Sakshya Adhinyam, Applicability of the Adhinyam; Central Conceptions in Law of Evidence – Facts - Facts in issue and relevant facts- Evidence- Document- proved, disproved, not proved- May presume, Shall presume, Conclusive proof. Closely Connected Facts- Sections 4 to 14; Admissions- Definition, Relevancy and Admissibility, Privileged admissions, Evidentiary value of Admissions (Sections 15 to 21 & 25).

UNIT-II

Meaning, Forms, Relevancy and Admissibility of Confessions- Evidentiary value of information received from accused in custody- Confession of co-accused (Sections 22 to 24) - Dying declaration- Justification for relevance- Judicial standards for appreciating and assigning evidentiary value under Section 26 (a) with reference to English Law - Other statements by persons who cannot be called as witnesses (Sections 26(b) to (h)), Statement under special circumstances (Sections 28 to 33); Relevance of judgments- General principle –Exceptions (Sections 34to 38); Expert testimony: General principle (Sections 39-45) - Who is an expert- Types of expert evidence – Examiner of Electronic Evidence.

UNIT-III

Character Evidence – Relevance in Civil and Criminal cases (Sections 46- 50); Facts which need not be proved, judicial notice of laws having extra territorial operations (Sections 51-53); Oral Evidence -General principles (Sections 54 & 55); Documentary Evidence - General principles, Primary and Secondary Evidence and their scope, inclusion of electronic and digital records within primary evidence, Cases in which secondary evidence is admissible (Sections 56-60); Framework for admissibility of Electronic or Digital Records (Sections 61-63); Other Rules regarding proof of Documents (Sections 64-93);Exclusion of Oral by Documentary Evidence (Sections 94- 103).

UNIT-IV

Burden of Proof- The general conception of *onus probandi* (Section 104)- General and special exceptions to *onus probandi* (Sections102-109)- The justification of presumption and burden of proof (Sections 110 to 119) with special reference to presumption of legitimacy of child and presumption as to dowry death, Doctrine of judicial notice and presumptions; Estoppel- Scope and rationale (Section 121)- Estoppel distinguished from *Res judicata* - Waiver and Presumption- Kinds of Estoppel- Equitable and Promissory Estoppel- Tenancy Estoppel (Section 122), Estoppel of Acceptor of Bill of Exchange (Section 123).

UNIT-V

Witnesses- Examination and Cross Examination,Competence to testify (Sections 124 to 127), Privileged communications (Sections 128 to 139), General principles of Examination and Cross examination (Sections 140 to 169), Leading questions (Section 146), Approver's testimony (Section 138), Hostile witnesses (Section 157), Compulsion to answer questions (Sections 150, 151 and 156), Questions of Corroboration (Sections 159 to 160), Improper admission of evidence.

Prescribed Books:

1. Chief Justice M Monir, Textbook on The Bharatiya Sakshya Adhinyam, Universal LexisNexis
2. N.Vijaya Raghavan and Sharath Chandran, Ratanlal and Dhirajlal on The Bharatiya Sakshya Adhinyam, 2023, Vol.1&2, LexisNexis (the latest edition comprising the Bharatiya Sakshya Adhinyam, 2023)

Reference Books:

1. Bare Act- *The Bharatiya Sakshya Adhinyam, 2023*
2. Sudipto Sarkar and V. Kesav Rao, Sarkar on Law of Evidence, Vol.1& 2, LexisNexis.
3. M. Rama Jois, Legal and Constitutional History of India: Ancient Legal, Judicial and Constitutional System, Universal Law Publishing Co.
4. BatukLal, The Law of Evidence, Central Law Agency.

Important Note

- The teachers and students have to refer the provisions as amended upto date referring the latest editions of books on the subject.