EVIDENCE ACT

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[INDIAN]

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Textual and Reference Books:

Ratanlal	:	*Law of Evidence*
Sarkar	:	*Law of Evidence*
Cross	•:	*Law of Evidence*

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INTRODUCTION

The available books on the Law of Evidence, crowded with references, explanations and commentaries, adding to the volume, generally pose a serious problem to the student of law, who is confronted with the Law exam. The bewildering maze of legal jugglery adds to his confusion. Some serious students of law suggested to me, to reduce my lectures to a size sufficient to face the exam with success.

An attempt is made here to present the subject shorn of all frills in the form of references to academic literature. The basic principles of all important and relevant topics are discussed with cases and illustrations.

The Law of Evidence is of paramount importance to the legal practitioner and to the judiciary. The student must evince more interest in learning the rudiments of the subject, and, any attempt at specialisation is to be made only after entering the legal profession.

A special reference section is added at the end. Your familiarity with the sections, contents and illustrations would be of immense value as additions to the text given by me .

…..MSR

SYLLABUS

Definitions: Fact. Facts in issue, Document, Evidence, Proved, Disproved, not proved, May presume, shall presume and Conclusive Proof.

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QUESTIONS **BANK**

Define 'Evidence'. Explain 'Fact' and 'Facts in issue'

What is the law relating to 'Confession' in the Evidence Art?

Distinguish Admission from confession.

When are statements made by persons who cannot be called as witnesses admissible (Sn.32) or What is Dying declaration ? When is it admissible in evidence?

What are privileged communications? Explain the circumstances when a witness may claim a privilege.

Discuss,how far character is relevant in Criminal and Civil cases.

What are Public documents?

Distinguish between Private and Public documents. Discuss the mode of proving these documents.

How are attested and unattested documents proved?

Explain the scope of oral and documentary evidence and discuss how far documentary evidence excludes oral evidence.

a) Explain Examination in Chief, Cross examination and Re-examination.

b) What are leading questions? When are they allowed and when not?

What are presumptions? Explain rebuttable and irrebuttable presumptions with examples.

i)Explain Primary evidence and Secondary evidence,

ii) Explain when Secondary evidence is admissible.

Explain the doctrine of Estoppel with illustrations.

What is 'Onus of proof ? Briefly explain the law relating to it.

Explain facts which need not be proved.

Write Short Notes on:

i) Relevant Facts

ii) Res Gestae

iii) Ancient documents

iv) Judgment in rem

v) Child witness

vi) Proved, Disproved and not proved

vii) Experts opinion

viii) Hearsay evidence

ix) Hostile witness

x) Testimony of an Accomplice

xi) Dumb witness

xii) Retracted confession

xiii) Presumption of Legitimacy

xiv) Evidence

xv) Attestation

xvi) Competent witness

xvii) Judicial notice

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CHAPTER 1
DEFINITIONS

Ch.1.1. Evidence:

Evidence means and includes:

i) all statements which the court permits or requires to be made before it by witness in relation to a matter of fact under inquiry such statements are called oral evidence.

ii) all documents produced for the inspection of the court

Evidence may be oral or documentary. Evidence is defined as any matter of fact the effect or tendency of which is to produce in the mind a persuasion of the existence (or otherwise) of some other matter or fact,.

The textual definition refers only to oral and documentary evidence and hence incomplete. The judge may rest his judgment on various other media of proof as well. Inspection report, facts which the court may take judicial notice etc. are not covered by the definition.

An affidavit is not 'evidence' under this section. Similarly confessions of Co-accused, Mahajar report, finding of the tracker dogs or tape recordings etc; are not evidence. These are to be proved and then the court may decide their admissibility and evidentiary value.

Three major principles of evidence are i) it must be confined to facts in issue and relevant facts ii) Hearsay evidence is not admissible iii) Best evidence must be produced before the court.

Ch.1.2 Fact and Fact in Issue;

'Fact' means anything or state of thing which is capable of being perceived by the senses. It also includes any mental condition of which a person is conscious.

Eg.: i) if a man hears something then that he heard something is a fact.

ii) That a person has said certain words is a fact. Facts are of two kinds :

Physical

Psychological (item which exists in mind)

Facts in issue means any fact from which either by itself or in connection with other facts there necessarily follows the nature of the right asserted or denied in any civil or criminal proceedings.

'A' is accused of murder. The following are the facts in issue: 1) A caused B's death ii) A intended to cause the death of B iii) A had received a grave and sudden provocation from B. Matters which are in dispute or which form the subject of investigation are to be determined by the court. When the Court investigates the facts there may be allegation and denials by the parties to the dispute. From these the court settles the facts in issue. These are called issues under Civil Procedure Code.

Ch.l.3.Relevant Facts:

Facts mean:

i) anything capable of being perceived by the senses and

ii) any mental condition of which any person is conscious.

Facts in issue are matters which are in dispute or subjects for determination.

Relevant facts are defined in Sns. 3 & 5.

Evidence may be given of i) facts in issue and ii) of such other facts declared to be relevant by the Evidence Act, and of no others.-Generally speaking, evidence should to be confined to the facts in issue. But there are collateral facts which are intermixed with the facts in issue and according to the Evidence Act these are relevant and admissible. Relevancy is the test of admissibility.

i) A fact not relevant may become relevant because of a presumption.

ii) The terms of a contact may be relevant but no oral evidence is allowed except the document itself.

iii) In examination in chief though there may be facts leading questions concerning them are not admissible. But in cross examination leading question may be freely asked.

The objective of the evidence Act to save public time and to prevent fanciful inferences which may prejudice and mislead the court. Hence only collateral facts which are relevant according to the Evi dence Act are admissible. All others are inadmissible. The discretion of the court is guided by the provisions of 'the Act.

Ch.1.4 Res Gestae (Sn.6):

These are facts surrounding or accompanying a transaction. This has a reference to the circumstances which are the automatic and the unsigned incidents. The incidents may consist of the sayings and doings of persons.

Res Gestae according to Cross's Law of Evidence, is a blanket phrase covering, a variety of items of evidence for variety of purposes. Eg.: A sues B for a lible. The libel was in a letter. The correspondence between the parties relating to the subject of libel are relevant facts.

A is accused of murder of B by beating. All things said or done by A & B, or by the by-standers, at the time of beatings or just before it are relevant facts (Res Gestae). Of course, Hearsay evidence is not admissible.

Hence. Res Gestae refers to statements relating to and contemporaneous with a relevant fact. The essence of it is that there must be continuity of action and purpose.

(i) R.V. Thompson (committing abortion of a woman), all acts done and statements made before or after abortion were allowed as Res gestae.

(ii) In R.V. Lillyman, the accused had ravished a woman W. The particulars given by her in her complaint, were allowed as they were consistent with her conduct and for not giving her consent for ravishment.

Ch.1.5. 30 Years Old Document (Ancient Document) (Sn. 90):

There is a presumption in respect of a document which is 30 years old that the signature and other parts of the document which purport to be in the handwriting of a particular person, is in that persons handwriting. In respect of its execution or attestation, the court may presume that it has been duly done.

Such a document must be in the proper custody of a person ,who would naturally be in possession of it. The legitimate origin can be proved.

Eg.: A produces title deeds relating to his land. The custody is proper.

This rule is based on necessity and convenience. Further, after the lapse of such a longtime, i.e., 30 years or more it maybe difficult formally to prove the handwriting, attestation, etc.

These documents are also called ancient documents. 30 years is calculated of an ancient document. It does not apply to other aspects.

In Chiranjilal Vs. Kallo the court held that when a 30 years old document was produced there was no presumption as to its genuineness.

Ch.1.6. Judgment in Rem (Sn.41):

(i) A judgment in rem, is conclusive not only against the parties, but also against all the world (Norton). The judgment must been given upon the status of some particular subject matter and it must be by a competent court. Any person who is affected by the decision may appear and assert his own rights by becoming an actual party to the proceedings.

The leading case in Kanhya Vs. Radha, where Peacock J. laid down this rule.

A judgment in rem of a Competent Court which is exercising its jurisdiction in probate, Martimonial, Admiralty or Insolvency is binding on all persons, whether parties or privies or strangers. It is a conclusive proof of the legal character.

(ii) The legal character is the one that the judgment in rem confers, takes away or declares, in it's judgment. It may declare the property rights of any person. It is conclusive in regard to the martial status of parties, insolvency, probate and admiralty. Eg. Decree of divorce, of granting probate of status in insolvency etc.

Testator T dies leaving a will, with E as his executor. A,B,C & D dispute the will. The probate court decides that the will is genuine, it grants probate to E. This is binding on A,B,C, & D, and, also on all persons in the world. It is conclusive.

(iii) It may be impeached by proving:

That the court,had no jurisdiction.

That the judgment was obtained by fraud.

That it was not given on merits.

That it was not final,

iv) **Judgment in Personam:**

This is the judgment of the court binding on the parties to the case only or their legal representatives, on the matters decided by the court. Judgments in Contracts, Torts, etc., fall to this category.

Such judgments are not a bar between strangers or between a party to the judgment and a stranger.

There is one exception. When the judgment relates to a matter of Public nature, it may be relevant.

A sues B for trespass on his land. B alleges that there was a public right of way. A denies. In a previous suit between A and C there was a decree in favor of C for public right of way on the same land. Such a decree, is relevant but not conclusive.

Ch.1.7. Alibi Evidence (Sn. ll):

Alibi means elsewhere. It is a complete defence in Criminal Cases.

(i) The Charge is that A has committed theft at Bombay on 25-12-92. The fact that on that day A was in Calcutta is a relevant fact. The fact that A was far away from the place of crime makes it highly improbable (though not impossible) that A has committed theft.

(ii) The charge is that A has committed an offence. The circumstances are such that A,B,C, or D must have committed the offence. The fact that it was not committed by B,C, or D is relevant.

The leading case in R.V.Richardson. In this R committed murder of a peasant girl in a cottage but claimed alibi. The circumstances showed that the plea was bad. He was found guilty.

The principle of alibi is:

Facts (not otherwise relevant) are relevant

(i) if they are inconsistent with any fact in issue or relevant fact.

(ii) if the facts in connection with other facts make the existence of the fact in issue or relevant fact, impossible.

Thus, in the illustration, if A is elsewhere at the time of the crime, it is inconsistent with the fact in issue. This also makes it improbable that A who is at Calcutta could commit theft, at that time at Bombay.

