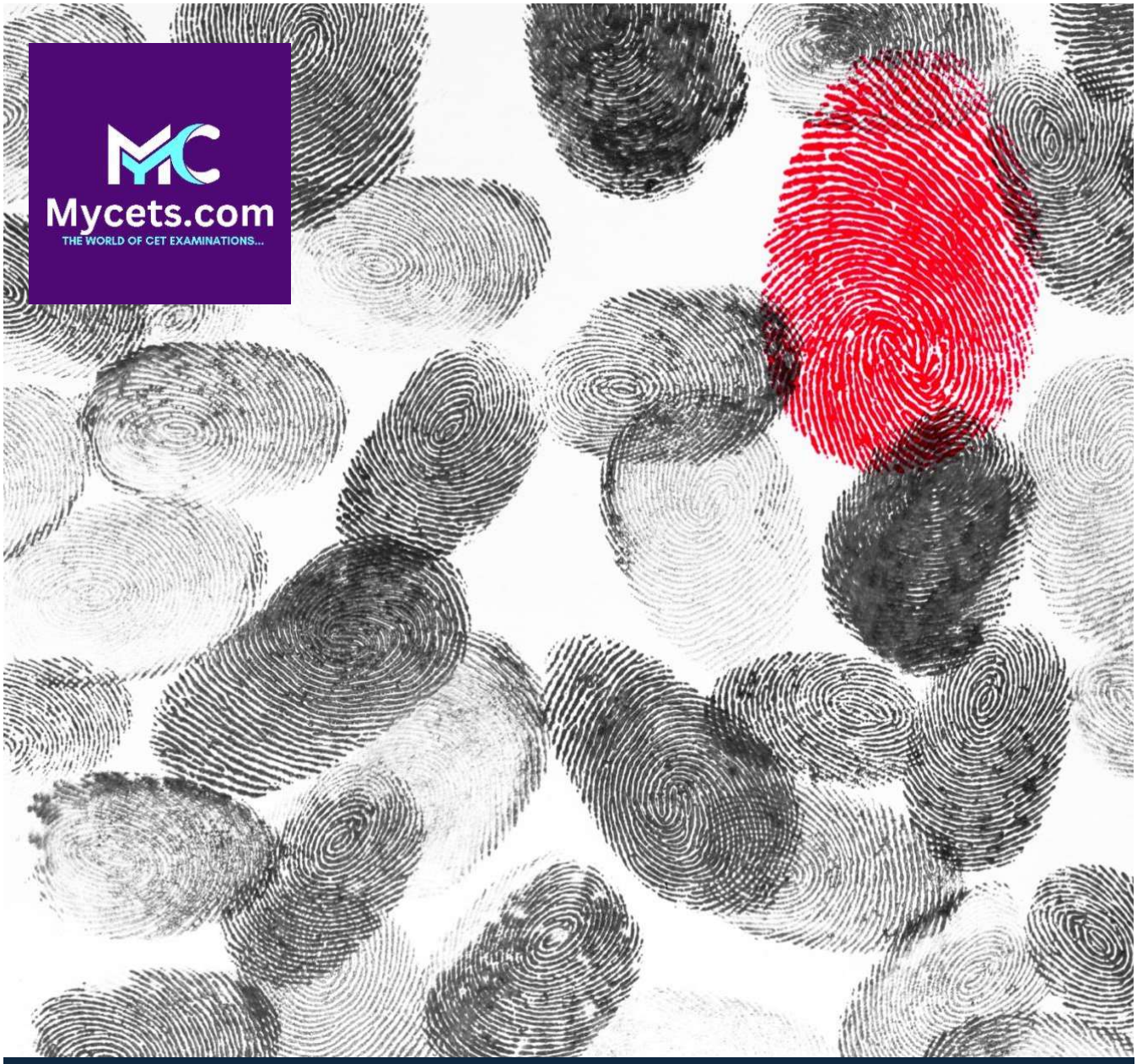

Law of Evidence

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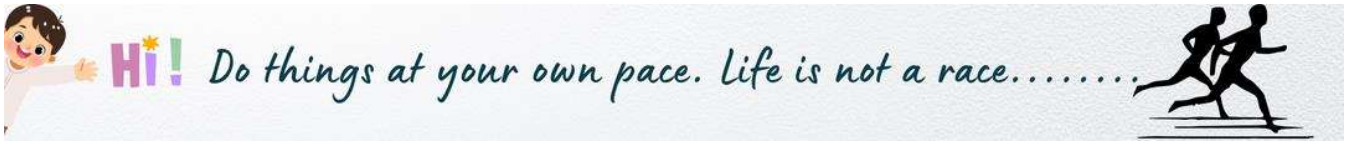


PART-A

Short Answers

1. Meaning of Evidence.

Under the Indian Evidence Act, 1872, the term "evidence" refers to the means by which an alleged fact is proved or disproved in court. It includes all the material or information presented to a court to prove or disprove a matter of fact. The term encompasses both the information (oral or documentary) presented in a trial and the things (objects or exhibits) that can substantiate a claim.

Section 3 of the Indian Evidence Act, 1872, defines evidence as:

- **"Evidence"** includes:
  - **All documents produced for the inspection of the court**,
  - **Oral evidence**, which means statements made by witnesses in court.

Types of Evidence:

1. **Oral Evidence**: According to **Section 59**, oral evidence means all statements that the court allows to be made by the witness in relation to facts.
2. **Documentary Evidence**: As per **Section 61**, documentary evidence refers to all documents presented as evidence in court to establish a fact.
3. **Real Evidence**: Tangible items or objects physically related to the case, such as a weapon or material object, are categorized as real evidence.

Relevant Maxim:

- **"Nemo dat quod non habet"** (No one can give what they do not have). This maxim is often relevant in cases involving the introduction of documents or real evidence to prove a claim.

Conclusion: The term "evidence" in the Indian Evidence Act, therefore, encompasses any means of proving a fact in dispute before the court, either through oral testimony, documentary materials, or physical objects. The primary goal is to establish the truth of the matter under trial, following the prescribed procedures set out in the Act.

2. Indirect evidence.

Indirect evidence, also known as **circumstantial evidence**, refers to evidence that does not directly prove a fact but allows a court to infer the existence of that fact. It does not directly establish the fact in question, but it can lead to a reasonable conclusion based on surrounding circumstances or related facts.

Key Features of Indirect Evidence:

1. **Inferential Nature**: Unlike direct evidence, which directly establishes a fact (e.g., an eyewitness testimony), indirect evidence requires the court to draw inferences about a fact based on other established facts.

2. **Establishing a Chain of Circumstances**: In most cases, indirect evidence consists of a series of connected facts or circumstances, each of which by itself may be insignificant, but when combined, they point towards a particular conclusion.

Legal Provisions Regarding Indirect Evidence:

- **Section 3 of the Indian Evidence Act, 1872** defines the term **"relevant facts"** which is a critical foundation for indirect evidence. In cases involving circumstantial evidence, the relevance of the fact (even if it is not directly related to the fact in issue) must be established.
- **Section 5** of the Indian Evidence Act: It allows the admission of indirect evidence when it is relevant to the matter at hand. This ensures that facts indirectly related to the issue, but capable of establishing a connection to the issue, are admissible in court.

Examples of Indirect Evidence:

1. **Motive**: The fact that a person had a motive to commit a crime may be used as circumstantial evidence to suggest they might have committed it.
2. **Presence at the Scene**: If a person was present at the scene of the crime, even though they didn't directly witness the act, their presence might indirectly suggest their involvement.
3. **Forensic Evidence**: Traces of DNA, fingerprints, or fibers found at a crime scene may be used to infer a person's involvement in the crime.

Case Law and Application:

- **Shivaji v. State of Maharashtra (1973)**: The Supreme Court held that circumstantial evidence, when all circumstances taken together, form a complete chain pointing to the guilt of the accused beyond a reasonable doubt, is sufficient for conviction.
- **Hanif v. State of Rajasthan (2005)**: In this case, the court highlighted that circumstantial evidence must be conclusive in nature and should leave no room for reasonable doubt regarding the involvement of the accused.

Conclusion: Indirect or circumstantial evidence is admissible in court if it is relevant and can lead to reasonable inferences regarding the facts in dispute. It plays a critical role in cases where direct evidence is unavailable, but a chain of circumstantial facts points towards a particular conclusion.

3. Primary and Secondary Evidence.

The **Indian Evidence Act, 1872** distinguishes between **primary** and **secondary** evidence, especially in the context of documents. The classification is important because the type of evidence determines how it can be presented in court and under what conditions. **Primary evidence** is the original document or object that is presented as evidence in its original form before the court. It is the best form of evidence available and is generally the most reliable.

- **Section 62** of the Indian Evidence Act defines **primary evidence** as the **original document** itself.
  - **Example**: A signed contract presented in court is primary evidence of the agreement between the parties.
- **Section 63** deals with **secondary evidence** and indirectly provides that primary evidence must be presented unless it is unavailable for valid reasons (e.g., lost, destroyed, or untraceable).
- **Section 64** specifies that documents should be proved by **primary evidence** unless there is a valid excuse to use secondary evidence. The original document is always preferred to maintain the integrity of the legal process.

Secondary Evidence:

Secondary evidence refers to any evidence other than the original document. It is usually admissible when the primary evidence is unavailable due to some legitimate reason, such as loss, destruction, or being out of reach.

- **Section 63** of the Indian Evidence Act defines **secondary evidence** and provides a list of various types of secondary evidence:
    1. **Copies of the original document** that are made by a mechanical or photographic process.
    2. **A copy of the document made by the same person who made the original copy**.
    3. **Oral accounts** of the contents of the document made by a person who has seen the document.
    - **Example**: A photocopy of a signed agreement, where the original is lost, can be considered secondary evidence.

When is Secondary Evidence Admissible?

Secondary evidence can be admitted under the following circumstances:

1. **Loss of Original**: The original document is lost or destroyed. In this case, secondary evidence is admissible only after the party has satisfactorily explained the loss of the original document.
    - **Section 65**: The conditions for admissibility of secondary evidence when the original document is unavailable.
2. **Document in Possession of Another**: If the original document is in the possession of a third party who refuses to produce it, secondary evidence may be allowed.
3. **Public Documents**: Copies of public documents (such as government records) can be secondary evidence and are admissible in court under **Section 77** and **Section 78**.

Conclusion: Primary evidence is the original document or object, considered the most reliable form of evidence. Secondary evidence, on the other hand, is permissible only under specific conditions, such as the unavailability of the original. Courts prefer primary evidence as it is direct and unaltered, but secondary evidence can still be useful when circumstances justify its use.

4. Electronic Evidence.

Electronic Evidence refers to any information that is stored, transmitted, or received in an electronic format. With the advancement of technology, electronic evidence has become a critical part of the legal process, particularly in cases involving communications, digital transactions, and online activities. The **Indian Evidence Act, 1872**, was amended by the **Information Technology Act, 2000** to address the growing need to regulate and admit electronic records as evidence.

1. **Section 65A of the Indian Evidence Act (Amendment in 2000)**:
    - This section specifically deals with the **admissibility of electronic records** in evidence. It allows electronic records to be admissible in court if they are properly produced and authenticated according to the rules established under the **Information Technology Act, 2000**.
2. **Section 65B of the Indian Evidence Act (Amendment in 2000)**:
    - This section outlines the conditions for the admissibility of **electronic records**. It states that an electronic record must be:
        - **Printed on paper**, **stored** on any physical medium, or **transmitted** in electronic form (such as emails, messages, or data stored in a computer).
        - The electronic record must be **authenticated** by a certificate that specifies:

        - The identity of the computer or system from which the record was generated.
        - The method of creating the record.
        - The integrity of the record.
    - The certificate must be signed by a person who is in charge of the computer or system.
3. **Section 2(1)(t) of the Information Technology Act, 2000**:
    - This section defines **electronic records** as data, text, images, sounds, or any other information generated, sent, received, or stored in a digital form.
4. **Section 65B(4) of the Indian Evidence Act**:
    - This section ensures that the **original** electronic record is not required for evidence purposes if the conditions set out in **Section 65B** are met. Instead, a certified copy of the electronic record may be used in court.