Ch.1.8. Child Witness:

A child of tender age is competent to be a witness before a court but it must have intellectually and sufficiently developed to understand what it has seen and also to tell the court about the same. Whether a child is sufficiently developed or not may be tested in examination-in-chief. The child must be capable of giving rational

answers.lt is left to the discretion of the court to decide the compe- vi tency of the child.

In criminal cases, it has been held, that, the conviction of the accused cannot be based solely on the solitary evidence of a child, because children are the most untrust-worthy class of witnesses. They may mistake dreams for realities and are greatly influenced by fear of punishment, by hope of reward and by a desire of notoriety. In Abbas Ali Shah Vs. Emperor, the Privy Council said that it is not sound rule to act on the uncorroborated evidence of a child. This is only a rule of prudence and not law.

Ch.1.9. Proved, disproved and not proved:

Proved: A fact is said to be proved when the court after considering the matters before it, believes its existence or believes it to be so probable that a prudent man would conclude it to exist under the circumstances of the case. This definition indicates, the degree of certainty which must be reached.

Proof means anything which helps to convince the mind, of the truth or falsehood of a fact. Absolute certainty may not be had in the affairs of life. Practical good sense and prudence consist in judging matters with a degree of probability or certainty. Suspicion will not give probative force to testimony and an accused cannot be convicted on grounds of suspicion.

Disproved: A fact is said to be disproved when the court after considering the matters before it, believes that it does not exist or considers its non-existence so probable that a prudent man would conclude it, not to exist under the circumstances of the case.

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

(i) A is tried for murder of B. On the basis of evidence the court is satisfied that A has murdered. Here, the charge is proved.

(ii) A is tried for theft. The prosecution could not convince the court with evidence available. The accused, showed evidence that he has not committed theft. The judge is convinced. The charge is disproved.

(iii) A is charged with receiving of stolen property. The evidence could not establish beyond doubt that A is guilty. The court may declare the charge as not proved.

Proof may be direct or circumstantial. The court decides whether a fact is proved or disproved. A fact is proved when the court believes it to be certain and most probable. It is disproved when it is uncertain or improbable or not possible. A stage between these two is 'not proved. That is, the court will not be able to say precisely, how the matter stands.

Ch.1.10. Expert Witness (Sn. 45)

An expert witness is one who has devoted his time and study to a special branch of learning and so is skilled specially on the points on which he gives the opinion. His evidence is admissible, doctors surgeons, engineers, fingerprint and Handwriting experts, Chemical examiners etc, are Expert witnesses.

The principle of the Evidence Act is that the "opinion evidence" should not be entertained. Expert opinion is an exception to this rule.

Opinion of experts on points of i) Foreign Law ii) Art iii) Identity of handwriting or fingerprints or other impressions, are admissible as facts in evidence.

Eg.: i) The question is whether 'A' died of poison. The opinion of an expert relating to the symptoms of such poison is relevant.

ii) The question is whether a signature is that of 'A'. Handwriting experts opinion is relevant.

In the Meerut Conspiracy case, the Supreme Court laid down that after hearing experts opinion the court'may come to its own conclusions and it is not bound by experts opinion.

The experts o**pinion is rebuttable.** Facts which support or are inconsistent with experts opinions are relevant to rebut or affirm such opinions. Eg. : A was poisoned by B. The fact other persons showed similar symptoms with that poison, is relevant.

In **Aziz Banu Vs M.Ibrahim**, witness W was examined as an expert in Muslim law. The High Court, rejected this and held that the evidence was inadmissible. The Court must decide the law, not the witness. But experts may be witnesses to prove foreign law.

Ch.1.11. Opinion of Non-experts (Sns.47 **to** 51): **Third Persons:**

The general rule is that opinions of persons are inadmissible as evidence.

However, there are some circumstances, where opinion of third persons is admitted giving weight to whatever they are worth.

i) Opinion as to handwriting:

A person who is acquainted with the hand-writing or signature of another person, may give his opinion whether the hand-writing or signature is that of the person in question.

The question is whether the letter from London is in the handwriting of A. The opinions of B, the receiver of such letters at Bombay, and C his clerk who are familiar with such handwriting are relevant.

ii) Opinions as to customs, rights, etc.

When the court is to form an opinion as to the existence of a general custom or right the opinions of persons who are likely to have knowledge of it, are relevant.

Eg. Customary right of way, necessary easements, etc. iii) Opinions as to usages, tenets:

Opinions of persons having special knowledge.of words or terms used in charitable or religious institutions, or Government or family or classes of persons, are relevant. This helps the court to form its own opinions, about the usage.

Eg. Rate of interest on loans; agricultural year, iv) Opinions on relationships.

When the court is to form its opinion, in respect of relationship between one person and another, the opinion of a member of a family who has special knowledge on the subject, is relevant.

Exceptions: Such an opinion is not admissible to prove a marriage; or to prosecute for Bigamy under I.P.C.

Ch.1.12. Hearsay Evidence Sn.60:

The general rule of evidence is that Hearsay evidence is not admissble. Sn.60 provides that oral evidence must be direct. This means if it refers to a fact which could be seen, it must be the evidence of a witness who says he has seen it. If it refers to a fact which could be heard, it must be the evidence of a witness who says he has heard it. Similarly, if it could be perceived by any other sense or manner, it must be the evidence of a person, who has perceived it by that sense or manner. An opinion is to be by a person who holds that opinion.

Hearsay evidence is **opposed to direct evidence**.

Hearsay refers to what is done or written or spoken and the evidence does not solely,evolve from the witness. It is partially based on the varacity and competence of some other person.

Hearsay is inadmissible as, otherwise, frauds may be practised and legal proceedings may be protracted. In fact, it is a second hand proof. All evidence must be under the personal responsibility, of the witnesses.

This rule is subject to an exception in S.32. Statements made by a person

who is dead

who cannot be found

who has become incapable of giving evidence or

(d) whose attendance cannot be procured without unreasonable expense or delay, are admissible subject to the provisions made in Sn.32.

Eg.: Opinion of experts expressed in a treatise or commentary may be proved by producing the book, if the author is dead.

Ch.l.l3.Hostile Witness:

A witness is a person who is produced before the court with whose support the proceedings take place. (Sn.154)

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. An unfavorable witness is not necessarily hostile. He is one who is gained over by the opposite party. As far as the courts are concerned, he should not be believed unless the

testimony is supported by satisfactory evidence.

The court in its discretion may allow the concerned party to cross-examine him. Leading questions may be put to him. Also, questions relating to his previous statements may be put to him. His credit may be impeached.

The result is that the whole of the evidence of the witness does not become worthless. It is left to the discretion of the court to consider his evidence, and a part of his evidence may be utilised by the parties. Corroboration is required if the court wants to give any credence.

The principle underlying the law relating to hostile witness is that one's own witness unexpectedly may make statements adversely and in such cases, it is common fairness that such statements should be tested by cross-examination. The utility of cross-examination is to get at the truth more readily.

Ch.1.14. Leading Questions:

Any question suggesting the answer which the person putting it wishes or expects, is called a leading question.

A leading question should not be asked in examination-in-chief-or re-examination. The reason is, it will enable a party t**o prepare his story and evolve it in his very words from the mouth of his witness in** the court. A false gloss may be put. Hence concocted stories may be built up. As the witness is presumed to be in favor of his party, he might be prompted.

Eg.: Question asked by the Prosecutor:

Did Accused Jones attack you with a knife as soon as you met him on 1st January 1983?

This is a leading question and is inadmissible

As **Cross on 'Law of Evidence'** points out Leading question is a question which suggests a desired answer. Hence they are not admitted in evidence.

Leading questions may be asked in examination-in-chief when they refer to matters which are introductory, undisputed or sufficiently proved i.e., to abridge the proceedings.

Leading questions may be freely asked in cross-examination. As the purpose of cross-examination is to test the accuracy, credibility and the general value of evidence and also to sift the facts already stated, it is necessary to put leading questions to elicit facts.

Leading questions may be freely asked to a hostile witness to test the truth or veracity of such a witness.

CHAPTER2 PRESUMPTIONS

Ch.2.1 Presumptions:

Definition: A presumption is a rule of law that Courts and Judges shall draw a particular inference from a particular set of facts; or from a particular evidence. This is held so until the truth of such inference is disproved. Presumptions are drawn from the course of nature. These inferences are based on the wide experience of mankind. They may also be drawn from the course of human affairs, the usage of society, transactions in business, or domestic relationships.' (Norton)

Ch.2.2 Kinds of Presumptions:

Presumptions are of three kinds:

Presumptions of fact (Natural Presumptions)

Presumptions of law (Artificial Presumptions)

Mixed Presumptions.

a) Natural Presumptions: are inferences drawn naturally and logically from the experience of the course of nature, constitution of human mind, the springs of human action and usages and habits of society. These are rebuttable. The Evidence Act, has stated them under 'May Presume'.

Examples:

i) Certified copy of foreign records may be presumed genuine.

ii) Telephone message: The presumption is that it corresponds with the original message sent.

iii) Documents 30 years old: The presumption is that the handwriting is that of the person concerned. Regarding attestation the presumption is that it is duly done.

These may be rebutted.

b) Presumptions of Law: These are legal, uniform and are drawn by the Courts whenever the necessary facts develop. In fact, these are in reality rules of law.

These may be rebuttable or irrebuttable. The Evidence Act has enumerated them under 'Shall Presume' and

Examples:

i) Certified copies of documents are genuine, ii) Official gazette notifications are genuine, iii) Maps and plans published under the authority of the government are presumed to be genuine, iv) Law reports and such publications are genuine, v) Power of attorney is genuine.

These are rebuttable.

Irrebuttable Presumptions:

Examples:

i) Judgments in rem is conclusive in respect of the Legal character it declares (Sn.41).

ii) Any person born, a) During the continuance of a valid marriage between his mother and any man or

b) Within 280 days after divorce, the mother remaining unmar
ried, shall be conclusive proof that he is legitimate. There must be, of

course, access to the parties.

iii) Cession of territory made by Government-conclusive if it is in official gazette.

These are irrebuttable presumptions and hence are conclusive in nature.

c) Mixed Presumptions:

This stands midway between presumption of fact and of law. These are inferences but because of their strength, importance or occurrence, they have gained the force of law.