Admissibility and Requirements for Electronic Evidence:

For electronic evidence to be admissible in a court of law, the following conditions must be met:

1. **Certificate of Authenticity (Section 65B)**:
    - The certificate should state the **time and date** when the document was created or received.
    - It should also confirm that the electronic record was created or stored in a manner consistent with the normal course of business.
    - The certificate must be signed by a person who is responsible for the functioning of the computer or system.
2. **Integrity of the Record**:
    - The record must be shown to be **unaltered** or **unalterable**, ensuring that the information presented has not been tampered with.
3. **Chain of Custody**:
    - There must be a clear chain of custody or history of the record, indicating how the electronic record was preserved from the time it was created to its submission in court.

Conclusion: **Electronic evidence** has become an integral part of the legal landscape in India, especially in the digital age. The **Indian Evidence Act, 1872**, as amended by the **Information Technology Act, 2000**, provides a clear framework for the admissibility of electronic records, ensuring that such evidence can be effectively used in legal proceedings. Proper certification, integrity, and chain of custody are crucial for electronic evidence to be considered admissible in court.

5. Oral evidence.

Oral evidence refers to statements made by a witness in court regarding facts which they have personally observed, heard, or otherwise perceived. Under the **Indian Evidence Act, 1872**, oral evidence plays a crucial role in proving facts in a trial. It is a direct form of evidence and involves testimony given by a witness in the form of spoken words.

Definition and Provisions:

1. **Section 59 of the Indian Evidence Act** defines oral evidence as follows:
   - **"Oral evidence"** means **"all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry"**.
   - This includes both the spoken words (testimonies) and the facts that are communicated by witnesses.
2. **Section 60 of the Indian Evidence Act** emphasizes the **best evidence rule** in relation to oral evidence. It states:
   - **Oral evidence must be direct**. That is, the witness should personally have witnessed the fact or have direct knowledge of the fact they are testifying about.
   - **Example**: If a witness testifies to hearing someone threaten another person, this is admissible as oral evidence.

Nature of Oral Evidence:

- **Direct Evidence**: Oral evidence is typically used as direct evidence, where the witness testifies about what they personally experienced or observed.
- **Witness Testimonies**: Witnesses are asked to describe what they saw, heard, or know firsthand about the facts in issue.

Categories of Oral Evidence:

1. **Fact Witnesses**: These are individuals who testify to facts they directly observed or experienced.
   - **Example**: A witness who saw the accused at the scene of a crime.
2. **Expert Witnesses**: These individuals provide testimony based on their special knowledge, training, or experience in a particular field. The testimony of expert witnesses is used to help the court understand complex facts or technical issues.
   - **Example**: A forensic expert providing testimony about the cause of death based on post-mortem examination.

Conditions for Admissibility of Oral Evidence:

1. **First-Hand Knowledge**: A witness must testify about facts that they personally know. They cannot testify about what someone else has said or done (this would be considered **hearsay** evidence).
2. **Relevance**: The oral evidence must be relevant to the issues being tried in the case. It must assist the court in proving or disproving a matter of fact.
3. **Competency of Witness**: A witness must be competent to give oral evidence. Under **Section 118**, anyone who is not a child, insane, or incapable of understanding the nature of the proceedings can testify as a witness.
4. **Examination of Witness**: Oral evidence is typically elicited through the process of examination-in-chief, cross-examination, and re-examination.
   - **Examination-in-chief**: The initial questioning of a witness by the party that calls them to the stand.
   - **Cross-examination**: The questioning of a witness by the opposing party to test their credibility.
   - **Re-examination**: A follow-up questioning of the witness by the original party to clarify or expand on points raised during cross-examination.

Conclusion: Oral evidence is a critical component of the judicial process, as it provides direct testimony about facts that may be in dispute. The admissibility and reliability of oral evidence depend on its

relevance, the competency of the witness, and the absence of hearsay. The Indian Evidence Act ensures that oral evidence is subjected to proper scrutiny to help the court determine the truth of a matter under trial.

6 Material Evidence.

Material Evidence refers to any physical evidence that is relevant and significant in proving or disproving a fact in issue during a trial. It encompasses physical objects or items that can be presented before the court to establish the truth of a matter under inquiry. Material evidence is tangible, often in the form of objects, documents, or any other item that has a direct bearing on the facts being adjudicated.

While **material evidence** is not directly defined in the Indian Evidence Act, it falls within the broader concept of **relevant evidence** as outlined in **Section 5** of the Act. According to this section, all facts that are relevant to the case, whether they are direct or circumstantial, can be used as evidence in court, provided they are material to the issues being tried.

- **Section 3 of the Indian Evidence Act** defines **"relevant facts"** which are essential for proving a point in the case, and material evidence is the physical manifestation of such relevant facts. Material evidence is directly linked to the facts of the case and helps to substantiate or challenge the claims made by either party.

Examples of Material Evidence:

1. **Weapons and Tools**: In criminal cases, items like knives, guns, or tools used in the commission of a crime (e.g., a hammer used in a murder) are examples of material evidence.
2. **Documents**: Contracts, wills, receipts, or any official documents related to the case can be considered material evidence in civil and criminal cases.
    - **Example**: A forged will, if proven to be the one in question, can be material evidence in a case of property dispute or fraud.
3. **Photographs and Videos**: Visual or audio evidence that directly supports or contradicts testimony or claims made by the parties in a case.
    - **Example**: CCTV footage of a crime scene or photographs showing the condition of a vehicle after an accident.
4. **Physical Objects**: These include clothing, fingerprints, or other items directly related to the crime scene or incident being investigated.
    - **Example**: Bloodstained clothing, a torn piece of fabric found at the crime scene, or a broken door lock may serve as material evidence in a burglary case.
5. **Forensic Evidence**: Materials such as DNA samples, hair, blood, or fingerprints that link a suspect to a crime or an event are also considered material evidence.
    - **Example**: A suspect's fingerprints found on a weapon used in the commission of a crime.

Relevance and Admissibility of Material Evidence:

1. **Relevance (Section 5)**: For any piece of material evidence to be admissible in court, it must be relevant to the issue at hand. This means it must have a direct connection to proving or disproving the fact in issue.
    - **Example**: A piece of clothing found at the crime scene may be material evidence, but only if it can be linked to the accused or the incident in question.
2. **Chain of Custody**: In order to ensure that material evidence is reliable and has not been tampered with, it is essential that the chain of custody is maintained. This refers to the documentation and handling process through which the evidence passes from the time it is collected until it is presented in court.

- **Example**: If a blood sample is collected as material evidence, it must be properly stored, recorded, and transported without any alteration to its integrity.

3. **Expert Testimony**: In some cases, material evidence may require expert analysis to determine its relevance or significance. For example, forensic evidence such as fingerprints, DNA, or handwriting analysis often needs to be examined by experts.
    - **Example**: A forensic expert may testify about the analysis of DNA evidence linking a suspect to the scene of a crime.

Conclusion: Material evidence is critical in the judicial process, as it helps to establish the facts of a case beyond the scope of witness testimony alone. It includes physical objects, documents, photographs, forensic evidence, and any tangible items that can directly support or disprove a claim. The Indian Evidence Act allows for the admissibility of material evidence as long as it meets the criteria of relevance and integrity, ensuring its reliability in proving the facts at hand.

7. Documentary Evidence.

Documentary Evidence refers to evidence presented to the court in the form of documents or written records. It is an essential type of evidence under the **Indian Evidence Act, 1872**, which defines the rules and procedures governing the admissibility and use of documents to prove or disprove facts in issue.

1. **Section 3 (Interpretation Clause)**:
    - Documentary evidence includes all documents presented to the court for inspection to establish facts. The Act defines a document as any matter expressed or described upon any substance by means of letters, figures, or marks intended to be used as evidence.
2. **Section 61**:
    - It states that facts can be proved either by oral evidence or by documentary evidence. Documentary evidence is often preferred as it provides a written record that can be verified and scrutinized.
3. **Section 62 (Primary Evidence)**:
    - Primary evidence refers to the original document itself, which must be presented whenever possible. It is considered the best evidence.
4. **Section 63 (Secondary Evidence)**:
    - Secondary evidence includes certified copies, counterparts of documents, or oral accounts of the contents of a document. It is admissible only under certain conditions, such as when the original is lost or destroyed.
5. **Section 65**:
    - This section lays down circumstances under which secondary evidence may be admissible, such as:
        - The original document is lost or destroyed.
        - The original is in possession of the opposing party.
        - The original is not easily movable.

Examples of Documentary Evidence:

1. **Contracts**: Written agreements between parties.
2. **Wills**: Testamentary documents used in inheritance cases.
3. **Receipts and Invoices**: Proof of financial transactions.
4. **Official Records**: Birth certificates, property deeds, court records, etc.
5. **Electronic Documents**: Emails, digital contracts, or other forms of electronic communication.

Admissibility of Documentary Evidence:

To be admissible, documentary evidence must fulfill the following conditions:

1. **Relevance**: The document must be directly related to the facts in issue.
2. **Authentication**: The party submitting the document must prove its authenticity.
    - **Section 67**: Proof of signature and handwriting of the person claiming to have signed or written the document is required.
3. **Execution of Documents**: Documents that require attestation, such as wills, must be executed as per legal requirements.
    - **Section 68**: Proof of execution of documents required by law to be attested.
4. **Stamping**: Documents must be properly stamped under the Indian Stamp Act, 1899, to be admissible.

Electronic Evidence as Documentary Evidence:

Under **Section 65B**, electronic records are treated as documentary evidence. For admissibility:

1. A certificate under **Section 65B(4)** is required.
2. The record must be produced from a computer used regularly in the ordinary course of business.

Conclusion: Documentary evidence is vital in both civil and criminal cases, as it provides a tangible, verifiable record of facts. The Indian Evidence Act ensures that documents are properly authenticated, relevant, and admissible, making them a reliable source of proof in legal proceedings.

8. Mixed question of law & fact.

A **Mixed Question of Law and Fact** arises in legal proceedings when a case involves both legal principles (law) and factual disputes (facts). Resolving such questions requires analyzing the facts in light of the applicable legal provisions. These questions are crucial in determining the rights and liabilities of the parties involved in a legal matter.

- A **question of law** pertains to the interpretation or application of legal principles or statutes.
- A **question of fact** involves determining the truth or falsity of a factual assertion based on evidence.
- A **mixed question of law and fact** combines these elements, requiring the application of legal principles to the facts of the case to reach a conclusion.

Examples of Mixed Questions of Law and Fact:

1. **Negligence Cases**: Determining whether a person acted negligently requires evaluating their conduct (a fact) against the standard of reasonable care (a legal principle).
    - **Example**: In a motor accident case, deciding whether the driver acted recklessly is a mixed question, as it involves interpreting the duty of care and assessing the driver's behavior.
2. **Contractual Disputes**: Deciding whether a breach of contract occurred often requires interpreting the contract (a legal question) and examining the actions of the parties (a factual question).
3. **Criminal Cases**: Establishing whether an accused had the necessary intent (mens rea) to commit a crime involves both the factual determination of their actions and the legal interpretation of intent.

Key Features:

1. **Fact-Based Determination**: Facts are first established based on evidence presented during the trial.

2. **Legal Application**: The facts are then analyzed using the relevant legal provisions, principles, or precedents.
3. **Judicial Interpretation**: Courts must carefully balance both aspects to arrive at a fair decision.

Judicial Approach:

- In **mixed questions**, the judiciary typically focuses on finding the facts first, as the application of the law depends on the established facts.
- Higher courts (e.g., appellate courts) may review questions of law but generally do not interfere with factual findings unless there is a significant error or perversity.

Application in Indian Evidence Act:

- The **Indian Evidence Act, 1872**, plays a significant role in resolving mixed questions of law and fact by providing rules for the admissibility and evaluation of evidence.
- **Section 101** (Burden of Proof): In mixed questions, the burden of proof lies with the party asserting a fact or claiming a legal right.
- **Section 114**: Courts may draw presumptions based on facts and apply them to legal principles.

Conclusion: Mixed questions of law and fact require careful scrutiny of both evidence and legal principles. Courts must analyze the factual matrix while interpreting the law to ensure that justice is served. These questions are fundamental to legal proceedings, as they often determine the outcome of cases where legal rights and factual circumstances are intricately linked.

9. Confessions made to police officer.

Under the **Indian Evidence Act, 1872**, the admissibility of confessions made to a police officer is strictly regulated to prevent abuse of power and coercion. Confessions are an important part of evidence, but to safeguard the rights of the accused, the law imposes certain restrictions on their use when made to police officers.