Eg.: A person is presumed to be dead when it is proved that he has not been heard of, for seven years. (Sn.107).

Ch.2.3. May presume, Shall presume and Conclusive proof:

a) May Presume: Whenever the Evidence Act provides that the court may presume, what is understood is, that the court treats the fact as proved until it is disproved or it may call for proof of it.

A Presumption is a rule of law. The court shall draw an inference from a particular set of facts, or, from a particular evidence. 'May Presume' refers to natural presumptions. These are inferences drawn naturally and logically from the experience of mankind, usage and habits of society.

These are rebuttable:

Eg.: i) Certified copy of foreign records may be presumed genuine.

ii) Ancient documents (30 years old documents), the Presumptions is that the handwriting is that of the person concerned.

b) Shall Presume: Whenever the Act provides that the court shall presume, what is understood, is, that the court shall regard the fact as proved unless it is disproved.

This is rebuttable and stands good until disproved

Eg.: i) Official Gazette notifications shall be presumed to be genuine.

ii) Maps and plans published under the authority of law shall be presumed to be genuine..

c) Conclusive Presumptions: -These are inferences which the law makes so peremptorily that it will not allow them to be over turned by any contrary proof however strong.

Eg.: i) Judgment in rem is conclusive in respect of the legal character it declares.

ii) Sn. 112: 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 divorce (the mother remaining unmarried) shall be conclusive proof that the son is legitimate. The burden is on the husband to show that he had no access to his wife at all and very strong proof is required by courts to establish this.

Eg. Husband living abroad for over one year. Here,H had no access to his wife, when the child would have been begotten.

iii) Sn. 113: Cession of territory by Govt.: The official gazette notification is conclusive proof.

Ch.2.4. Presumptions as to documents (Sns.79 to 90):

i) A Presumption is a rule of law that Courts and judges shall draw a particular inference from a particular set of facts, or from a particular evidence. The Evidence Act has classified these presumptions into three groups:

a) May Presume b) Shall Presume and c) Irrebuttable Presumptions.

ii) In regard to documents produced before the Courts or their certified copies as required by the Evidence Act, the Courts start with some presumption for example about the genuineness of the document. This presumption is rebuttable, and, the party who asserts that the document is not genuine, should prove or establish his assertion.

iii**) May Presume:**

Certified copies of foreign judicial records: The Court may presume them to be genuine and accurate if duly certified by the concerned authority. Sn 86

Books/Maps and Charts: The court which may refer for information on matters of public or general interest, as relevant facts, may presume that these were written and published duly at the place, by the persons there of. Sn 87

Telephonic Message: The court may presume that telegraphic message received by the addressee corresponds with the message given for transmission. However, the court will not make any presumption as to who has sent the message. Sn 88

Ancient documents: In regard to such documents which are thirty years old, and produced from proper Custody, the court may presume that the signature, the hand-writing, are proper ; and, that the attestations and execution are duly done.

iv) **Shall Presume:**

Certified Copies: Every Certified copy duly issued by the concerned authority shall be presumed to be genuine, and, duly certified by that authority and that authority held the official status stated therein. Sn 79

Records of evidence in judicial proceedings: The Court shall presume, that such documents forming part of judicial proceedings, are genuine, that the statements contained therein were duly taken or recorded. (This refers to Confession Statements, or any document or memorandum before any judicial proceedings). Sn 80

Gazette, Newspaper, Acts of Parliament (Or Legislature) and other documents, shall be presumed to be genuine. Sn 81

Maps or Plans made by Government: The courts shall pre sume that they are accurate. Sn 83,

Foreign Law books and reports: Sn 84. Every law book and-law report published by a foreign Govt. shall be presumed to be genuine.

Power of Attorney: Every Power of Attorney duly executed before a Magistrate or a Court, or a Notary Public, shall be presumed to be genuine. Sn 85

Irrebuttable Presumptions:

Examples:

i) Judgments in rem is conclusive in respect of the Legal character it declares (Sn.41).

ii) Any person born, a) During the continuance of a valid marriage between his mother and any man or

b) Within 280 days after divorce, the mother remaining unmar ried, shall be conclusive proof that he is legitimate. There must be, of course, access to the parties.

iii) Cession of territory made by Government-conclusive if it is in official gazette.

These are irrebuttable presumptions and hence are conclusive in nature.

CHAPTERS 3
ADMISSION & CONFESSION

Ch.3.1. Admission:

i) Definition:

An admission is a statement (oral or documentary), made by a party (or his representative), which suggests an inference as to any fact in issue or relevant fact.

According to Best, admission is a species of evidence and is called self regarding. This is of two kinds. When the evidence given is in favor of party it is self-serving; but, when it is otherwise, it is self-harming. The general rule is that self-serving evidence is not receivable; but self-harming evidence is always considered as satisfactory.

If A says 'B owes me Rs.5,000/- this is no evidence. This is self-serving. If A says 'B, has paid and does not owe me any debt', this is a fact self-harming and can be used by B.

An admission may be judicial. It may be extra-judicial i.e., outside the court or under other circumstances.

ii) Persons to make admissions Sns.18-20:

Party: Admission may be made by the party to the proceeding.

Agents: Admission may be made on behalf of the party by the Advocate, Vakil, Power of Attorney holder,etc.

Proprietory or Pecuniary interest: Partners or joint contrac tors may make admissions, as they act as agents. There must be the identity in legal interest among them.

Predecessor-in-title: Admissions of such persons from whom a part had derived his interests, are admissible.

There must be privity between them.19

e) Persons with representative character: Karta of a Hindu Joint Family may make admissions on behalf of other coparceners.

iii) Proof of position or Liability:

Admissions may be made by persons holding some position; In such a case their position or liability is to be proved.

T is the tenant of B. B has appointed A as his agent to collect rents.

B sues A' for not collecting rents. A denies any dues from T. Admission by T, that rents were due is admissible,

iv) **Admission** by **referee:**

Admissions made by a referee who is expressly referred to by the party, are a'dmissible.

The question is whether, the horse H is sound. A says to B Ask 'C', he knows everything". Statements of "C" are admissible.

v) **Proof of admissions:**

a) Admissions cannot be proved in favour of a party making them (self-serving evidence). But admissions may be proved against the person who is making them.

A says that a deed is forged. B says it is genuine, Statement by A that it is forged will not be allowed to be proved. But statement by A, that it was genuine, made before C, may be proved against A.

Exception :

Under Sn.32: Persons who are dead or those who cannot be called as witnesses: Statements made by them are admissible. Similarly a statement of the existence of any state of mind or body is admissible. Eg.:A is charged for casting the ship away. A produces log book kept in the ordinary course of his duty and the .day to day recordings therein.

These are allowed as they would be admissible if A were dead

Admissions in Civil Cases:

In civil cases, admissions without prejudice are irrelevant.

A sues B for Rs.1,000/- B sends Rs.200/- without prejudice. This offer of Rs.200/- is not an admission of the liability of Rs.1,000/ - and hence, not admissible.

Ch.3.2. Confession:

i) Definition:

Confession is not defined in the Evidence Act. In Pakala Narayan Swami V. R., the court said that a confession should either admit in terms of the offence or, at any rate substantially all the facts which constitute a crime. The reason for allowing confession is that what a man voluntarily says against his own interests, is likely to be true.

The confession should be recorded according to Sn.164 Cr.P.C.

ii) Admissibility:

To make a confession relevant, it must be shown

that it was made by the accused

that it was voluntary

that it was true (accused may be convicted on this ground).

confession should not be prompted by inducement, threat or promise from a person in authority or made to gain any advantage or to avoid any evil of a temporal nature.

confession to a police officer is not admissible (Sn.25)

the confession is admissible if it is made before the Magis trate. It is not admissible if it is made by the accused while in police custody *(Sn.26)

The reason for this is that a confession in police custody is untrustworthy. Further, it may have been

exerted by torture by using "swear-box" or third degree methods". (Taylor)

g) the burden of proving that the confession is voluntary is on the prosecution. If it is not voluntary, even if it is true, it is not admissible.

i) How much of information, admissible: (Sn.27)

If the accused in police custody discloses any information and in consequence of that, the police discover a fact, only so much of information as relates distinctly to the fact so discovered may be proved.

Eg.: A tells the police when in custody

i) that he has thrown his dagger into a well, and

ii) that it is with dagger that he has committed the murder of B. The first statement is admissible as a fact, if the dagger is discovered on the information given by A, but the second statement is never admissible, as it is a confession to the police.

iv) Relevancy of otherwise valid Confession Sns. 28 & 29.

If a confession is recorded after the removel of any threat, promise inducement etc., it is admissible. The court must be satisfied that the impression of threat etc., has been wholly removed. (R.V.Sherrington) and that it is voluntary.

If a confession is voluntary and relevant as per the Evidence Act (Sn.24), it does not become irrelevant merely because it was made under i) promise or secrecy or ii) in consequence of deception or artifice or iii) under the influence of drinks or iv) that no warning was given that he was not bound to confess.

v) **Confession of Accomplice: Sn.30.**

If one of the accused makes a confession affecting himself and some other person., the court may take into consideration such a confession as against the other person, and of himself.

A and B are jointly tried for murder of C. It is proved that A, confessed stating "B and I, murdered C'.The court may consider the effect of this confession as against B.

Corroboration necessary to convict a person on the confession of an accomplice.

In Bhuboni Sahu V. King, the Privy Council held that a confession of a co-accused does not tantamount to proof. It can be used only in support of other evidence, and cannot be the ground for conviction.

Ch 3.3 **Admission and confession, distinguished:**

Admission	Confession
An admission is a statement of fact. It accepts that the fact	a) A confession is an admission made by the accused stating or

asserted by the opponent is true, Hence, that fact need not be proved.

Admission is usually applied to civil proceedings and consists of all statements made by the party, his agent, legal representative or person with derivative interest.

c) It is immaterial to whom the admission is made.

suggesting the inference that inference that he committed the time.

b) A confession is applied to cri -minal proceedings and must be made by the accused, before the Magistrate.

c) A Confession is relevant only if it is made in the presence of a Magistrate during Police Inves -tigation Sn. 164 Cr. P.C.'A accused tells the Police.

that he has thrown the dagger into a well.

and that he committed murder with that dagger, Held: the first statement of fact is discovered

1) An admission may be used on behalf of person making it, subject to certain statutory exceptions.
An admission is not a conclusive
proof of the matter admitted but
may act as an estoppel.