1. **Section 25**:
   - It explicitly states that a confession made to a police officer is not admissible as evidence in a court of law.
   - **Text**: "No confession made to a police officer shall be proved as against a person accused of any offense."
   - **Reason**: This provision aims to prevent coerced confessions and ensure fair treatment during investigations.
2. **Section 26**:
   - A confession made by a person in police custody is not admissible unless it is made in the immediate presence of a Magistrate.
   - **Text**: "No confession made by any person whilst he is in the custody of a police officer shall be proved against such person unless it is made in the immediate presence of a Magistrate."

- **Purpose**: This ensures that the confession is voluntary and free from undue influence or coercion.

3. **Section 27**:
   - An exception to Sections 25 and 26. It states that if a confession made in police custody leads to the discovery of a fact, that part of the confession which relates to the discovery is admissible.
   - **Text**: "Provided that, when any fact is discovered in consequence of information received from a person accused of any offense, 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."
   - **Illustration**: If an accused confesses to the police that a weapon is hidden at a specific place, and the weapon is subsequently found there, that part of the confession leading to the discovery is admissible.

Key Features:

1. **Inadmissibility**: Confessions made directly to a police officer or in police custody (without the presence of a Magistrate) are not admissible as evidence.
2. **Discovery Exception**: Only the part of the confession that leads to a discovery of a material fact is admissible under Section 27.
3. **Voluntariness**: The law emphasizes that a confession should be voluntary, free from coercion, inducement, or threats. Any confession obtained through improper means is inadmissible.
4. **Judicial Safeguards**: The involvement of a Magistrate ensures that the confession is recorded voluntarily and in compliance with legal procedures.

Illustrative Case Laws:

1. **Aghnoo Nagesia v. State of Bihar (1966)**:
   - The Supreme Court held that the entire confession made to a police officer is inadmissible under Section 25, except for the portion leading to the discovery of a fact under Section 27.
2. **Pakala Narayana Swami v. Emperor (1939)**:
   - The court emphasized that confessions must be voluntary to be admissible, highlighting the importance of safeguards under the law.
3. **State of U.P. v. Deoman Upadhyaya (1960)**:
   - The court clarified that Section 27 serves as a balancing provision, allowing admissibility of only those parts of a confession that lead to a discovery.
4. **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983)**:
   - The court reiterated that police cannot rely on confessions made in custody unless corroborated by independent evidence.

Conclusion: The Indian Evidence Act, through **Sections 25 to 27**, ensures a balance between protecting the accused's rights and enabling the discovery of material facts. Confessions made to police officers are inadmissible in most cases, reflecting the law's commitment to preventing misuse of power and ensuring fairness in criminal justice proceedings.

10. Witness opinion.

The general rule under the **Indian Evidence Act, 1872** is that witnesses must testify to **facts** and not express their **opinions**. However, there are specific exceptions where the opinion of a witness is admissible, primarily when the witness has special knowledge, skill, or expertise relevant to the case.

1. **Section 45 – Opinions of Experts:**
   - Expert opinion is admissible in matters requiring specialized knowledge or skill, such as:
     - **Fingerprints**
     - **Handwriting**
     - **Ballistics**
     - **Medical Evidence**
     - **Scientific Evidence**
   - **Example**: A handwriting expert's opinion about the authenticity of a signature.
2. **Section 47 – Opinion as to Handwriting:**
   - A person who is familiar with another's handwriting (e.g., a clerk, friend, or relative) can testify about its authenticity.
3. **Section 48 – Opinion on Customs and Usages:**
   - Opinions of people having special knowledge of customs or usages are admissible, especially in matters related to family law, marriage, or inheritance.
4. **Section 49 – Opinion as to Relationship:**
   - Testimony about relationships based on the perceptions of a witness who has had special knowledge of the family is admissible.
5. **Section 50 – Opinion on the Right or Custom:**
   - A witness acquainted with a person's right to property or entitlement through custom may offer an opinion.
6. **Section 51 – Grounds of Opinion:**
   - The grounds on which a witness bases their opinion may also be examined to determine its credibility.

Key Features:

1. **General Rule – Fact vs. Opinion:**
   - Witnesses are expected to testify about facts they have personally observed, not their interpretations or inferences.
2. **Exceptions – Admissibility of Opinions:**
   - Opinions are allowed only in cases where:
     - They aid the court in understanding technical or specialized matters.
     - The opinion is based on recognized expertise or special knowledge.
3. **Expert Witnesses:**
   - The court must first establish the competence of the witness as an expert in the relevant field.

Conclusion: While the Indian Evidence Act emphasizes factual testimony, it recognizes the importance of expert opinions and certain specialized lay opinions in aiding the judicial process. Courts exercise caution in admitting and weighing witness opinions to ensure justice and fairness in legal proceedings.

11. Relevance of Social Media in Law of Evidence.

Social media has become an integral part of modern communication and information sharing. With the widespread use of platforms like Facebook, Instagram, Twitter, and WhatsApp, social media evidence has gained significant importance in legal proceedings. Under the **Indian Evidence Act, 1872**, electronic records, including social media content, are admissible as evidence, provided they meet certain legal and procedural requirements.

1. **Section 3 – Definition of Evidence:**
   - Evidence includes "all documents, including electronic records, produced for the inspection of the court."

- Social media posts, messages, images, and videos fall under the category of **electronic records**.

2. **Section 65A – Special Provisions for Electronic Records:**
   - Social media evidence is considered **electronic evidence** and is governed by Sections 65A and 65B.
3. **Section 65B – Admissibility of Electronic Records:**
   - For any electronic evidence, including social media data, to be admissible, a **certificate of authenticity** under Section 65B(4) is mandatory.
   - The certificate must state:
     - The manner in which the electronic evidence was produced.
     - The device used to produce the evidence.
     - The authenticity of the evidence.
4. **Section 45A – Opinion of Examiner of Electronic Evidence:**
   - An expert opinion can be sought for examining and verifying the authenticity of electronic evidence.
5. **Information Technology Act, 2000 (Section 79A):**
   - Empowers the government to designate **certifying authorities** or **agencies** for authenticating electronic records, including social media evidence.

Types of Social Media Evidence:

1. **Posts and Messages:** Facebook posts, WhatsApp chats, tweets, and Instagram messages can establish communication, intent, or conduct.
2. **Images and Videos:** Photographs or videos shared on social media may serve as proof of an event, location, or activity.
3. **Metadata:** Metadata associated with social media content (e.g., timestamps, geolocation) can provide additional evidence.
4. **Screenshots:** Screenshots of social media content may be admissible, provided their authenticity is established.

Case Laws:

1. **Anvar P.V. v. P.K. Basheer (2014):**
   - The Supreme Court held that electronic evidence is admissible only if accompanied by a certificate under Section 65B of the Evidence Act.
2. **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal (2020):**
   - Reiterated the mandatory requirement of a Section 65B certificate for electronic evidence, including social media content.

Conclusion: Social media evidence is highly relevant under the **Law of Evidence** in modern legal systems. However, courts must ensure its authenticity, reliability, and compliance with statutory requirements under the **Indian Evidence Act** and related laws. While social media plays a pivotal role in aiding justice, safeguards must be in place to address challenges related to privacy, tampering, and admissibility.

12. Privileged Communication.

Privileged communication refers to certain types of communication that are protected from being disclosed in a court of law without the consent of the party entitled to the privilege. The Indian Evidence Act, 1872, recognizes such communications and provides specific provisions under which disclosure of such information is prohibited to uphold confidentiality and trust in certain relationships.

Relevant Provisions of the Indian Evidence Act:

1. **Section 122 – Communications Between Spouses:**
   - Communications between husband and wife during the marriage are considered privileged.
   - Neither spouse is compelled to disclose these communications in court without the consent of the other.
   - **Rationale**: To preserve marital harmony and confidentiality.
   - **Exception**: If one spouse is being prosecuted for an offense against the other, this privilege may not apply.
2. **Section 126 – Professional Communications (Attorney-Client Privilege):**
   - A legal professional (barrister, attorney, pleader, or vakil) is not permitted to disclose:
     - Communications made to them by their client.
     - Advice provided to the client.
     - Contents of documents entrusted to them in their professional capacity.
   - **Exception**:
     - If the communication is made in furtherance of an illegal purpose.
     - If the legal professional becomes aware of a crime after the fact.
3. **Section 127 – Extends Privilege to Interpreters and Clerks:**
   - The privilege under Section 126 is extended to interpreters, clerks, and other agents of legal professionals.
4. **Section 128 – Waiver of Privilege by the Client:**
   - If a client calls their legal advisor as a witness and questions them on privileged matters, the privilege is deemed waived.
5. **Section 129 – Confidential Communications with Legal Advisers:**
   - Clients cannot be compelled to disclose confidential communications with their legal advisers unless they offer themselves as witnesses.
6. **Section 131 – Production of Documents:**
   - Documents in possession of a person cannot be produced if their production would result in the breach of a privilege.

Key Features of Privileged Communication:

1. **Relationships Covered:**
   - Husband-wife relationship.
   - Attorney-client relationship.
   - Certain other confidential relationships recognized by law.
2. **Purpose:**
   - To ensure free and open communication between parties without fear of legal repercussions.
   - To uphold public policy and preserve confidentiality in key social and professional relationships.
3. **Non-Disclosure Principle:**
   - Such communication is protected even after the termination of the relationship (e.g., divorce, cessation of attorney-client relationship).

Conclusion: Privileged communication is a cornerstone of trust and confidentiality in key relationships. The Indian Evidence Act, 1872, safeguards such communications to ensure that parties can communicate openly without fear of legal repercussions. However, exceptions exist to prevent misuse of these protections, particularly in cases involving crime, fraud, or public interest. Courts balance these competing interests to ensure justice while respecting confidentiality.

13. May presumption.

May presumption refers to a discretionary presumption that the court *may infer* a certain fact from the available evidence but is not obligated to do so. It gives the court the liberty to draw an inference, depending on the circumstances of the case, the nature of the evidence presented, and judicial reasoning. These presumptions are permissive rather than mandatory.

1. **Section 4 – "May Presume":**
   - The term "may presume" is defined under Section 4 of the Act.
   - When the law states that the court "may presume" a fact, it implies that:
     - The court is permitted to regard the fact as proved unless it is disproved.
     - However, the court retains discretion to reject the presumption even if it is not disproved.
2. **Examples of "May Presume" in the Evidence Act:**
   - **Section 113A**: Presumption as to abetment of suicide by a married woman.
     - If a married woman commits suicide within seven years of marriage and is subjected to cruelty, the court *may presume* that her husband or relatives abetted the suicide.
   - **Section 114**: Court's general discretionary power to draw presumptions.
     - Illustrations include presuming:
       - That an official act has been regularly performed.
       - That a person in possession of stolen goods soon after the theft is either the thief or has received them knowing them to be stolen.
   - **Section 90**: Presumption regarding the validity of ancient documents (over 30 years old).
     - The court *may presume* the document was properly executed and authentic.

Characteristics of "May Presume":

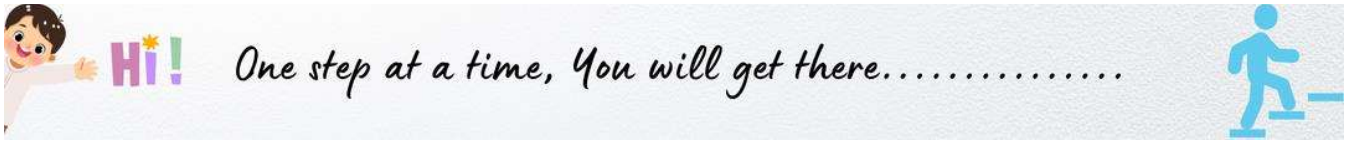
1. **Discretionary Nature:**
   - The court has the option to accept or reject the presumption based on the circumstances and the evidence available.
2. **Rebuttable Presumption:**
   - The presumption is not conclusive and can be disproved by contrary evidence.
3. **Burden of Proof:**
   - Initially, the burden of proof shifts to the party disputing the presumption, but they can rebut it with sufficient evidence.
4. **Judicial Reasoning:**
   - The court's reasoning plays a key role in deciding whether to accept or reject the presumption.

Case Laws on May Presumption:

1. **Sharad Birdhichand Sarda v. State of Maharashtra (1984):**
   - The Supreme Court clarified that a "may presumption" must be based on facts and circumstances that logically support the inference.
2. **Shiv Kumar v. State (1999):**
   - Discussed the discretionary nature of Section 113A, where the court held that the presumption of abetment of suicide must depend on the facts of each case.

Conclusion: "May presumption" under the Indian Evidence Act provides the court with flexibility in determining facts. It allows the judiciary to infer certain facts in the absence of direct proof, ensuring fairness in cases where strict proof may not be available. However, such presumptions are rebuttable,

preserving the rights of the parties to challenge and disprove the inference drawn. This balance ensures that justice is served while maintaining judicial discretion.



14. Motive.

Motive refers to the reason or incentive behind a person's actions, particularly criminal actions. While motive is not directly relevant to proving a crime in Indian law, it plays a significant role in providing context, understanding behavior, and corroborating other pieces of evidence. The Indian Evidence Act does not explicitly define "motive," but it is often discussed in the context of *circumstantial evidence* and *criminal cases*.

Role of Motive in Criminal Cases:

1. **Motive as Circumstantial Evidence:**
   - Motive can serve as circumstantial evidence, meaning it is used to establish a reason for committing a crime.
   - Although motive itself is not enough to convict someone, it helps build a narrative around the defendant's actions and intentions.
2. **Establishing Intent:**
   - In criminal law, establishing motive can help in proving *mens rea* (guilty mind), which is an essential element in criminal liability.
   - It helps the court understand why a person may have committed a crime, supporting the inference that the crime was committed with deliberate intent rather than by accident.
3. **Motive in Homicide Cases:**
   - In murder or homicide cases, establishing the motive helps corroborate evidence such as the weapon used, the manner of death, or the accused's actions leading to the crime.

Provisions Under the Indian Evidence Act:

1. **Section 8 – Motive, Preparation, and Previous or Subsequent Conduct:**
   - Section 8 of the Indian Evidence Act allows the court to consider the motive, preparation, and conduct of the accused before or after the crime as part of the *circumstantial evidence*.
   - **Explanation:** The section states that the court may take into account the motive behind an act to establish the likelihood of the act being committed, especially in cases where the direct evidence is unavailable.

   Example: If someone is seen preparing for a crime (e.g., purchasing a weapon) or has a financial dispute with the victim, these acts may suggest the motive for the crime.

2. **Section 27 – Discovery of Facts Based on Accused's Information:**
   - Under Section 27, statements made by the accused about the crime, which lead to the discovery of material facts, can be admitted in court. While not directly addressing "motive," such discoveries may reveal the accused's intent or reason for committing the crime.

Motive as Corroborative Evidence:

- **Not a Mandatory Requirement:** In criminal trials, motive is not a mandatory element to prove a crime. However, it strengthens the case when other evidence is ambiguous or circumstantial.
- **Not Direct Evidence of the Crime:** Motive does not prove that a crime was committed; it simply provides context. For example, in a case of murder, the motive can show why the accused might have killed the victim but does not directly prove the killing.

Illustrations of Motive in Criminal Cases:

1. **Financial Gain:** A person may commit a robbery to obtain money. The motive, in this case, is financial gain.
2. **Personal Revenge:** A person may commit murder to avenge a personal grievance, such as a past insult or conflict.
3. **Jealousy or Love:** A crime such as homicide may be committed due to feelings of jealousy or unrequited love, as in the case of crimes of passion.

Conclusion: Motive in the context of the Indian Evidence Act plays a crucial role in understanding the *why* behind a crime, even though it is not a standalone element for conviction. It helps in connecting the dots between the accused's actions, their intent, and the resulting crime. Motive strengthens the circumstantial evidence but cannot serve as the sole ground for conviction. Thus, it plays a supplementary role in criminal law, helping courts to form a coherent narrative of the case.

15. Test of identification Parado.

A **Test of Identification Parade** (TIP) is a process used in criminal investigations to confirm the identity of a person suspected of committing a crime. The primary purpose of this process is to ensure that a witness or victim correctly identifies the accused among a group of similar-looking individuals. It serves as an important part of the evidence in criminal cases, especially when the identification of the accused is central to the prosecution's case.

Legal Framework in the Indian Evidence Act:

While the Indian Evidence Act does not specifically mention the Test of Identification Parade, **Section 9** and **Section 8** play a crucial role in understanding how it fits within the framework of evidence.

1. **Section 9 – Identification of Things:** Section 9 allows for the identification of objects that are relevant to the case, and similarly, the identification of the person involved is also considered admissible if the process is legally conducted.
2. **Section 8 – Motive, Preparation, and Previous or Subsequent Conduct:** The section talks about the relevance of the previous or subsequent conduct of an accused. This can include the identification of the accused if it is relevant to the case's circumstances.

Purpose of Identification Parade:

1. **Establishing the Identity of the Accused:**
   - The TIP helps to establish that the witness or victim correctly identifies the accused from a group of similar individuals.
2. **Preventing Mistaken Identification:**
   - The process ensures that the identification is not based on mere recognition or assumption but is based on the witness's ability to identify the actual offender.
3. **Reliability of Witness:**
   - It tests the reliability of the witness's identification. A correct identification strengthens the case, while a mistaken identification can weaken or discredit it.

Process of Identification Parade:

1. **Conducting the Parade:**
   - The Identification Parade is generally conducted by the police in the presence of a Magistrate (preferably a Judicial Magistrate).
   - The witness or victim is shown a lineup of people, including the suspect and other individuals with similar physical characteristics (e.g., age, height, build, etc.).
2. **Right to Refuse:**
   - The accused has the right to refuse to participate in the parade. However, refusal by the accused cannot invalidate the process. In such cases, the court may rely on other evidence for identification.
3. **Witness's Role:**
   - The witness is asked to identify the suspect among the group of individuals. This should be done under conditions that minimize the risk of suggestion or influence, ensuring that the identification is unbiased.
4. **Recording the Statement:**
   - The identification, whether positive or negative, is recorded by the Magistrate. The entire process is carefully documented, ensuring that it is transparent and free from any improper influence or coercion.

Conclusion: The **Test of Identification Parade** is a crucial procedural safeguard in criminal investigations under Indian law. While it is not conclusive proof of the accused's guilt, it serves as an important piece of evidence that helps establish the identity of the accused. The court examines the manner in which the parade was conducted, the circumstances of the case, and the witness's testimony to assess the identification's credibility.

16. Res gestae.

Res Gestae is a Latin term that translates to "things done" or "things which have happened." In the context of the Indian Evidence Act, **Res Gestae** refers to statements or actions made by a person during or immediately after the occurrence of an event, which are considered relevant and admissible in court as part of the incident itself. The underlying principle is that these statements are spontaneous, made in the heat of the moment, and are therefore more likely to be truthful and reliable.

Section 6 of the Indian Evidence Act defines and deals with **Res Gestae** as a part of the exception to the general rule against hearsay evidence. The section allows the admission of statements made during or immediately after the event, which are considered to be part of the res gestae.

Section 6 – "Relevance of Facts forming Part of the Same Transaction":

- **Section 6** of the Indian Evidence Act states that:

"Facts which are part of the same transaction, are relevant."

- This section permits the admission of statements or actions made during or immediately following the commission of an offense, which are closely connected to the event and necessary to explain it.

Conditions for Res Gestae to be Admissible:

1. **Spontaneity of the Statement:**

- The statement or act must be made contemporaneously or immediately after the occurrence of the event.
- The person making the statement must not have had time to reflect or fabricate the statement.

2. **Proximity to the Incident:**
   - The statement or act must be closely related to the event in time and space. It must form part of the same transaction.
3. **Relevance to the Main Event:**
   - The statement must help in explaining or giving context to the incident or transaction. It must provide a clear understanding of the facts surrounding the event.
4. **No Intervening Period:**
   - There should be no significant gap between the occurrence of the event and the statement. A considerable delay or any time gap between the incident and the statement may disqualify it as res gestae.

Examples of Res Gestae:

1. **Spontaneous Statements:**
   - If a person, immediately after being attacked, says, "He is the one who hit me!" such a statement would be admissible under Section 6 as part of the res gestae.
2. **Excited Utterances:**
   - If a person, witnessing a crime, shouts out, "Help! The thief is running away!" immediately after the crime, this utterance is part of the res gestae and can be admitted as evidence.
3. **Acts or Deeds:**
   - If a person is seen fleeing the scene immediately after a crime is committed, that act of fleeing can be part of the res gestae.
4. **Physical Actions or Conduct:**
   - Actions like a person pointing to the accused or making gestures indicating the commission of the crime are part of the res gestae.

Conclusion: **Res gestae** is a critical concept in the Indian Evidence Act that allows certain spontaneous statements or actions to be admitted in court as part of the transaction. These statements or actions help provide a clearer understanding of the facts surrounding a crime or event and can be used as corroborative evidence. However, the admissibility of res gestae depends on factors such as proximity to the event, spontaneity, and relevance to the case.

17. Alibi.

Alibi is a Latin term meaning **"elsewhere"**, and in the legal context, it refers to a defense used by an accused person in a criminal case, asserting that they were not present at the scene of the crime when the offense was committed. The accused presents evidence to show that they were elsewhere, which makes it impossible for them to have committed the alleged crime. The **Indian Evidence Act, 1872** does not specifically mention **alibi**; however, the principles governing alibi can be understood through certain provisions and judicial interpretations.

Section 11 – "When facts not otherwise relevant become relevant":

- **Section 11** of the Indian Evidence Act deals with facts that are not directly relevant to the main issue of the case but become relevant when they form part of the context of the case.
- In the context of alibi, evidence showing that the accused was elsewhere at the time of the crime is relevant because it can serve to **negate the prosecution's allegations**.

Burden of Proof and Alibi:

1. **Prosecution's Burden:**
   - The prosecution has the burden to prove the guilt of the accused beyond a reasonable doubt. If the prosecution's evidence establishes that the accused was at the scene of the crime, the burden shifts to the accused to prove the alibi.
2. **Accused's Responsibility:**
   - Under **Section 103 of the Indian Evidence Act**, the accused is not required to prove the alibi beyond a reasonable doubt but only to present sufficient evidence to raise a reasonable doubt about their presence at the crime scene.
   - **Section 106** also applies, which deals with **facts within the knowledge of the accused**. If the accused claims to have been somewhere else, the accused may be expected to provide some evidence or circumstances supporting their claim.
3. **No Absolute Obligation:**
   - The accused does not have an absolute duty to prove an alibi. They can rely on the prosecution's failure to establish the case beyond a reasonable doubt. However, if the accused does present an alibi, the court will consider it along with other evidence.

Types of Alibi Evidence:

1. **Documentary Evidence:**
   - The accused may produce documents that show they were elsewhere at the time of the crime. For example, travel tickets, time-stamped receipts, or official records.
2. **Witness Testimony:**
   - Testimony from witnesses who can confirm the accused's presence elsewhere, such as colleagues, family members, or friends, is also a common form of alibi evidence.
3. **Physical Evidence:**
   - Physical evidence, such as surveillance footage, location data from mobile phones, or security camera recordings, can help substantiate the alibi claim.
4. **Expert Evidence:**
   - In certain cases, expert evidence may be provided to support an alibi, such as the testimony of a doctor regarding medical records or an expert confirming the timeline.

Illustrative Examples:

1. **Example 1:** A person is accused of committing a robbery at a bank. They claim to have been in a different city on the day of the robbery. The accused produces a train ticket with a time and date that corroborates their claim. Additionally, a friend testifies that they were together during the robbery. This is a classic example of an alibi.
2. **Example 2:** An accused is charged with committing a murder. The accused claims they were attending a wedding at the time of the crime. The defense presents photographic evidence from the event, as well as witness testimony from the wedding guests, all of which support the alibi.
3. **Example 3:** The accused claims they were in a hospital at the time of the crime. However, no medical records or testimony are provided to substantiate the claim. In this case, the lack of evidence weakens the defense of alibi.

Conclusion: The **alibi defense** in criminal law under Indian jurisprudence is crucial for an accused to establish that they were not at the scene of the crime when it occurred. While it does not shift the burden of proof onto the accused, the defense must be supported by credible and relevant evidence to raise a reasonable doubt about the accused's involvement in the crime. Courts will carefully evaluate the alibi based on consistency, plausibility, and corroboration from various sources of evidence.