An admission of one of several
parties in a suit is no evidence
against another, generally.

(fact) in consequence of inforrmaion given by the accused. But, the second statement is not admissible as it amounts to a confession in police custody.

A confession always goes against the accused who makes it.

A confession made voluntarily and deliberately, may be accepted as conclusive in itself, of the matter confessed.

A confession of one or two or more accused, jointly tried for the same offence, may be taken into consideration, against the co-accused.

Eg. : A and B jointly tried for murder. A said B and 1 murdered C.

The Court may consider the effect of such confession.

A confession under deception or promise of secrecy, or a confession made when a person is drunk when irrelevant questions have been asked, is against law.

The provisions of Sn. 164 Cr.P.C. must be strictly followed.

Please refer to Author's e-book Criminal Procedure Code.

Ch. 3.4 **Retracted Confession:**

An accused who makes a confession under Sn. 164 Cr.P.C. may **go back or withdraw his statements.** This is called retracted confession. In such a circumstance, the question will be which is to be believed either the confession or the retracted confession. To solve this the courts have evolved' certain principles: (R.V.Babula)

i) A confession statement duly recorded by the Magistrate under Sn.164 Cr.P.C. is not to be regarded as not voluntary,merely because there was retraction by the accused.

ii) As against the accused, the retract confession may form the basis of a conviction;but, as a rule of prudence and caution the retraction should be looked with suspicion, 'and corroboration is necessary to convict him.

iii) Against the co-accused, the value of retracted confession is nil, and hence substantial corroboration is necessary, to convict the co-accused.

iv) The accused may show satisfactory evidence to establish that the confession was made out of fear, duress, police torture, inducement or promise of some person in authority. Mere retraction is of no value.

In an English case,A in 1905 confessed that he had murdered 20 years ago.

He retracted in the trial. He said that after reading a story, he had fancied that he had murdered and made this confession. The court held that his confession was accurate.

It rejected the retraction and convicted him (Best's law of Evidence).

CHAPTER 4

HEARSAY & DYING DECLARATION

Ch.4.1 Persons who **are not called witnesses: Sn.32**

(Exceptions to Hearsay Evidence Rule)

The general rule of Evidence Act is that any oral evidence must be direct i.e, Hearsay evidence is not admissible. It must be given on oath and must be subject to cross-examination by the opposite party. Otherwise, the evidence is not admissible.

There is, however one exception to this rule. Under Sns. 32 & 33, there are four types of persons who are neither called before the court as witnesses, nor, are they subject to cross-examination. They are:

i) those who are dead

ii) those who cannot be found

iii) those who have become incapable of giving evidence

iv) those whose presence cannot be procured except after reasonable delay or expense.

The reason for allowing such an evidence is one of necessity and it may be impossible, to apply the test of cross-examination to them. But the circumstances show that their statements are true and trustworthy.

i) **Dying Declaration:** Statements made by a person as to the cause of his death or circumstances leading to his death, are relevant.

ii) **Business or Professional duty:** The statements made by the above four classes of persons, in the course of business or professional duty are admissible. Eg. entries in books kept by them or in documents used by them, are relevant and admissible.

Entries made by a Surgeon in her dairy, regularly kept, stating the birth of A on a particular day is relevant fact.

iii) **Pecuniary or other interests**: Statements made by any of against the pecuniary interest or title, ii) exposing a person to criminal prosecution or damages in torts, are relevant and admissible.

The question is about the payment of rent to A. Letter by A's deceased agent that the rents were received and were kept under A's order are relevant

The question is about the legality of the wedding between A and B. The statements made by the clergy man (or officiating person) that the circumstances of that wedding were such that, it would be a crime, are relevant.

iv) **Custom or matters of general interest:**

Opinion of such persons as to the existence of a public right of way, or a custom or a matter of general interest are relevant. But such an opinion must have been made before the controversy arose.

The question is whether there was a public right of way over a road. The opinion of the deceased village Headman that it was a public road is relevant.

v) Relationship, Pedigree etc:

Statements made by such persons as to the relationship by blood, marriage or adoption, are relevant if they had some-special knowl-ed<?e and if the statement was made before the controversy arose.
o

Similarly,when such statements of relationship are made in any will, or family pedigree or tombstone etc., they are relevant, if they had been made before the controversy arose.

The question is whether S is the adopted son of F. A statement by F, in his will that S is his adopted son is relevant.

vi) Evidence tendered in earlier proceedings:

Evidence given by any such person in a judicial proceedings is relevant and admissible-in a subsequent proceeding if

i) the proceedings were between the same parties, or their legal representatives.

ii) there was cross-examination

iii) the questions were substantially the same as in the second proceeding.

Conclusions:

In all the above circumstances, the statements by the four classes persons are relevant and admissible. Though the rule is that Hearsay evidence is not admissible, in the above circumstances, the statements are admissible and hence, are exceptions to that rule.

Ch.4.2.Dying Declaration:

The general rule of evidence is that Hearsay evidence is not admissbile. In other words, in the interest of justice, it is desirable that the person himself should give evidence (direct evidence) in a court, under a oath. Under Sn.32, Dying declaration is an exception to this rule. This is based on necessity and

also on the fact that there is no better evidence available.

Statement made by the deceased is relevant when it is in respect of

i) cause of death and

ii) circumstances which resulted in his death. Such a person must be under expectations of death at the .time of making it. The statement is admissible in Civil and Criminal proceedings, if the person dies thereafter.

Eg. a) The question is whether A was murdered by B. A dies of injuries received in a transaction in which she was ravished Statements by A as to her cause of death are relevant.

The tongue of W, the wife was cut off by her husband, H, He threw the tongue from the window and escaped from the hinder-door of his house. W yelled. Police arrived within seconds. The Sub-Inspector put certain question to W. W made gestures and then died. Held: the gestures recorded were admissible.

Statements by deceased D, about the rape committed by A the accused on her, are relevant.

Patient in hospital made certain statements which were recorded. She was discharged from hospital. After a few days she died. Held, declaration not admissible. Hence, declaration becomes admissible, when the person making it dies soon after making the statement.

Corroboration is not necessary. The Supreme Court in KhushalRao Vs. State of Bombay, held that dying declaration was **not a weak evidence**.

CHAPTER 5
PRIVILEGED COMMUNICATIONS

Ch.5. Privileged Communication:

Sns. 121 to 132 of the Indian Evidence Act provide for privileged communications. The general rule of evidence is that a witness should tell the whole truth and produce all the documents in his custody relevant to the matter in issue before the court. However, this is subject to certain exceptions. They are called privileged communications.

Privileged communications are based on public policy,

i) **Judge or Magistrate: Sn 121**

No Judge or Magistrate shall be compelled to answer any questions as to his conduct in his court. This is his privilege. Anything which came to the knowledge of the Judge or the Magistrate in the trial is also privileged.

The exception is when the Superior Court makes a special order he should answer.

In the Session Court, A is charge-sheeted for 'giving false evidence' (Sn. 192 I.P.C.) in Magistrate B's court. B cannot be asked what A said, except on the special orders of the Superior court.

ii) Communications during marriage are privileged: Sn 122

. A spouse should not be compelled to disclose any communication made by the other spouse during the marriage ,i.e, during coverture. However, with the consent of the other spouse, or in suits between spouses or in criminal proceedings where one is accused of an offence against the other, the communications may be disclosed.

This privilege is to protect the peace and solace of the families.

The protection is during marriage, after marriage & even after dissolved by divorce or death of a spouse

i) Official communications: Sn 123

A Public Officer should not be compelled to disclose official communications made to him in confidence. Public interest would suffer by such disclosure, and hence, this privilege. However, with the permission of the Depth head he may disclose.

A Magistrate or Public Officer or a Revenue Officer should not be compelled to disclose the source of information relating to the

Commission of an offence.

The section has reference to unpublished documents of State, iv) Professional

communications: Sn 125

A legal practitioner shall not at any time, be permitted to disclose :-

Any communication made by his client to him.

Any advice tendered by him to the client during the course and for the purpose of his employment.

Similarly he shall not be permitted to state the contents or conditions of any document he has become acquainted. However, he may disclose

any communication made in furtherance of any illegal pur
pose or

any fact observed by him in the course of his employment.

Eg.: i) Accused 'A' discloses his forgery to this advocate and asks to defend. This is privileged.

ii) '1 wish to obtain possession of property by forging a deed and I request you to act on it. This not privileged under this section.

The legal adviser is prohibited from disclosing except with the permission of the accused. Similarly interpretors, clerks and servants of the legal practitioners are prohibited from disclosing. Sn 127

The principle is that this rule is made in the interest of justice, i.e., if such communications were not protected, then no man would resort to get a professional advice with a view to his defence, or to enforce his right, and, no man could safely come into the court either to obtain redress or to defend himself.

No client should be compelled to disclose any confidential communications between him and his legal adviser. However, if the client is himself a witness before the court, then he may be compelled to answer questions which the court finds necessary to get explanation but not any other question. Sn 129

v) **Affairs of State:**

No person shall be compelled to give evidence derived from unpublished official records to any affairs of state except with the permission of the head of the department. This is based on public policy. This should not be used as cloak to shield the truth from the court.

CHAPTER 6
ONUS OF PROOF

Ch.6. Burden of Proof:

The subject of burden of proof has been dealt with in Sns.101 to 114 of the Evidence Act.

One of the cardinal principles of the Evidence Act is that the Onus probandi is on him who desires the Court to find a fact in his favour. This is called the burden of proof. This has two distinct meanings,

As a matter of law and pleading,

ii) Burden of establishing a case.

In the trial the first is fixed and remains unchanged, but the second will be shifting from one party to the other as soon as evidence is adduced by one to established a fact.

The Evidence Act has made provisions to state on whom the burden of proof-lies.

i) A person who wants the court to give a judgment as to his legal right or liability on certain facts must prove the existence of those facts; that is, the burden of proof lies on him who substantially 'asserts the affirmative of the issue'.

The proving of negative is beset with many difficulties due to lack of direct proof. Hence the affirmative is to be proved.

Eg. A desires the court to convict B of theft under Sn. 380, I.P.C. A must prove that B has committed the crime.

ii) The onus lies on that person who would fail if no evidence at all, was given on either side.