18. Estoppel.

Estoppel is a legal doctrine that prevents a person from asserting or denying something contrary to what they have previously stated or agreed upon, especially when that statement or agreement has been relied upon by others. The principle of estoppel serves to uphold fairness and prevent injustice by ensuring that a party cannot change their position if it would adversely affect another party who has relied on their prior representation or conduct.

The concept of **estoppel** is mainly covered under **Sections 115 to 117** of the **Indian Evidence Act, 1872**. These provisions describe the rules regarding estoppel, its scope, and its applications in different circumstances.

Section 115 – "Estoppel"

- **Section 115** of the Indian Evidence Act states:

"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 that person or his representative, to deny the truth of that thing."

- This section lays down the foundational rule of estoppel, where a person who has led another to believe in a certain state of affairs and act upon that belief is prevented from denying the truth of the matter in subsequent proceedings.

Key Aspects of Estoppel:

1. **Representation or Assertion:**
   - For estoppel to apply, there must be a **representation, act, or omission** by the party in question. This representation or act must intentionally or negligently cause another person to believe something to be true.
2. **Reliance by the Other Party:**
   - The other person must have relied on the representation or conduct of the first party and acted upon it. In other words, they must have been **misled or influenced** by the declaration, act, or omission of the other party.
3. **Subsequent Denial:**
   - Estoppel prevents the first party from **denying or contradicting** the truth of what they previously represented, especially when it would lead to injustice to the person who relied on that representation.
4. **Scope of Estoppel:**
   - Estoppel applies only in **civil matters** between the parties directly involved. It does not apply in criminal proceedings. However, it can be invoked as a defense in civil cases or disputes related to contracts, property rights, and other civil matters.

Types of Estoppel:

1. **Estoppel by Record (Judicial Estoppel):**
   - This type of estoppel occurs when a person is prevented from making a claim or assertion in a later proceeding that contradicts what was previously decided or recorded in earlier judicial proceedings.
   - Example: If a court has already ruled on a particular matter, a party is estopped from arguing against the facts decided in that case in a subsequent suit.
2. **Estoppel by Deed:**
   - When parties enter into a deed (such as a contract or agreement), they are estopped from denying or disputing the facts or provisions established within that deed.
   - Example: If a person executes a deed acknowledging ownership of a property, they cannot later deny ownership in a subsequent legal dispute about the same property.
3. **Estoppel by Representation (Equitable Estoppel):**
   - This estoppel arises when a person makes a representation of fact to another party, and the other party relies on that representation, believing it to be true. The first party is then prevented from contradicting that representation.
   - Example: If a landlord tells a tenant that they will not enforce a rent increase for a year, the landlord is estopped from demanding the increased rent during that period.
4. **Estoppel by Omission:**
   - If a person fails to take an action when it is their duty to do so, and this omission leads another party to rely on the situation, the first party may be estopped from later asserting a position contrary to the reliance.
   - Example: If a property owner does not contest a claim of adverse possession for years, they may be estopped from later asserting that the property was never adversely possessed.

Conclusion: **Estoppel** is a crucial legal doctrine under the Indian Evidence Act, primarily designed to promote fairness and prevent injustice in legal proceedings. By preventing a party from denying facts that they have previously represented or allowed another party to rely upon, estoppel ensures that parties do not act in a manner that could cause unfair disadvantage to others. While estoppel can apply in many civil matters, its scope, especially in contractual disputes, judicial proceedings, and landlord-tenant relationships, is significant. Courts carefully consider estoppel to prevent inconsistent claims that could undermine the integrity of legal proceedings and transactions.

19. Opinion of Experts.

Opinion of experts refers to the testimony provided by a person who possesses special knowledge, experience, or expertise in a particular field, and their opinion is considered as evidence in legal proceedings. The Indian Evidence Act, 1872 allows the opinion of experts to be admissible in court under specific circumstances where the opinion of an expert is necessary to understand certain facts or issues that are beyond the common knowledge of an ordinary person.

The provisions governing **opinion evidence** under the Indian Evidence Act are primarily found in **Sections 45 to 51**.

Section 45 – "Opinions of experts":

Section 45 allows the **opinions of experts** to be admissible in evidence. It states:

"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."

- **Scope of Section 45:**
  - This section deals with opinions from experts in fields such as **science**, **art**, **foreign law**, **handwriting**, and **fingerprint identification**. These fields require specialized knowledge that an ordinary person may not possess, thus necessitating expert testimony.
- **Types of Expert Opinions:**
  - **Foreign Law:** The opinion of an expert may be sought when the court needs to form an opinion regarding foreign law, which is outside the knowledge of the judge.
  - **Science or Art:** In matters that require specialized knowledge in fields like medicine, engineering, forensic science, or art, an expert's opinion can be sought.
  - **Handwriting and Fingerprints:** The identification of handwriting or fingerprints, which often plays a critical role in criminal and civil matters, may require expert testimony from document examiners or forensic experts.

Section 46 – "Facts bearing upon opinions of experts":

Section 46 deals with the **facts** that are the basis of an expert's opinion. The section provides that:

"Facts which are the subject of an opinion of an expert are relevant facts."

- The facts upon which the expert's opinion is based can be admitted as evidence. For example, in a medical case, the facts regarding a patient's condition (such as medical records, test results, etc.) are relevant to the expert's opinion.

Section 47 – "Opinion as to handwriting":

This section allows the **opinion on handwriting** to be admissible in court. It states:

"When the Court has to form an opinion as to the handwriting of any person, the opinion of a person who is acquainted with the handwriting of that person is a relevant fact."

- **Handwriting experts** are often called to determine the authenticity of signatures, documents, or letters in various criminal or civil cases.

Section 48 – "Opinion as to the finger impressions":

Similar to Section 47, this section pertains to the **opinion on fingerprint identification**:

"When the Court has to form an opinion as to the identity of a person from the person's fingerprints, the opinion of an expert in fingerprint identification is a relevant fact."

- **Forensic experts** specializing in fingerprint analysis may be called to verify the identity of individuals or establish a connection between a person and a crime scene.

Section 49 – "Opinion on relationship between persons":

Section 49 allows an expert to provide an opinion on the relationship between individuals if it is relevant to the case. However, such opinions must be based on facts directly known to the expert.

Section 50 – "Opinion on existence of a relationship":

This section is related to the **opinions regarding the existence of a relationship** between individuals, where the expert's opinion is admissible when it is based on relevant facts.

Section 51 – "Opinion on the grounds of suspicion":

Section 51 allows the **opinion of an expert** to be used to demonstrate a **ground for suspicion** in certain criminal matters.

Conclusion: The **opinion of experts** is an essential aspect of the **Indian Evidence Act, 1872** and plays a critical role in cases requiring specialized knowledge in fields like medicine, science, law, handwriting analysis, and more. Expert opinions assist the court in forming an informed judgment where the facts or issues involved are beyond the common knowledge of an ordinary person. While expert opinions are admissible, they are subject to scrutiny and must be based on facts and methodologies that are scientifically or legally recognized. Therefore, expert testimony is not conclusive but rather a guiding factor in the court's decision-making process.

20. Hostile witness.

A **hostile witness** is a witness who, after being called by one party, either **turns against the party** that called them or refuses to testify truthfully. Such a witness may either **contradict** their previous statement, fail to answer questions, or testify in a manner that is damaging to the party that called them to the stand.

The **Indian Evidence Act, 1872** provides specific provisions regarding **hostile witnesses** and the procedure that may be followed in such situations. The concept of a hostile witness is primarily covered under **Section 154**.

Section 154 – "Cross-examination of a witness declared hostile": Section 154 of the Indian Evidence Act deals directly with hostile witnesses:

"The party who calls a witness shall not be entitled to cross-examine him, unless he has been declared by the Court to be a hostile witness."

- This section permits a party to cross-examine its own witness if the witness has been declared hostile by the court.
- A hostile witness is one who either:
  - **Contradicts** their earlier statement or testimony.
  - **Deliberately** gives answers that are adverse to the party who called them.
  - **Refuses** to testify or fails to answer questions in a manner that is consistent with their previous statement or testimony.

- **Power of the Court:**
  - A court has the discretion to declare a witness hostile if they are found to be unwilling to testify or are giving answers that contradict earlier statements or depositions.
  - Once a witness is declared hostile, the party calling the witness is allowed to cross-examine them, which is otherwise not permitted.
  - The court also allows **leading questions** to be asked during cross-examination, which is normally prohibited in examination-in-chief. Leading questions suggest the answer and are typically only allowed during cross-examination.

Illustrative Example:

1. **Example 1:**

- A witness who initially testified in favor of the prosecution but later turns hostile by contradicting their earlier statement in court, saying that they were mistaken when identifying the accused, may be declared a hostile witness by the court.
- The prosecution can then cross-examine the witness and refer to their earlier statement to challenge their credibility and attempt to prove the accused's guilt using other evidence.

2. **Example 2:**
   - In a case where a witness initially testified about an incident that they had witnessed but later in court refused to answer questions or stated that they could not recall what had happened, the party calling the witness may request the court to declare them hostile.
   - Once declared hostile, the lawyer can use leading questions to extract more information or refer to earlier statements the witness may have made during investigations.

Conclusion: A **hostile witness** is one whose testimony turns against the party that called them to testify. Under **Section 154** of the **Indian Evidence Act, 1872**, the court has the authority to declare a witness hostile, which allows the party to cross-examine the witness and use leading questions. The court will then assess the reliability of the witness's testimony, considering any inconsistencies or contradictions. The concept of a hostile witness is crucial in ensuring that justice is served, as it allows a party to challenge unreliable testimony and to refer to prior statements to establish the truth.

21. Relevant fact.

A **relevant fact** refers to a fact that has a direct connection to the facts in issue in a case, and its admission can help establish the truth of the case. In the **Indian Evidence Act, 1872**, the term "relevant" is extensively defined and plays a crucial role in determining the admissibility of evidence during legal proceedings. The concept of **relevant facts** is primarily outlined in **Section 5** of the **Indian Evidence Act, 1872**:

Section 5 – *"Evidence may be given of facts in issue and relevant facts":*

"Evidence may be given of facts in issue and relevant facts; but not of facts which are not relevant to the issue."

- **Facts in Issue**: These are the core facts that are directly related to the dispute. For example, in a criminal trial, the facts that need to be proved are whether the accused committed the offense.
- **Relevant Facts**: These are facts that may not directly constitute the facts in issue but have a logical connection to them. Relevant facts can assist in proving or disproving the facts in issue. The connection between these facts and the facts in issue must be established to prove their relevance.

Types of Relevant Facts:

The **Indian Evidence Act, 1872** provides an elaborate list of **relevant facts** in **Sections 6 to 55**, which help establish connections between facts in issue and other facts. These sections outline various types of relevant facts such as:

1. **Facts necessary to explain or introduce a fact in issue (Section 6)**: These include facts that help explain or introduce the facts in issue. For instance, the circumstances surrounding the commission of an offense may be admissible to establish the facts in issue.
2. **Facts that establish the existence of a relationship (Sections 7 to 10)**: These are facts that help establish relationships between parties involved. For example, family relationships, business relationships, or previous connections may be relevant to establish motives or intentions.
3. **Res Gestae (Section 6)**: Res gestae refers to events that are part of the same transaction or closely connected with the facts in issue, such as statements made by a person while committing a crime.

These are spontaneous and unplanned statements made at the time of an event and can be used as relevant facts to establish the truth.

4. **Admissibility of facts related to the motive, preparation, and conduct of a party (Sections 8 and 9)**: The actions, motives, and preparation of the accused, such as prior threats or attempts to escape, can be used as relevant facts to infer the intention behind their actions.
5. **Facts that establish the identity of a person (Section 9)**: Any fact that helps establish the identity of a person involved in a case can be relevant, such as their appearance, handwriting, or fingerprints.
6. **Acts showing knowledge or state of mind (Sections 7 and 8)**: Knowledge or the state of mind of an individual regarding a specific fact can be crucial to proving that fact. For instance, statements made by the accused about the commission of an offense may be admissible.
7. **Admissions and Confessions (Sections 17 to 31)**: Admissions are statements made by a party that suggest a fact to be true. They are admissible if relevant to the case. Confessions made by the accused can be crucial in criminal cases and are often treated as relevant facts.
8. **Opinions of experts (Sections 45 to 51)**: The opinion of an expert is admissible in cases where special knowledge or skill is required to interpret facts. For instance, a medical expert's opinion about the cause of death or an expert in handwriting analysis can provide relevant facts for the case.
9. **Character Evidence (Section 8)**: The character of a person may be a relevant fact if it directly pertains to the case. For example, a person's previous convictions may be relevant in determining their involvement in a crime.
10. **Facts that affect the existence of a right or liability (Sections 16-18)**: In civil cases, facts that can affect the existence of a right or liability, such as possession of property or ownership of goods, may be considered relevant.