'A' sues B for Rs.3,000-00 on a promissory note. The execution of the promissory note is admitted but B says that there was fraud. A denies this. The burden to prove fraud is on B. .

If no evidence is given on either side, A would succeed as the fraud is not proved.

iii) The onus on any particular fact lies on him who wishes the court to believe in its existence (Any law may suitably provide on whom the burden shall lie).

Eg. A prosecutes B for robbery. A wishes the court to believe that B admitted robbery to C. A must prove the admission.

iv) When it is necessary to prove any fact, in order to make evidence of any other fact admissible, the onus of proving it, is on the person who wants to give such evidence.

v) The burden of proving the circumstances to come within the general exceptions in the I.P.C. is on the accused.

A is accused of murder. He alleges that he was of unsound mind. The burden is on A.

vi) Special Knowledge: When any fact is especially within the knowledge of any person, the burden of proving is on him.

A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him.

vii) Life and Death of a person:

If a person is. known to be alive within 30 years, the onus of proving that he is dead is on the person who affirms it.

Is a person is not heard of for seven years, there is a presumption of law that he is dead. However, if a person asserts that he is alive, he must prove it.

viii) Relationships:

When there is existence of a relationship such as partnership, agency, tenancy, the burden of proving that there is no such relationship is on him who so asserts.

A, B & C are partners of a firm. D, a distributor asserts that there is no firm. D must prove that.

ix) Active confidence: If one party to a transaction 'A' stands in a position of active confidence to B the burden of proving good faith is on A.

This is called the great rule of the court; the person who makes a bargain must prove his good faith, e.g. Trustees, Attorneys etc. The risk of abuse by such person is always there. Hence, the rule is that he must prove 'good faith' in his dealings.

A, a client sues his advocate B to set aside a sale. B must show that he has acted in good faith.

x) Sn. 112: **Irrebuttable Presumption:**

The fact that any person was burn during the continuance of a valid marriage between his mother and any man, or within 280 days after divorce (the mother remaining unmarried) shall be conclusive proof that the son is legitimate. The burden is on the husband to show that he had no access to his wife at all and very strong proof is required by courts to established this.

Eg. Husband living abroad for over one year. Here, H had no access to his wife, when the child would have been begotten.

Sn. 113: Cession of territory by Govt.: The official gazette notification is conclusive proof.

xi) 'May' or 'shall.' presume: Court makes a presumption of any fact according to the common course of natural events, human conduct etc. The burden is shifted on to the other party.

CHAPTER 7

CHARACTER

Ch.7. Character (Sns.52 **to** 55):

The general rule is that the character of a person is irrelevant. The reason is one of public policy and fairness. The raking up of the whole of the career of the party may surprise and prejudice him. Further, **the business of the court is to try the case, not the man. A** very bad man may have a righteous cause. (Norton : Evidence Act)

"Character" includes both regulation and disposition. Evidence may be given only on general reputation & disposition. (Bhagwan Swarup V. State of Maharastra 1965 (Sc)

Character in Criminal Cases:

The English leading case is R.V.Rowton.

Rowton was charged with 'Assault. He put a witness to speak to his good moral character. The prosecution put its own PW who ' stated that Rowton was a man of grossest indecency. The trial court held that Rowton was guilty. This was reversed by the Court of Appeal. The reason was that the evidence of character had been given in the wrong form. The PW's should have been asked Rowton's reputation for morality. Hence, the conviction was set aside. There cannot be a conviction on the 'opinion' of character of a person. The guilt is to be proved by reference to alleged facts, but not by proof of his character.

According to the Evidence Act Sn 53 in Criminal cases, the fact that the accused is of good character is relevant.

This is based on the presumption that a person who has uniformly followed an honest and' upright course of conduct, would not depart from it, to commit an offence.

No doubt, character evidence is a weak evidence, it cannot outweigh the positive evidence of facts in regard to the guilt of the person.

Further, according to the Evidence Act, the fact, that the accused is of a good character is relevant.

However, if evidence of good character is tendered, then the evidence of bad character of the accused is itself a fact in issue.

The prosecution may rely upon the previous convictions, if any, for enhancement of punishment. The Court may take-into consideration the character and antecedents of the accused, or his state of mind.

ii) **Character in Civil** cases: Sn 52

The rule is that in Civil cases, evidence of character of any party to prove the probability or otherwise of any conduct imputed to him, is not relevant.

There is one exception Sn 55. Evidence of character, affecting the amount of damages or compensation is relevant.

Eg.: In case of breach of promise of marriage the plaintiff's general-character for immorality is relevant. Incase of seduction, the character of the person seduced is relevant.

iii) Character of witness:

In cross-examination of a witness questions can be asked:

to test his veracity.

to discover his status in life.

to shake his client-worthiness by impeaching his character.

The court is empowered to decide whether or not the witness should be compelled to answer, it may even tell the witness that he is not obliged to answer the questions.

The charge was .that A raped W on 1-1-1985. W was a prosecution witness. In cross-examination the questions whether she had connections with A earlier, or whether she was a prostitute was held as relevant.

CHAPTER 8

EXAMINATION

Ch.8 Examination in Chief and Cross **examination:**

1. The Evidence Act defines evidence to include oral and documentary evidence to prove or disprove any matter of fact.

In respect of oral testimony of witnesses, the rule is that the adverse party shall have the right of cross-examination.

According to sn. 137, the examination of a witness by the party who calls him is called the examination-in-chief. The examination .of a witness by the adverse party is called the 'cross examination'. It is called re-examination when, after the cross-examination, the witness is examined by the party who called him.

The order of examination is:

Examination in chief.,

Cross examination, if the adverse party so desires.

Re-examination, if it is so desired by the party calling him.

1. Examination in Chief :-

The examination is a viva voce. It is in the form of questions and answers.

The deposition of the witnesses is recorded in narrative form, It is read out to the witness and signed by the Judge or Magistrate.

t In Examination in Chief,**no leading questions** .should be put.

It is the duty of the advocate to bring out clearly every relevant fact in a chronological order. However, the statements made in examination-in-chief will not carry any value unless they are subject to the crucial acid test of cross-examination.

2. **Cross-Examination" :-**

Cross examination is a **very powerful weapon** in the hands of

an experienced advocate, and it is double-edged weapon. Its object is to bring out the truth and expose falsehood.

In cross examination, questions may be asked

i) to test his veracity

ii) ii) ti discover his status etc.

iii) iii) to shake his credit by injuring his character (criminating also). However, all questions, which are indecent and scandalous (unless they refer to a fact in issue) are to be avoided. The range of cross

examination is almost unlimited, but subject only to relevancy.

iv) Leading questions can be asked.

If a witness turns hostile, then the party who called him may cross examine him.

Cross examination is a branch of forensic practice and to get mastery, one should have tact, deep understanding of human nature, logical outlook and analysis and of course great practice.

The trend of cross examination depends generally on the narration even in examination in chief.

The major purposes of such an examination is to bring out the falsehood of the story narrated by the witness, and. also, to build a line of defence by getting some facts from the witness himself.

3. Re-examination:

Its objective is to provide an opportunity, to the party who called the witness, to fill in any lacuna or to explain any in consistencies discovered during cross examination. However, if any new matter is introduced, then the adverse party will have a right to cross-examine the witness.

CHAPTER 9

DOCUMENT

Ch.9.1. Public and Private Documents:

1. Documents are divided into two categories. Public and Private documents.

a) Public documents (Sn.74)

i) Documents forming the acts or records of the acts

of a sovereign authority.

of official bodies and tribunals

of public officers, legislative judicial and executive

ii) Public records, kept in any State, of private documents.

Eg.: Original Wills,Sale, Mortgage or Lease deeds duly registered are Public records, Similarly M/A of a company.

b) Private Documents:

According to sn. 75, all other documents are private documents.

A plaint or written statement, income-tax return etc. are not public documents contracts, agreements between parties,leases etc. are private documents.

Ch.9.2. Proof of the contents of Public documents:

The contents of a public document may be proved by **means of a certified copy**. Sns 76 & 77 [Evidence Act]

A person, who.is interested in such a public document, may apply to the public officer, who is having custody of the public.docu-ment, for certified copy, He should pay the prescribed fee. The officer prepares a copy and at the foot duly certifies that it is a true copy of such document. He shall sign the same with date and seal of the office. Such copy is called a 'Certified Copy'.

Such certified copies are admissible in evidence to prove their contents.

In particular, the following provide for the mode of proving the contents of the Public document. Sn 78

i) Acts, orders, notification of Central Govt. proved by records certified duly.

ii)The Legislative proceedings are proved by producing Journals. Publication of the Houses duly authorised.

iii) Proclamation, orders etc. are proved by producing copies.

iv) Municipal proceedings are proved by producing certified copies.

v) Public documents, in a foreign country are proved by producing the original or a certified copy issued by the Consul or diplomatic agent.

Ch. 9,21: Presumptions as **to documents : Refer Ch.2.4 above**

CHAPTER 10

EVIDENCE

Ch. 10.1 Documentary Evidence:

The contents of documents may be proved either by producing a) Primary evidence or b) Secondary evidence Sn 61

Primary Evidence: means, the documents is itself produced before the Court for its inspection. If the document is in several parts, each part is a primary evidence. Where the documents are produced by mechanical processes like Printing. Lithography, Photography each one is primary evidence.

Secondary Evidence: Sn 63 It means and includes the fol lowing:

l) Certified Copies duly issued,

ii) Copies made from the Original by mechanical means (Xerox) and copies compared with such copies.

iii) Copies made from the Original, iv) Counterparts of documents.

v) Oral account of the contents of a document given by a person who has seen the Original.

Eg,: 1) A photo of the Original Statue is Secondary evidence.

.A copy compared with a copy of the letter made by a copying machine is Secondary evidence.

Ch.10.2. Circumstances when Secondary evidence, may be given (sn.65):

The following are the circumstances when secondary evidence may be adduced to prove the existence, condition or contents of a document.

i) When the document is in possession of the person against whom it is to be produced, or where such a person is staying outside the jurisdiction of the Court, or when a person who should produce the document, does not so produce, the secondary evidence is allowed.

ii) When the existence or the contents of the original have been admitted to be in writing by A, the other party B, may adduce secondary evidence.

iii) Where the original is lost or damaged or the person cannot produce it in a reasonable time, then secondary evidence is allowed.

iv) Where the Original is not movable.

v) Where certified copies are permitted as per the Evidence Act, secondary evidence is allowed.