Conclusion: A **relevant fact** is one that has a logical connection to the facts in issue and helps establish the truth of the case. Under **Section 5** of the **Indian Evidence Act, 1872**, evidence can only be given for facts that are **relevant** to the issue at hand, and the court must assess the relevance of any fact presented during trial. The relevance of a fact is based on its **probative value**, i.e., its potential to contribute to the establishment of the facts in issue.

22. Conclusive proof.

Conclusive proof refers to a type of evidence that **irrefutably establishes a fact**. When a fact is **conclusively proved**, no further evidence can be brought to challenge it. In other words, the law **treats it as an absolute truth**, and the court is **legally bound to accept** that fact as true. The concept of conclusive proof is addressed in the **Indian Evidence Act, 1872** and is crucial for legal proceedings.

The concept of **conclusive proof** is primarily discussed under **Section 4** of the **Indian Evidence Act, 1872**, and it is distinct from **presumptions** and **rebuttable evidence**. The key provisions related to conclusive proof are:

Section 4 – "Meaning of 'Proved', 'Disproved', and 'Not Proved'":

"A fact is said to be proved when, after considering the matters before it, the Court believes it to exist; it is said to be disproved when, after considering the matters before it, the Court believes it does not exist; it is said not to be proved when it is neither proved nor disproved."

- **Proved**: When a fact is established beyond a reasonable doubt.
- **Not Proved**: When no evidence has been provided to establish the fact.
- **Disproved**: When the evidence proves the fact to be false.

However, **conclusive proof** is different from regular proof because the law treats certain facts as conclusively established once certain conditions or legal provisions are met.

Section 4(2) – "Conclusive Proof":

"When one fact is declared by this Act to be conclusive proof of another, the court shall, in such case, accept the first-mentioned fact as conclusive evidence of the second."

This section explains that when the law declares that one fact is conclusive proof of another fact, the court is bound to accept the first fact as decisive evidence of the second fact.

Key Features of Conclusive Proof:

1. **No Contradiction Allowed**:
   - Once a fact is declared conclusive proof of another, no evidence can be introduced to contradict it. The law treats such facts as irrefutable.
   - Example: If a statutory presumption declares a certain fact as conclusive proof, the court must accept it.
2. **Legally Binding**:
   - The fact that is conclusively proven is legally binding on the court. The court cannot ignore or disregard it, no matter what evidence is presented against it.
3. **Examples of Conclusive Proof**:
   - Section 112 of the Indian Evidence Act: A child born during the marriage of a woman is conclusively presumed to be the husband's child unless proven otherwise (i.e., the husband was impotent or absent).
   - Section 31 of the Indian Evidence Act: When a document is attested and produced by the proper person, it is conclusively presumed to be valid and authentic.

Conclusion: Conclusive proof is a form of evidence that establishes a fact beyond any dispute. When a fact is declared conclusive by the law, it must be accepted as true by the court, and no contradictory evidence can be introduced. The Indian Evidence Act, 1872 provides specific provisions for conclusive proof, particularly in sections like Section 4 and Section 112, ensuring that certain facts, such as the legitimacy of a child born during a marriage or the validity of attested documents, are irrefutable in legal proceedings.

23. Presumptions and Presumptions as to Documents.

In legal proceedings, **presumptions** are inferences or assumptions that the law allows the court to make based on the presence of certain facts. They help in guiding the court's approach when direct evidence is unavailable or when the evidence points toward a certain conclusion. The **Indian Evidence Act, 1872** provides for various types of presumptions that a court may adopt during the trial.

Legal Framework:

The general provisions relating to **presumptions** are found under **Sections 4 to 114** of the **Indian Evidence Act, 1872**.

Section 4 – "Meaning of 'Proved', 'Disproved', and 'Not Proved'":

"A fact is said to be proved when, after considering the matters before it, the Court believes it to exist; it is said to be disproved when, after considering the matters before it, the Court believes it does not exist; it is said not to be proved when it is neither proved nor disproved."

This section provides a framework for understanding **how facts are established** in the court through **evidence** and **presumptions**.

Types of Presumptions:

1. Presumption of Legitimacy (Section 112): Section 112 of the Indian Evidence Act lays down a presumption that a child born during the continuance of a marriage is presumed to be the legitimate child of the husband, unless it is proven otherwise. Rebuttable presumption: This can be rebutted by strong evidence such as non-access, impotence, or the husband's absence.

2. Presumption as to Certain Documents (Section 90): Under Section 90, the law presumes the genuineness of documents that are 30 years old. Such documents are presumed to be authentic, and no further proof is required unless evidence is presented to the contrary. This presumption applies to public documents, wills, and other documents that are produced in court after the required number of years.

3. Presumption as to Attested Documents (Section 67): Section 67 states that the attestation of a document is presumed to be valid unless proven otherwise. If a document has been duly executed and attested by witnesses, it is presumed that the document has been executed as stated.

4. Presumption of Continuance of a Course of Business (Section 114): Under Section 114, the court may presume the continuance of a course of business. For example, if a person has been conducting business in a particular way, it can be presumed that they continue to do so unless evidence is presented to suggest otherwise.

5. Presumption as to the Integrity of Official Acts (Section 114): The court may presume the proper performance of official duties in the absence of evidence to the contrary. For instance, official documents produced in court are presumed to be signed by the appropriate officials unless proven otherwise.

6. Presumption as to Handwriting (Section 47): If a document is disputed regarding its authorship, a presumption of authenticity can be made based on handwriting. The court may accept the handwriting of the person who is supposed to have written it unless evidence is produced to suggest otherwise.

7. Presumption as to Relationship (Section 114): The court may presume that a husband and wife are living together in a relationship of matrimony, and a child born to them is their legitimate offspring, unless evidence is presented to prove the contrary.

8. Presumption as to the Death of a Person (Section 108): Section 108 of the Indian Evidence Act creates a presumption that a person who has not been heard from for seven years or more is presumed to be dead, unless evidence is brought to suggest that they are still alive.

Conclusion: **Presumptions** in the **Indian Evidence Act, 1872** serve as valuable tools for the court when direct evidence is unavailable or when a fact's authenticity needs to be established based on **circumstantial evidence**. **Presumptions as to documents** are specifically addressed in the Act, providing for the **presumption of genuineness** of certain documents, such as those that are **30 years old** or **attested properly**. The law distinguishes between **rebuttable** and **irrebuttable presumptions**, offering a framework to establish facts in legal proceedings more efficiently, while also allowing parties to challenge certain presumptions when sufficient evidence is available.

24. Leading questions.

A **leading question** is one that **suggests** the answer within the question itself, often implying or guiding the witness toward a particular response. Leading questions are generally **not allowed** during **examination-in-chief**, but they may be **permitted** in certain circumstances, such as during **cross-examination**. The Indian Evidence Act, 1872, addresses the issue of leading questions in **Section 141** and provides for various exceptions.

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

This section defines a **leading question** as one that **suggests** the answer to the witness. It is designed to prompt or lead the witness toward a particular response, often resulting in the witness confirming what the questioner has in mind, rather than the witness providing an independent, unbiased account of events.

Examples of Leading Questions:

1. **Example of a Leading Question:**
   - *"You were at the scene of the crime on the night of 5th June, weren't you?"*

This question **suggests** the answer ("Yes") and influences the witness's response.

2. **Non-Leading Question:**
   - *"Where were you on the night of 5th June?"*

This question allows the witness to answer freely without suggesting any particular answer.

Prohibition of Leading Questions:

- **Examination-in-Chief**:
  - Leading questions are generally **prohibited** during the **examination-in-chief** (the first questioning of a witness by the party calling them). The goal during examination-in-chief is to allow the witness to **testify freely** and **narrate the facts** without being guided by the examiner.
  - A party cannot ask questions that suggest the answer in **examination-in-chief**, as it undermines the credibility of the testimony and may be seen as a form of **witness coaching**.
- **Cross-Examination**:
  - **Leading questions are permitted** during **cross-examination** (the questioning of a witness by the opposing party). Cross-examination aims to test the witness's reliability, memory, and credibility, and leading questions help to expose contradictions or influence the witness's testimony.

Example: **"You didn't see the defendant at the scene, did you?"** This can be used to impeach the credibility of the witness and challenge their statements.

Conclusion: A leading question suggests the answer within the question itself, and the Indian Evidence Act, 1872 provides guidelines to ensure that leading questions are generally prohibited during examination-in-chief, as they can influence or manipulate the witness's response. However, leading questions are allowed in cross-examination to help test the veracity of a witness's testimony. There are also exceptions, such as when the witness is hostile, when minor details are in question, or when a formal fact or admission is sought. The proper use of leading questions is critical to ensuring a fair trial and maintaining the integrity of the judicial process.

25. Examination of witnesses.

The examination of witnesses is a crucial part of the trial process in legal proceedings. It involves the questioning of witnesses who provide oral evidence regarding the facts of a case. The Indian Evidence Act, 1872 regulates the rules concerning the examination, cross-examination, and re-examination of witnesses to ensure a fair and just trial process. The examination of witnesses is addressed in Sections 135 to 166 of the Indian Evidence Act and further detailed in the Indian Criminal Procedure Code (CrPC).

Section 135 – "Order of Examination of Witnesses"

"In every case, the party who calls a witness shall examine him in the first instance. He may then be cross-examined by the opposite party, and then he may be re-examined by the party who called him."

Section 135 outlines the basic **order of examination**:

1. **Examination-in-Chief**: The party calling the witness questions them to establish the facts of the case.
2. **Cross-Examination**: The opposing party has the right to question the witness in an attempt to discredit their testimony or test their reliability.
3. **Re-Examination**: The party who called the witness may ask further questions to clarify any issues raised during the cross-examination.

Stages of Examination:

1. **Examination-in-Chief (Section 137)**:
    - The **examination-in-chief** is the first stage of the witness's testimony and is conducted by the **party who calls the witness**.
    - The purpose is to elicit facts that support the case of the party calling the witness.
    - The questions asked during the **examination-in-chief** must be **non-leading** (i.e., they must not suggest the answer within the question itself, unless exceptions apply, such as for hostile witnesses).

    Example of a proper **examination-in-chief** question:

    "What did you observe at the scene of the incident on 5th June?"

2. **Cross-Examination (Section 138)**:
    - **Cross-examination** is the questioning of the witness by the **opposing party**. The goal is to **challenge** the credibility, memory, and reliability of the witness's testimony.

- **Leading questions** are **allowed** during **cross-examination**. These questions are used to suggest a particular answer or to confront the witness with contradictions or inconsistencies.
- **Section 138** states that **any question** may be asked during **cross-examination**, provided it pertains to matters that **can discredit the witness**, such as:
  - Contradictions in their testimony.
  - Their credibility, bias, or reliability.
  - Whether the witness has a motive to lie or has been impeached.

Example of a **cross-examination** question:

"You were not at the scene on 5th June, were you?"

3. **Re-Examination (Section 137)**:
   - **Re-examination** is the final stage, where the **party who called the witness** asks questions to clarify or explain matters raised during **cross-examination**. The purpose is not to introduce new matters but to ensure the testimony remains clear and coherent.
   - During **re-examination**, leading questions are not allowed unless they are needed to clarify specific points.

Example of a **re-examination** question:

"You mentioned that you saw the defendant at the scene, can you explain how far you were from the incident?"

Conclusion: The examination of witnesses is an essential part of the trial process under the Indian Evidence Act, 1872. The examination follows a structured procedure involving examination-in-chief, cross-examination, and re-examination, ensuring that the court receives accurate and unbiased evidence. The rules governing the examination of witnesses aim to ensure that the testimony is reliable, credible, and relevant to the issues at hand. Leading questions, generally prohibited in examination-in-chief, can be used strategically during cross-examination and when questioning hostile witnesses. Understanding the roles and rules governing the examination process is vital to conducting fair and effective trials.

26. Expert opinion.

An **expert opinion** is an opinion provided by a person who is qualified by knowledge, experience, or training in a particular field, and whose opinion can assist the court in understanding or deciding issues beyond the general knowledge of the average person. The Indian Evidence Act, 1872, regulates the use of expert opinions in legal proceedings, specifically in **Sections 45 to 51**. Expert testimony can play a crucial role in cases that involve specialized knowledge, such as medical, scientific, technical, or forensic matters.

Section 45 – "Opinion of experts"

"When the court has to form an opinion upon a point of foreign law, or of science or art, or as to the identity of handwriting or finger impressions, the opinion of persons specially skilled in such foreign law, science or art, or in handwriting or finger impressions, are relevant facts."

Section 45 allows **expert testimony** in cases where the court is required to form an opinion on specialized subjects, including:

- Foreign law
- Science
- Art
- Handwriting
- Fingerprints

The opinion of an expert is admissible as evidence when the subject matter falls under these categories. The expert's knowledge and qualifications in the relevant area allow them to provide opinions that help the court reach a conclusion on complex matters.

Conditions for Admissibility of Expert Opinion:

1. **Expertise**: The person offering an opinion must be specially skilled or qualified in the field concerned. The witness must have a recognized qualification, training, or experience in the area they are providing an opinion about. For example, a medical expert must be a licensed doctor with appropriate qualifications, or a forensic expert should have expertise in forensic science.
2. **Relevance**: The expert's opinion must be relevant to the issues in the case. For example, in a medical negligence case, the opinion of a doctor would be relevant in determining whether the standard of care was met.
3. **Assistance to the Court**: The expert opinion should provide insight or assist the court in understanding matters that require specialized knowledge. The court may not have the expertise to understand certain technical or scientific evidence, and the expert's role is to clarify such complex issues.
4. **Hearsay Rule**: An expert opinion is not hearsay as it is based on the expert's own knowledge, experience, and analysis. However, if the expert's opinion is based on what others have said (e.g., relying on data or studies done by others), it may be treated as hearsay unless those other sources are also admissible in court.

Conclusion: An expert opinion plays a significant role in legal proceedings where the subject matter requires specialized knowledge beyond the understanding of ordinary witnesses. The Indian Evidence Act, 1872 permits the use of expert testimony to assist the court in understanding complex scientific, technical, or forensic issues. The admissibility of expert opinions is governed by several provisions, including Section 45 (opinion of experts), Section 46 (facts bearing upon expert opinions), and Sections 47-51 (matters related to handwriting and identity). Expert opinions are crucial in areas such as medical negligence, forensic analysis, fingerprint identification, and foreign law, and they help ensure that justice is based on a thorough understanding of the specialized facts in a case.

27. Fact and Facts in Issue.

In legal terminology, **facts** play a crucial role in determining the outcome of a case. The distinction between **fact** and **fact in issue** is essential for understanding the structure of evidence and how the courts evaluate it. Under the **Indian Evidence Act, 1872**, these concepts are elaborated upon in various sections.

A **fact** is something that is **perceived by the senses** or something that is **known** or can be **proved** to be true. In the context of evidence law, facts are the details or circumstances that are essential to resolving a dispute. A fact can be an **event, occurrence, or condition** that has **legal significance** and is capable of being **proved** in court.

Types of Facts:

1. **Fact in Issue**: These are the facts that are directly involved in the dispute between the parties. They are the points the court must decide upon to resolve the case.
2. **Relevant Facts**: These are facts that help prove or disprove the facts in issue. A relevant fact may support or negate an argument in the case but is not the central issue that the court needs to resolve.
3. **Proved Facts**: Facts that have been established by evidence and are accepted by the court as being true.
4. **Not Proved Facts**: Facts that are not sufficiently established by evidence.
5. **Disputed Facts**: Facts that are in dispute and need to be resolved by the court through the examination of evidence.
6. **Circumstantial Facts**: Facts that, though not directly related to the issue, can indirectly support or refute other facts in the case.

Fact in Issue:

A **fact in issue** is a **disputed fact** that is the **central point** that the court needs to decide in order to resolve the case. A fact in issue is the key **controversial fact** that forms the basis of the litigation between the parties. It is the fact that is the **subject of legal controversy** and will ultimately determine the court's judgment in a case.

Section 3 – Indian Evidence Act, 1872:

"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.

Thus, a **fact in issue** refers to the facts that the court is **required to prove** in order to determine the rights of the parties involved. They are directly related to the claim or defense.

Example of Fact in Issue:

- In a **murder trial**, the fact in issue is whether the accused **killed the victim**.
- In a **contract dispute**, the fact in issue is whether the contract was **breached** by one of the parties.

The **facts in issue** are the ones that **must be proved** to establish the legal rights of the parties involved in the case.

Under **Section 5** of the Indian Evidence Act, **only facts that are relevant to the matter in issue are admissible** in court. Hence, when parties present evidence, it is necessary that the evidence pertains to facts that are in issue. The fact in issue helps determine whether the evidence presented is **admissible** or not.

Distinction Between Fact and Fact in Issue:

- A **fact** is any **event, condition, or state** that has **legal relevance** and can be proved in court.
- A **fact in issue** is a specific fact that is the **core of the legal dispute** in the case and requires proof to resolve the controversy between the parties.

Conclusion: The concepts of **fact** and **fact in issue** are foundational in the practice of law. A **fact** is a piece of information that can be proven or disproven, and it can range from peripheral details to central matters in the dispute. A **fact in issue**, on the other hand, is a **central point** of controversy in a case, the

resolution of which will determine the rights and obligations of the parties involved. The court's primary concern is to ascertain whether a **fact in issue** has been **proven or disproven** through the available **evidence**, and whether the facts presented are relevant to the case at hand. This distinction plays a key role in how the evidence is structured, presented, and evaluated in legal proceedings.

28. Admission.

An **admission** is a statement made by a party in a case, or by a person authorized to make statements on behalf of a party, which is **against the interests** of the party making it. Under the **Indian Evidence Act, 1872**, admissions play a significant role in the adjudication of disputes, as they may **admit or deny** certain facts that can significantly affect the case's outcome.

Definition of Admission: Section 17 of the **Indian Evidence Act, 1872** defines **admission** as follows:

"Admission" means a statement, oral or written, made by a party to a proceeding, or by an agent of such party, or by a person who is specifically authorized by the party to make it, in the course of the proceedings, and is offered against the party who makes it."

Thus, an **admission** is any **statement** made by a person, which can be oral or written, that goes against their own interest or position in the case. The significance of admissions is that they **prove** the facts admitted and often have a strong impact on the outcome of a case.

Types of Admissions:

1. **Judicial Admissions**:
   - These are admissions made **in the course of judicial proceedings**. Judicial admissions are considered **conclusive proof** of the facts admitted, provided they are made in the **right context**.
   - Example: A party may admit during trial that they signed a contract. This statement, if made in the courtroom, becomes **conclusive evidence** that the party did sign the contract.
2. **Extrajudicial Admissions**:
   - These are admissions made **outside the course of judicial proceedings** and include statements made by a party to a third person or in an informal context.
   - Example: A person admits in a conversation with a friend that they owe money to someone. This can be used as evidence, but it is not conclusive.
3. **Admissions by Conduct**:
   - These are admissions made through a person's **actions** rather than words. If a person behaves in a way that acknowledges the truth of a matter, such as agreeing to pay a debt by giving money, it may be considered an admission.
   - Example: If someone accepts a cheque or part-payment of a debt, it could be seen as an **admission** that they owe the money.
4. **Express Admissions**:
   - These are direct and explicit statements in which a person admits to a certain fact.
   - Example: A statement such as "I committed the crime" is an express admission of guilt.
5. **Implied Admissions**:
   - These are admissions that are made indirectly, often through conduct or behavior, rather than through explicit words.
   - Example: If a person refuses to deny allegations when given an opportunity, it can be construed as an implied admission.

Conclusion: An admission is a statement that is made by a party to a proceeding that is against their interest and is relevant to the facts of the case. Under the Indian Evidence Act, 1872, admissions are

admissible evidence and can significantly affect the outcome of a case. They can be made orally or in writing and can be categorized into different types, such as judicial, extrajudicial, express, implied, and by conduct. Admissions are relevant as they help establish the truth of contested facts and are often treated as significant evidence in legal proceedings. However, they are not conclusive and must be evaluated in the context of the entire case.

29. Accomplice.

An **accomplice** is an individual who **participates in the commission of a crime**, either as a principal or an accessory. The term refers to someone who aids, abets, or assists in the commission of an offense. In criminal law, the role and testimony of an accomplice are of particular interest, as their statements may be used as evidence against the accused. However, special care is taken regarding the evidence provided by accomplices due to the potential for self-interest or a desire for leniency.

The **Indian Evidence Act, 1872** does not provide a direct definition of an accomplice, but the concept is addressed in sections related to the **admissibility of evidence**, particularly in the context of **confessions** and **witness testimonies**.

Role of an Accomplice: An accomplice is directly involved in the criminal act but is not necessarily the primary perpetrator of the crime. An accomplice may be:

1. **Principal Offender**: A person who directly commits the crime.
2. **Accessory**: A person who aids, abets, or assists in the commission of a crime, such as providing information, tools, or physical assistance.

An accomplice can also be someone who is **charged along with the accused** for participation in the crime, or they may turn into a **prosecution witness** to testify against the accused in exchange for immunity or a lighter sentence.

Admissibility of Accomplice Testimony:

Under the **Indian Evidence Act, 1872**, the testimony of an accomplice is **admissible** in court, but it is generally treated with caution. This is primarily because an accomplice may have a **vested interest** in testifying to gain leniency or immunity.

Section 133 – Accomplice Evidence:

"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."

This section of the Indian Evidence Act makes it clear that an accomplice's testimony is **admissible** in court, but it **does not require corroboration** by other evidence in order to be used for a conviction.

However, in practice, courts usually require **corroboration** of an accomplice's testimony, especially when the **accused's life or liberty** is at stake.

Rationale Behind Caution with Accomplice Testimony: The reason courts are cautious about relying on accomplice testimony is the potential for self-serving motives. An accomplice may testify against the accused in an attempt to reduce their own culpability, avoid punishment, or gain leniency. This can affect the reliability and objectivity of the testimony. Hence, though admissible, corroboration is typically required to ensure the truthfulness of the statement.

Corroboration of Accomplice Testimony: While the Indian Evidence Act allows for the use of uncorroborated accomplice testimony, it is generally advisable for the prosecution to provide additional evidence to corroborate the accomplice's statement. This is to ensure that the testimony is credible and trustworthy.

- **Corroboration** can come in various forms, such as:
  - **Physical evidence**: For example, the discovery of stolen property or the presence of the accused at the crime scene.
  - **Statements by other witnesses**: Testimonies from other individuals who may support the accomplice's account of events.
  - **Circumstantial evidence**: Any evidence that indirectly supports the accomplice's testimony.

Conclusion: An accomplice is a person who participates in the commission of a crime and may be either a principal or an accessory. Their testimony is admissible under Section 133 of the Indian Evidence Act, 1872, but must be treated with caution due to the potential for self-interest or a desire for leniency. While the Indian Evidence Act does not mandate corroboration, it is generally required to ensure that the accomplice's testimony is reliable. Courts often look for corroborating evidence in the form of physical evidence, statements from other witnesses, or circumstantial facts to validate the accomplice's account of the events. Despite these precautions, accomplice testimony remains a crucial tool in criminal trials, particularly when the accomplice's cooperation can provide key details about the commission of the crime.

30. Confession.

A **confession** is a statement made by an accused person that admits guilt or implicates them in the commission of a crime. It is a statement that **acknowledges the truth** of certain facts that are adverse to the person making it. Confessions are of critical importance in criminal law as they may lead to a conviction, especially if they are **voluntary**, **authentic**, and **corroborated by other evidence**. However, there are strict rules governing the admissibility of confessions to ensure that they are not coerced, and that they do not violate the rights of the accused.

Section 24 of the **Indian Evidence Act, 1872** does not define a "confession," but it discusses the circumstances under which a confession becomes admissible.

"Confession made by an accused person is not admissible if it is made under inducement, threat, or promise".

Thus, a confession is typically understood as an **admission of guilt** made by a person who is accused of committing an offense. It may be a statement that admits to committing the crime or a statement that **acknowledges facts** that make it more likely that the accused committed the offense.

Confessions and their Admissibility:

Under the **Indian Evidence Act, 1872**, the **admissibility of confessions** depends on various factors, including the manner in which they were made and whether they were voluntary.