Numerous details: If the document deals with numerous accounts which cannot be easily examined by the court, then the evidence given by an expert in document verification may be admitted.

Ch. 10,3 Exclusion of Oral by Secondary Evidence:

One basic rule of the Evidence Act is that the **best evidence** of which the case, in its nature, is susceptible should be adduced by the parties. Hence, if the transaction is in writing, the document itself should be produced before the court, and the court will not hear .oral evidence of the contents of the document. The principle is to prevent any fraud. If the party does not produce the document, he may have some design or bad motive behind it. Hence, the best evidence about a document, is the document itself.

For transactions which are voluntarily reduced to writing by the parties, or where, as per law it is in writing containing the terms of a contract, grant or any other disposition of property, no oral •evidence is allowed and the document itself should be produced before the court. However, Secondary evidence can be adduced according to the Evidence Act.

Exceptions:

When a Public officer acts as such, his appointment letter need not be produced or proved.

Wills admitted to probate may be proved by the probate itself. A sells by a deed his estate to B, discribing the boundary. The _ fact that orally a small parcel of land was agreed to be included, is not allowed.

ii) When the document in writing, is proved as required by the Evidence Act (Sn.91), no evidence of any oral agreement or statement shall be admitted for the purpose of contradicting varying, ' adding to or substracting from the terms of the transaction.

Exceptions: In the following circumstances, oral evidence is allowed.

i) Any fact which invalidates the document itself or entitles a person to any decree, as in the case of fraud, intimidation, illegality, mistake of fact or law or failure of consideration, can be proved by adducing oral evidence.

ii) A separate agreement between the parties as to any matter on which the document is silent and which is not inconsistent, may be proved orally.

A sells by a deed his horse to B. Orally there is a warranty by A about the soundness of the horse. B may prove that there was a oral agreement. This is admissible although not in writing.

iii) Any separate oral agreement constituting a condition precedent may be proved by oral evidence.

iy) The existence of any distinct subsequent oral agreement may be proved before the court. This is not allowed when writing and Registration are fixed by law.

v) Any usage or custom usually attached to contracts, may be proved by all-owing oral evidence. A orders goods to B. B sends to A. A does not pay. B sues A. A may prove with oral evidence, that the custom was to allow credit for 6 months. This is admissible.•

vi) Any fact to show how the language in the document is related to the facts, may be proved by adducing oral evidence.

Ch.10.4 Oral Evidence: Sns 59 & 60

One cardinal rule of evidence is that where written documents exist they must be produced as being the best evidence. If there is oral evidence, which is conflicting with the document, then greater credence (value) is given to the document than to oral testimony. Hence it is provided in the Evidence Act (Sn.59), that all facts, except the contents of the documents are to be proved, by oral evidence.

Oral evidence in all cases must be direct. This is explained in Sn.60.

i) If the evidence refers to a fact which could be seen, it must by a witness who says he has seen it.

ii) If it refers to a fact which could be heard, it must be the evidence of a person who has heard it.

iii) If it refers to a fact which cou!d be perceived by any other sense, the evidence must be by a witness who says he has perceived through that sense.

vi) If he refers to an opinion, the evidence must be by a person who holds that opinion on those grounds or reasons. Here an expert may produce the treatises (e.g. Modi's: medical Jurisprudence etc.) and furnish his reasons lor the opinion.

(If the author is dead, cannot be found or is incapable of giving evidence or his bringing may result in delay or expenditure in such a case the opinion in the treatise is admissible).

v)If the Oral evidence refers to any material thing, the Court may ask the very thing to be produced as evidence (Exhibit).

T**his section prohibits Hearsay evidence**. Every evidence must be on the personal responsibility of the witness. But, if the evidence is based on the veracity or competence of some other person, it is called Hearsay and this is inadmissible. After all Hearsay evidence is a second-hand proof.

CHAPTER 11

ESTOPPEL

Ch. 11. **Doctrine of Estoppel** (Sns.115 to 117):

The Doctrine of estoppel is based on the principle that it would be an injustice to allow a person to make a representation to another and repudiate the effect of such representation. The rule is that s.uch a person- is estopped from denying his representation. No one who blows hot and cold in the same breath should be heard.

The rule was stated in **Pickard** V **Sears.**

A, the owner of a machinery which was in the possession of B allowed it to be attached by C, under a court decree. He did not protest until it was sold in execution. He sued later.

Held: That A by his conduct has been estopped from denying the title of the buyer in execution-sale.

Estoppel defined:

When one person has,

i) by his declaration, act or omission,

ii) iintentionally caused or permitted another person to believe a thing to be true and

iii) i 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), to deny the truth of that thing.

Eg.: A falsely and intentionally lead B to believe that certain land belongs to A an'd induces B to buy and to pay for it. The land afterwards becomes the property of A. A now seeks to set-aside the sale. A is estopped from denying the title to the property.

This rule of estoppel -is not a rule of equity but a rule of evidence applied by the courts. It is based on the maxim '**allegtans conraria, non est audiendus'** (person alleging contradictory facts, should not be heard).

No person who approbates and reprobates should be believed.

Estoppel depends on the existence of the some duty. It is a rule

of civil actions. It has no application to criminal proceedings.

There are different kinds:

i) Estoppel by matter of record,

ii) Estoppel by deed and

iii) Estoppel in pais.

i) An estoppel by matter of record is a reference to the records of the court. Eg. A judgment of the court. The affected party has a right to appeal to higher courts as per law. A person who does not go in appeal within the period of limitation should not later complain to reopen or dispute the decision. Not only the parties, but also the legal representatives and person deriving any title from them, are bound by the decision of the court, being 'privies to the estoppel'.

ii) Estoppel by deed: When parties enter into legal agreements by deed, they are estopped from denying the facts contained in the deed. Sale, mortgage, lease etc. come under this. However, the courts on grounds of justice than equity construe liberally and give effect to the truth rather than the form.

This estoppel will not apply in case of fraud or illegality.

iii) Estoppel in Pais: (Estoppel,'in the country' before the public:

This arises from agreement or contract or from act to con duct or misrepresentation. If A by words or conduct wilfully makes B to believe a state of affairs, and B acts, then A will not be allowed to deny his previous conduct. If a false representation is made by A, &B acts on it, then A is estopped from denying the representation. Cases of 'holding out' in Partnership Act Sns.116 & 117 explain this princi ple in detail.

Jus Tertii: The tenant of an immovable property is estopped from denying the title of the landlord. Similarly, a licensee cannot deny, licensor's title.

It is further provided that the acceptor of all bill of exchange is estopped from denying the authority of the drawer. Similarly, the bailee or licensee is not permitted to question the authority of the bailor or licenser.

CHAPTER 12
MISCELLANEOUS

Ch.12.1 Testimony of an Accomplice: (Sn.133)

An accomplice is a person who participates in the commission of a crime.

According Jto Evidence Act, an accomplice is a competent witness against the accused in a criminal case. A conviction is not illegal merely because it is based on the uncorroborated testimony of an accomplice.

This is to be understood in the context of illustration (b) of Sn. 114 which refers to a presumption of a fact rebuttable in nature. The testimony of an accomplice is a rebuttable presumption and the defence may destroy the evidence tendered by the accomplice.

The leading cases are **Mahadev V king and Rex V Baskerville.**

According to these:

i) Evidence of. one accomplice is not a corroboration of the other.

ii) There must be some additional; evidence than what is narrated by the accomplice to believe as true such narration.

iii) Any independent material evidence which makes it safe to connect the accused to the crime is relevant.

iv) Even circumstantial evidence may be relied upon.

.Thus extreme care is required, as the accomplice is a **'participes criminis'** (participant in the crime), and he will be having a motive to throw the blame on the accused or to shift the guilt from himself. Further an accomplice may turn an approver and so become favorable to the prosecution. He is an immoral person & hence, commit perjury.

The universal practice of the courts is not to convict a person on the un-corroborated evidence of an accomplice.

Corroboration is of two kinds:

Court must satisfy itself that the statement of approver is credible;

(ii) Approver's evidence in regard to others is to be corroborated, to connect others. In Bribery, the giver is an unwilling participant, a victim of offence.

Ch.12.2 Attestation:

Nature of proof required:

Sns. 68 to 72 deal with the nature of the proof required to prove attestation.

i) In the case of an attested document, it should not be admitted until at least one of the attesting witnesses, if alive testifies to its execution.

This will not apply to documents duly registered under the Registration Act. (But, if the execution is itself denied, then attestor's evidence is relevant).

ii) If the attesting witnesses are dead or cannot be found, then at east the signature of one of the attestors, and the executor's signature should be proved.

Further, the admission of an executant is sufficient proof of its execution.

iii) If the attestor denies or does not recollect the execution of a document then it must be proved with independent proof.

Documents which need not be attested according to law, may be proved by admission or otherwise.

Ch.12.3. Facts which need not be proved (Sns. **56** to 58)

One of the main rules of evidence is that all 'facts in issue' and ' 'relevant facts' must be proved by evidence. There are, however, two exceptions to this rule:

Facts which the court takes judicial notice of

And Admitted facts.

Judicial Notice:

i) Sn.57 refers to thirteen facts which the court judicially takes notice of, and, hence, these established facts need not be proved.

These are:

All laws in the territory of India.

All Public Acts of Parliament and State Legislatures.

Articles of War.

Parliamentary and Legislative proceedings

Seals of all Courts in India, Notary Public and others author ised by the Constitution.

Official Gazette Publication.

Declaration, Continuation or conclusion of hostilities between India and any Foreign State.

Persons duly authorised appearing before the court like Advocates, Vakils etc.

The rules of the raod or at sea etc.

and all matters of history, literature, science, art, the Court may resort to books or documents.

If any person desires the court to take judicial notice any book or document, that party should produce the book or document to the

court.

Admitted Facts:

Facts which are agreed by the parties.

By admitting them in the pleadings or Admitted at the proceedings or Agreeing to admit made in writing-

these need not be proved.

However, the court at its discretion may require the admitted facts to be proved otherwise than by such admissions i.e., in the case of fraud etc.

Admissions act as estoppels, the party is therefore estopped from denying the fact admitted.

Ch.12.4. Best Evidence:

One of the major objectives of the Evidence Act is that the courts should admit only the best evidence, and, nothing short of it. This is further emphasised by making detailed provisions, as, to when the evidence is admissible.

i) Evidence may be given only on facts in issue or relevant facts and no other.

ii) Opinion evidence should not be entertained:

Exception: Expert witnesses.

iii) Primary evidence of a document is the best evidence. Exception: Secondary evidence of the documents.

iv) Oral evidence is excluded to prove documents.(This is subject to certain exceptions)

v) Oral evidence must be direct. Hence Hearsay evidence is prohibited, subject to certain exceptions.

Ch.12.5 Judicial Notice:

Refer Ch.12.3 Ch.12.6 Presumption as to birth, life & death of a person.

Refer Ch.6 (x), (vii) above.

THE END

REFERENCE SECTION

Selected Sections

THE INDIAN EVIDENCE ACT, 1872

Sn 2 "**Fact."** "Fact" means and includes-- (1) any thing, state of things, or relation of things, capable of being perceived by the senses; (2) any mental condition of which any person is conscious.

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact. (c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.(e) That a man has a certain reputation, is a fact.

"**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.

"**Facts 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, in 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.**

A is accused of the murder of B. At his trial the following facts may be in issue:-- that A caused B's death; that A intended to cause B's death; that A had received grave and sudden provocation from B; that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

3 "**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.

Illustrations A writing 2* is a document: 2* Words printed lithographed or photographed are documents: A map or plan is a document: An inscription on a metal plate or stone is a document: A caricature is a document.

"**Evidence.**"" -- (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 evidence**; (2) all

documents produced for the inspection of the Court; such documents are called **documentary evidence**.

"**Proved."** A fact is said to be proved when, after considering the matters 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 matters 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.

4. "**May presume."-**Whenever it is provided by this Act that the 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 OF THE RELEVANCY OF FACTS

5. **Evidence may be given of facts in issue and relevant facts**. Evidence may be given in any suit or proceeding of the existence of non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

6. **Relevancy of facts forming part of same transaction.** Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact

7. **Facts which are the occasion, cause or effect of facts in issue**. .-Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, which afforded an opportunity for their occurrence or transaction, are relevant. The question is, whether A robbed B. The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

8. **Motive, preparation and previous or subsequent 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 proceeding, or in reference to any fact in issue therein or relevant thereto, and the 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 fact in issue or relevant fact, and whether it was previous or subsequent thereto Explanation 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.

Illustrations (a) A is tried for the murder of B. The facts that A murdered C, that B knew that A had

murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant. (b) A sues B upon a bond for the payment of money. B denies the making of the bond. The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

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 inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing 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 that purpose

. Illustrations (a) The question is, whether a given document is the will of A. The state of A's property and of his family at the date of the alleged will may be relevant facts. (b) A sues B for a libel imputing disgraceful conduct to A ; B affirms that the matter alleged to be libellous is true. The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue. The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

10. **Things said or done by conspirator in reference to common design.**

. Where there is reasonable round to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one 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. Illustration Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the 1*[Government of India]. The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

11**. When facts not otherwise relevant become relevant.**

Facts not otherwise relevant are relevant-- (1) if they are inconsistent with any fact in issue or relevant fact; (2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations (a) The question is whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A was at Lahore is relevant. The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

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.

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, recognized, asserted or denied, or which was inconsistent with its existence: (b) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

14. **Facts showing existence of state of mind, or of body, or bodily feeling.**

14. Facts showing existence of state of mind, or of body, of 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.

1*[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.

Illustrations. (a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article. The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen. b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit. The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant. The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.]

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.

(a) A is accused of burning down his house in order to obtain money for which it is insured. The facts that A lived in several houses successively each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental. (b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive. The question is, whether this false entry was accidental or intentional. The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant

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.

The question is, whether a particular letter was dispatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place are relevant

ADMISSIONS

17. **Admission defined.** An admission is a statement, oral or documentary, 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.

18. **Admission by party to proceeding or his agent.-**Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions. by suitor in representative character-Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character. 13 Statements made by-- by party interested in subject matter; (1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or by person from whom interest derived. (2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements.

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, if 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

A undertakes to collect rents for B. B sues A for not collecting rent due from C to B. A denies that rent was due from C to B. A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

20. **Admissions by persons expressly referred to by party to suit.** Statements made by person to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions. Illustration 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.

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 under section 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 .

22. **When oral admissions as to contents of documents are relevant.** When oral admissions as to contents of documents are relevant.-Oral admissions 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.

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.

Explanation.--Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

24. 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 1* having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

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.

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.

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.**

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.

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 practised 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.

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. Offence" as used in this section, includes the abetment of, or attempt to commit, the offence . A and B are jointly tried for the murder of C. It is proved that A said--"B and I murdered C". The Court may consider the effect of this confession as against B. (b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said--"A and I murdered C". This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

31. Admissions not conclusive proof, but may estop.

Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under

the provisions hereinafter contained.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. When it relates to cause of death; or is made in course of business; or against interest of maker; or gives opinion as to public right or custom, or matters of general interest; or relates to existence of relationship; or is made in will or deed relating to family affairs; or in document relating to transaction mentioned in section 13, clause (a); or is made by several persons and expresses feelings relevant to matter in question;

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:-- When it relates to cause of death.- (1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him. or against interest of maker ……..

(6) When the statement relates to the existence of any relationship 1*[by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised. or in document relating to transaction mentioned in section 13, clause (a); (7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a). or is made by several persons and expresses feelings relevant to matter in question. (8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations. (a) The question is, whether A was murdered by B; or A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or The question is, whether A was killed by B under such circumstances that a suit would lie against B by A's widow. Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

(b) The question is as to the date of A's birth. An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact

. (c) The question is, whether A was in Calcutta on a given day. A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place

mentioned, in Calcutta, for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from Bombay harbour on a given day. A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Bombay harbour, is a relevant fact.

33**. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.** .-Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable;

Provided- - that the proceeding was between the same parties or their representatives in interest; 20 that the adverse party in the first proceeding had the right and opportunity to cross-examine; that the questions in issue were substantially the same in the first as in the second proceeding.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

34. **Entries in books of account when relevant.**

Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

35. **Relevancy of entry in public record made in performance of duty.**

.-An entry in any public or other official book, register or 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 is kept, is itself a relevant fact.

36. **Relevancy of statements in maps, charts and plans.**

.-Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of 2*[the Central Government or any State Government], as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

37. Relevancy of statement as to fact of public nature contained in certain Acts or notifications. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament As to admissibility in evidence of certified copies of entries in Bankers' books, see the Bankers' Books Evidence Act,

. **38. Relevancy of statements as to any law contained in law-books**.- When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a

report of such rulings, is relevant.

HOW MUCH OF A STATEMENT IS TO BE PROVED

39. What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

39. What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.-When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT Previous judgments 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.

41. Relevancy of certain judgments in probate, etc., jurisdiction.

A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction,

42. **Relevancy and effect of judgments, orders or decrees,** other than those mentioned in section 41.-Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state. Illustration A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies. The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

43 **Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.**

Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act

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 or 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.

OPINIONS OF THIRD PERSONS WHEN RELEVANT

45. Opinions 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 impressions ,

the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.

Illustrations (a) The questions is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant. (b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant

46. **Facts bearing upon opinions of experts.**

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. Illustrations (a) The question is, whether A was poisoned by a certain poison. The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

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

. Explanation.--A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

48. **Opinion as to existence of right or custom, when relevant.**

.- When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant. Explanation.--The expression "general custom or right" includes customs or rights common to any considerable class of persons. Illustration The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

49. **Opinion as to usages, tenets, etc., when relevant**.

When the Court has to form an opinion as to-- the usages and tenets of any body of men or family, the constitution and government of any religious or charitable foundation, or the meaning of words or terms used in particular districts or by particular classes of people, the opinions of persons having special means of knowledge thereon, are relevant facts.

50. **Opinion on relationship, when relevant.**

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact (a) The question is, whether A and B, were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant. (b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members f the family, is relevant.

51. **Grounds of opinion, when relevant.** Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant. Illustration An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT

52. **In civil cases character to prove conduct imputed, irrelevant.** In civil cases the fact that the character of any person 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 facts otherwise relevant.

53. In criminal cases previous good character relevant. .-In criminal proceedings the fact that the person accused is of a good character is relevant.

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 a 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.]

55. Character as affecting damages.-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.

CHAPTER III
FACTS WHICH NEED NOT BE PROVED

56. **Fact judicially noticeable need not be proved.** No fact of which the Court will take judicial notice need be proved.

57. Facts of which Court must take judicial notice. The Court shall take judicial notice of the following facts 1) All laws in force in the territory of India; (2) All public Acts passed or hereafter to be passed by Parliament ; (3) Articles of War for the Indian Army Navy or Air Force 4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the States (8) The existence, title and national flag of every State or Sovereign recognized by the Government of India (12) The names of the members and officers of the Court and of their deputies and subordinate offices and assistants, and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons

authorized by law to appear or act before it; (13) The rule of the road 5*[on land or at sea]. In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference. If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

58. Facts admitted need not be proved. No fact need be proved in any proceeding which the parties thereto 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.

CHAPTER IV
OF ORAL EVIDENCE

59. **Proof of facts by oral evidence**. All facts, except the contents of documents, may be proved by oral evidence.

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:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable: Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER V
OF DOCUMENTARY EVIDENCE

61. **Proof of contents of documents.** The contents of documents may be proved either by primary or by secondary evidence.

62. **Primary evidence**. . Primary evidence means the document itself produced for the inspection of the Court. 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 executing 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. Illustration A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

63. **Secondary evidence.** Secondary evidence means and includes-- (1) certified copies given under the provisions hereinafter contained; 1* (2) copies made from the original by mechanical processes which in themselves insure 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. Illustrations (a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original. (b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.

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

65. Cases in which secondary evidence relating to documents may be given.

Secondary evidence may be given of the existence, condition or contents of a document in the following cases:-- (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 section 74; (f) when the original is a document of which a certified copy is permitted by this Act,

66. Rules as to notice to produce. Secondary evidence of the contents of the documents referred to in section 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, 1*[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

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 so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

68. Proof of execution of document required by law to be attested. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

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 United Kingdom, 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 that person.

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.

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.

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

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. the Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare

PUBLIC AND PRIVATE DOCUMENTS

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, 2*[of any part of India or of the Common-wealth], or of a foreign country; (2) public records kept 3*[in any State] of private documents.

75. Private documents. All other documents are private.

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 legal fees therefor, together with a certificate written at the foot of such 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 authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

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

78. **Proof of other official documents.**

The following public documents may be proved as follows:-- (1) Acts, orders or notifications of the Central Government in any of its departments, or of any State Government or any department of any State Government,-- by the records of the departments, certified by the heads of those departments respectively,

(2) the proceedings of the Legislatures,-- by the journals of those bodies respectively, or by published Acts or abstracts (3) proclamations, orders or regulations issued by 4) the Acts of the Executive or the proceedings of the Legislature of a foreign country,-- by journals published by their authority, or commonly received in that (5) the proceedings of a municipal body by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body (6) public documents of any other class in a foreign country,-- by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or an Indian Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

PRESUMPTIONS AS TO DOCUMENTS

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] who is duly authorized thereto

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 authorized 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 any 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 .

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 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.

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, and the

document shall be admissible for the same purpose for which it would be admissible in England or Ireland.

83. **Presumption as to maps or plans made by authority of Government**.-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 purposes of any cause must be proved to be accurate.

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.

85. **Presumption as to powers-of-attorney.-**The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul, or representative of the Central Government was so executed and authenticated.

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 not forming part of India or of Her Majesty's Dominions is genuine and accurate, if the document purports to be certified

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

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 the person by whom such message was delivered for transmission.

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.

90. **Presumption as to documents thirty years old**.-Where any document, purporting or proved to be thirty years 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.

A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land showing his titles to it. The custody is proper

CHAPTER VI
OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE

91**. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.-**When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, no evidence shall be given in proof except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible

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.

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. Illustrations (a) If a contract be contained in several letters, all the letters in which it is contained must be proved. (b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

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 from, 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, 1*[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 the 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:

Proviso (6).--Any fact may be proved which shows in what manner the language of a document is related to existing facts.

E .g., An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

. A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired .

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. Illustrations (a) A agrees, in writing, to sell a horse to B for "Rs. 1,000 or Rs. 1,500". Evidence cannot be given to show which price was to be given. (b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled. .

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 not meant to apply to such facts. 43 Illustration A sells to B, by deed, "my estate at Rampur containing 100 bighas". A has an estate at Rampur containing 100 bighas. Evidence may not be given of the fact that the estate meant to be sold was one situated at a different place and of a different size.

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. Illustration A sells to B, by deed, "my house in Calcutta". A had no house in Calcutta, but it appears that he had a house at Howrah, of which B had been in possession since the execution of the deed. These facts may be proved to show that the deed related to the house at Howrah

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. Illustrations A agrees to sell to B, for Rs. 1,000, "my white horse". A has two white horses. Evidence may be give of facts which show which of them was meant.

98. Evidence as to meaning of illegible characters, etc.-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. Illustration A, sculptor, agrees to sell to B, "all my mods". A has both

models and modelling tools. Evidence may be given to show which he meant to sell.

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. Illustration A and B make a contract in writing that B shall sell A certain cotton, to be paid for on delivery. At the same time they make an oral agreement that three months credit shall be given to A. This could not be shown as between A and B, but it might be shown by C, if it affected his interests.

CHAPTER VII
OF THE BURDEN OF PROOF

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. Illustrations (a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed. A must prove that B has committed the crime (b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true. A must prove the existence of those facts.

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. Illustrations (a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father. If no evidence were given on either side, B would be entitled to retain his possession. Therefore the burden of proof is on A. (b) A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies. If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore the burden of proof is on B.

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. A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C. A must prove the admission. B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

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 any person to give evidence of any other fact is on the person who wishes to give such evidence.

A wishes to prove a dying declaration by B. A must prove B's death.

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 Indian Penal Code **is upon him**,

and the Court shall presume the absence of such circumstances. Illustrations (a) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act. The burden of proof is on A. (b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control. The burden of proof is on A.

106. Burden of proving fact especially within knowledge.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

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

108. **Burden of proving that person is alive who has not been heard of for seven years.-** the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven 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.**

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.

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. Illustrations (a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney. (b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

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, namely:-- (a) an offence under section 121, section 121A, section 122 or section 123 of the Indian Penal Code (45 of 1860); (b) criminal conspiracy or attempt to commit, or abetment of, an offence under section 122 or section 123 of the Indian Penal Code (45 of 1860).

112. Birth during marriage, conclusive proof of legitimacy. . 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 two hundred and eighty 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.

113. Proof of cession of territory.-A notification in the Official Gazette that any portion of British territory has 2*[before the commencement of Part III of the Government of India Act, 1935 (26 Geo. 5, e. 2)] 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.

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 **seven 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.

113B. **Presumption as to dowry death**.-When the question is whether a person has committed the dowry death of a woman 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. .

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.

The Court may presume-- (a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession; (b) that an accomplice is unworthy of credit, unless he is corroborated in material particulars; . But **the Court shall** also have regard to such facts , in considering whether such maxims do or do not apply to the particular case before it

114A. Presumption as to absence of consent in certain prosecutions for rape.-In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, 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.]**

CHAPTER VIII.

ESTOPPEL

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, to deny the truth of that thing. Illustration A intentionally and falsely leads B to believe that certain land belongs to A, and thereby induces B to buy and pay for it. The land afterwards becomes the property of A, and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title. He must not be allowed to prove his want of title.

116. Estoppel of tenant; and of licensee 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.

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.

CHAPTER IX
OF WITNESSES

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 questions, 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.

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.

120. Parties to civil suit, and their wives or husbands. husband 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.

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

. Illustrations (a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court. (b) A is accused before the Court of Session of having given false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.

122. Communications 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.

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 State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

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

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

126. Professional communications.-No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's 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 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, 2*[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.

Illustrations (a) A, a client, says to B, an attorney--"I have committed forgery and I wish you to defend me." As the defence of a man known to be guilty is not a criminal purpose, this communication is protected from disclosure. (b) A, a client, says to B, an attorney--"I wish to obtain possession of property by the use of a forged deed on which I request you

to sue." This communication, being made in furtherance of a criminal purpose, is not protected from disclosure. (c) A, being charged with embezzlement, retains B, an attorney, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book, charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment. This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

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.

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.

129. Confidential communications 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.

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.

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

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 may 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 proved against him in any criminal proceeding, except a prosecution for giving false

evidence by such answer.

133. Accomplice.-An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

134. Number of witnesses.-No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X
OF THE EXAMINATION OF WITNESSES

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.

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 one 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. Illustrations (a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32. The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement. (b) It is proposed to prove, by a copy, the contents of a document said to be lost. The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced

137. Examination-in-chief.-The examination of 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 the party who called him, shall be called his re-examination.

138. Order of examinations.-Witnesses shall be first examined-in- chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts 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; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further

cross-examine upon that matter.

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 produces it and cannot be cross-examined unless and until he is called as a witness.

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

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

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. 56 The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

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

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 give 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. Illustration The question is, whether A assaulted B. C deposes that he heard A say to D--"B wrote a letter accusing me of theft, and I will be revenged on him." This statement is relevant, as showing A's motive for the assault, and evidence may be given of it, though no other evidence is given about the letter.

145. Cross-examination as to previous statements in writing.-A witness may be cross-examined as to previous statements 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.

146. Questions lawful in cross-examination.-When a witness is cross-examined, he may, in addition to the questions hereinbefore 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 As to police-diaries, see the Code of Criminal Procedure, to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

Amendment of section 146.-In section 146 of the Indian Evidence Act, 1872 (1 of 1872) (hereinafter referred to as the principal Act), after clause (3), the following proviso shall be inserted, namely:- "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.".

147. When witness to be compelled to answer.-If any such question relates to a matter relevant to the suit or roceeding, the provisions of section 132 shall apply thereto.

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 considerations:-- (1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies: (2) such questions are improper if the imputation which they convey relates to 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.

149. Question not to be asked without reasonable grounds.-No such question as is referred to in section 148 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded. Illustrations (a) A barrister is instructed by an attorney or vakil that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakait. 58 (b) A pleader is informed by a person in Court that an important witness is a dakait. The informant, on being questioned by the pleader, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

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.

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.

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

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. Illustrations (a) A claim against an underwriter is resisted on the ground of fraud. The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it. Evidence is offered to show that he did make such a claim. The evidence is inadmissible (b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it. Evidence is offered to show that he was dismissed for dishonesty. The evidence is not admissible. (c) A affirms that on a certain day he saw B at Lahore. A is asked whether he himself was not on that day at Calcutta. He denies it. Evidence is offered to show that A was on that day at Calcutta. The evidence is admissible, not as contradicting A on a fact which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore. In each of these cases the witness might, if his denial was false, be charged with giving false evidence. (d) A is asked whether his family has not had a bloodfeud with the family of B against whom he gives evidence. He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

154. Question by party to his own witness.-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.

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 be unworthy of credit; (2) by proof that the witness has been bribed, or has accepted the offer of bride, 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) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

A sues B for the price of goods sold and delivered to B. C says that he delivered the goods to B. Evidence is offered to show that, on a previous occasion, he said that he had not delivered goods to B. The evidence is admissible.

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. Illustration A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed. Independent evidence of these facts may be given in order to corroborate his evidence as

to the robbery itself.

157. Former statements 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. .

158. What matters may be proved in connection with proved statement relevant under section 32 or 33.-Whenever any statement, relevant under section 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.

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 61 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 be correct. When witness may use copy of document to refresh memory. Whenever a witness may refresh his memory by reference to any document, he may, with the permission of the Court, refer to a copy of such document: . An expert may refresh his memory by reference to professional treatises.

160. Testimony to facts stated in document mentioned in section 159.-A witness may also testify to facts mentioned in any such document as is mentioned in section 159, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document. Illustration A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

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

162. Production of documents.- A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

163. Giving, as evidence, of document called for and produced on notice.-When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so. 164. Using, as evidence, of document production of which was refused on notice. 164. Using, as evidence, of document production of which was refused on notice.-When a party refuses to produce a document which he has 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.

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 under sections 121 to 131, both inclusive, if the question were asked or the document 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 under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted. .

THE END