Section 24 – Confessions made under inducement, threat, or promise:

"A confession made by an accused person shall not be proved if it appears that it was made as a result of any inducement, threat, or promise."

This section prohibits the admissibility of confessions that have been made under any form of **duress, coercion**, or **undue influence**. If a confession is obtained through **force, threats**, or **unlawful promises**, it cannot be used as evidence against the accused. This provision ensures that confessions are made freely, without any pressure, and are therefore reliable and trustworthy.

- **Inducement**: Encouraging a person to confess by offering something beneficial (e.g., reduced punishment) can make the confession inadmissible.
- **Threat**: If an accused person is threatened with harm or punishment unless they confess, the confession is not admissible.
- **Promise**: A promise made by a police officer or authority figure to benefit the accused (e.g., a lighter sentence) in exchange for a confession can render the confession inadmissible.

Section 25 – Confessions made to police officers:

"No confession made to a police officer shall be proved as against the person making it."

Section 25 of the **Indian Evidence Act** explicitly bars **confessions made to police officers** from being admissible as evidence in court. The rationale behind this rule is that police officers are often in a position of power and authority over the accused, which may lead to **coercion** or **pressure** to extract a confession. As a result, such confessions are presumed to be unreliable and are not permissible as evidence.

- **Example**: If an accused person confesses to a police officer that they committed a crime, that confession cannot be used in court to convict them.

Section 26 – Confessions made while in custody:

"No confession made by any person while he is in the custody of a police officer shall be proved as against such person unless it is made in the immediate presence of a Magistrate."

Section 26 of the **Indian Evidence Act** provides an exception to the rule in Section 25. While confessions made to police officers are generally inadmissible, a confession made while in police custody can be **admissible** if it is made **in the presence of a Magistrate**. This safeguard ensures that the confession is voluntary and not coerced by the police.

- **Magistrate's presence**: A Magistrate acts as a neutral party to ensure that the confession is made without duress and that the accused's rights are protected.

Section 27 – Confessions leading to discovery of fact:

"Provided that when any fact is discovered in consequence of information received from a person accused of an offense, so much of the information as relates to the fact discovered may be proved."

Section 27 of the **Indian Evidence Act** makes a distinction between **confessions** and **information leading to the discovery of facts**. If a person confesses and provides information that leads to the

discovery of a material fact, such information may be admitted into evidence. This provision allows for **limited use** of confessions when they lead to the **discovery of relevant facts**, even if the confession itself would otherwise be inadmissible.

- **Example**: If an accused person confesses to a crime and reveals the location of stolen goods, the **discovery of the stolen goods** as a result of that confession can be used as evidence.

Section 28 – Confession made by an accused person under certain circumstances:

Section 28 extends the **safeguards against coercion** to ensure that a confession is not made under duress or unfair inducements. The confession must be voluntary and free from **pressure** by any third party. However, this section does not explicitly define circumstances under which confessions can be made but emphasizes that **confessions should be voluntary** and not extracted by force or threat.

Conclusion: A **confession** is a statement made by the accused that acknowledges their guilt or implicates them in a crime. Under the **Indian Evidence Act, 1872**, confessions are subject to strict rules of admissibility to ensure they are made **voluntarily** and without coercion. Confessions made to **police officers** are generally **inadmissible**, except when they lead to the **discovery of facts**. Additionally, confessions made **while in custody** are only admissible if made in the **presence of a Magistrate**. Courts rely heavily on the **voluntariness** of confessions and **corroborative evidence** to determine their weight in convicting the accused.

31. Examination in Chief.

Examination-in-chief is the process by which a witness is questioned by the party that has called them to testify in a case. It is the initial stage of questioning a witness in court and is conducted by the party who has presented the witness. The goal of the examination-in-chief is to establish the facts that support the case of the party calling the witness. The purpose of the examination-in-chief is to allow the witness to present their evidence in a way that helps the party's case. It is the primary examination of a witness, where they are asked to tell their version of the facts and events to the court, without any suggestions or leading questions. During this stage, the witness is supposed to speak in a natural manner about the facts they know, and the questions asked should be open-ended and designed to elicit truthful, untainted testimony.

1. **Section 137 of the Indian Evidence Act, 1872**:

"Examination-in-chief is the examination of a witness by the party who calls him."

This section lays down the definition of **examination-in-chief**, highlighting that the **party who calls the witness** (i.e., the **prosecution** or **defense**, depending on the case) will conduct the examination.

2. **Section 138 of the Indian Evidence Act, 1872**:

"The examination-in-chief of a witness shall be conducted in such a manner as to not include leading questions, except where they are necessary to explain the witness's previous answers."

According to this section, **leading questions** (questions that suggest the answer) are not allowed during examination-in-chief, as they may influence or bias the witness. Leading questions are usually reserved for **cross-examination** (the questioning conducted by the opposing party), where the goal is to challenge the credibility or accuracy of the witness's testimony.

Characteristics of Examination-in-Chief:

1. **Non-leading Questions**: During examination-in-chief, **questions must be open-ended** and should not suggest the answer. The purpose is to allow the witness to provide their own version of events. The **questions should be simple**, factual, and clear.
    - **Example**: "What did you see on the night of the incident?" (open-ended)
    - **Not allowed**: "You saw the accused at the scene of the crime, didn't you?" (leading question)
2. **Witness Testifies Freely**: The witness is expected to **narrate** the facts, rather than simply answering yes or no. The goal is to gather as much relevant information as possible from the witness in their own words.
3. **Admissibility of Evidence**: The evidence presented during examination-in-chief is subject to **admissibility rules**, such as those concerning hearsay evidence, irrelevant or prejudicial material, and improper evidence (like confessions or inadmissible statements).
4. **Objectivity**: The questioning party must ensure that the witness is allowed to speak clearly and fully without being interrupted or influenced. The goal is to preserve the **integrity of the testimony**.
5. **No Cross-Examination During Examination-in-Chief**: The party conducting the examination-in-chief cannot cross-examine the witness during this phase. Cross-examination is a separate process and happens after the examination-in-chief is completed.

Example of Examination-in-Chief:

A witness called by the prosecution might be questioned as follows:

- **Prosecution**: "Can you tell the court what you saw on the 5th of January, 2023, around 9 p.m.?"
- **Witness**: "Yes, I was at the park near my home when I saw a person running away from the scene of an accident."
- **Prosecution**: "What did you do after you saw this person?"
- **Witness**: "I immediately called the police and informed them about the incident."

Conclusion: Examination-in-chief is a critical part of the trial process under the Indian Evidence Act, 1872. It allows the party calling the witness to establish the facts of the case. During this phase, the witness is asked open-ended questions that allow them to testify in their own words, without the influence of leading questions. The goal is to extract truthful and reliable evidence that supports the case of the party calling the witness. Leading questions are generally prohibited in examination-in-chief, ensuring that the witness provides their account freely and without suggestions.

Part B

Long Answer Questions

1. Explain the Evidentiary value of Accomplice witness with illustrations.

An **accomplice witness** is a person who has participated in the commission of a crime and is potentially liable for the offense but has agreed to testify against the accused in exchange for a promise of immunity

or reduced punishment. The testimony of an accomplice is often considered **sensitive** and **unreliable**, primarily because the accomplice has an inherent **interest in minimizing their own role** and **securing leniency** from the court. However, an accomplice's testimony may still have **evidentiary value** under the **Indian Evidence Act, 1872**, provided certain conditions are met, such as corroboration from other evidence. Courts approach an accomplice's testimony with caution due to the risk of **self-interest**, but it can be used as evidence if it is **believable**, **credible**, and **corroborated**.

1. **Section 133 of the Indian Evidence Act, 1872:**

"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."

This section acknowledges that an accomplice is a **competent witness**, meaning that their testimony can be taken into consideration by the court. However, it **does not** require the **corroboration** of their testimony, which means that an accomplice's testimony alone can lead to a conviction, but this is **rare** and must be done cautiously.

2. **Section 114(b) of the Indian Evidence Act, 1872:**

"The court may presume that an accomplice is unworthy of credit unless his evidence is corroborated in material particulars."

Although Section 133 permits the testimony of an accomplice, **Section 114(b)** of the Indian Evidence Act suggests that the **court may presume** that an accomplice is not trustworthy unless there is **corroboration** of their statement. Thus, while the testimony of an accomplice may be admissible, its **value is significantly reduced** unless it is corroborated by independent evidence.

Evidentiary Value of an Accomplice's Testimony:

1. **Testimony of an Accomplice and Corroboration:**
   - An accomplice's testimony **cannot be treated as conclusive evidence**. The **rule of corroboration** means that the testimony of an accomplice must be **supported** by other evidence that **reinforces** the truth of their statement.
   - **Corroboration** is required to ensure that the accomplice is not lying to protect themselves or minimize their involvement in the crime.

Illustration:

   - Suppose two individuals, **A** and **B**, are charged with the murder of **C**. **A** admits to the crime but seeks a lighter sentence by testifying against **B**, claiming that **B** was the one who actually killed **C**.
   - If **A's testimony** is corroborated by physical evidence (such as a weapon belonging to **B** found at the crime scene) or **other independent witness testimony** placing **B** at the scene, then **A's testimony** becomes more credible and can be considered valid by the court.
2. **Caution in Accepting an Accomplice's Testimony:**
   - **Accomplices** are **self-interested** because they may have a personal motive to **shift the blame** or exaggerate the role of the accused to escape harsher punishment or obtain leniency.
   - The **court must carefully assess** the accomplice's statement, weighing the possibility of **bias** and **fabrication**.
   - Courts are particularly cautious when the accomplice's role is critical in **framing the case** or when they are given **immunity** in return for their testimony.

Illustration:

- In a case where two individuals, **X** and **Y**, are charged with **theft**, and **X** agrees to testify that **Y** was the one who stole the goods while **X** was merely a bystander, the court would look at the motives behind **X's** testimony, as **X** may be seeking immunity or a reduced sentence in exchange for implicating **Y**.
- If there is **no independent evidence** (such as eyewitness accounts or forensic evidence) to corroborate **X's statement**, the court would likely **question** the reliability of **X's** testimony and may be **reluctant to convict Y** based solely on **X's** word.

3. **Judicial Precedents:**
   - **R v. Baskerville (1916)**: The English court ruled that an accomplice's evidence is admissible but must be treated with great care, especially if the accomplice seeks **leniency** for their cooperation.
   - **Emperor v. Suresh (1916)**: The Privy Council observed that although an accomplice's testimony is admissible, it should be **corroborated** by other evidence, especially in cases involving **serious charges** like murder or robbery.
4. **Threshold for Corroboration:**
   - Corroboration **does not have to be direct**. It may include any evidence, such as:
     - Physical evidence (e.g., fingerprints, weapons).
     - Testimonies from other witnesses that support the accomplice's account.
     - Circumstantial evidence that matches the facts provided by the accomplice.

Illustration:

- If an accomplice testifies that they and the accused, **Z**, were involved in a robbery at a bank and **Z** was carrying a specific **bag of cash**, then the testimony of a third party who testifies to seeing **Z** leave the bank with a bag matching the description provided by the accomplice can **corroborate** the accomplice's statement.

5. **Reliability of an Accomplice's Testimony in Certain Circumstances:**
   - An accomplice may be **reliable** if their testimony is **detailed, consistent**, and **corroborated** by **independent evidence**. If the court is satisfied with the **truthfulness** of the accomplice's statement, they may use it to convict the accused.

Conclusion: The evidentiary value of an accomplice's testimony under Indian law is significant but comes with strong safeguards to ensure that it is truthful and reliable. While Section 133 of the Indian Evidence Act, 1872 allows the testimony of an accomplice, the court requires corroboration from other evidence to validate the testimony. Accomplice testimony should be treated with caution, and the courts must assess the motivation behind the accomplice's cooperation, as their testimony may be influenced by the hope of receiving leniency or immunity. Ultimately, the value of an accomplice's evidence depends on its credibility, consistency, and supporting evidence.

2. Explain the facts which need not be proved with illustrations.

Under the **Indian Evidence Act, 1872**, certain **facts** are considered so well-established or self-evident that they **do not need to be proved** during a trial. These facts are often known as **"facts that need not be proved"** because they are considered **common knowledge**, **presumed**, or **admitted**. The law allows these facts to be accepted as true without requiring **proof** by evidence. These facts are listed under **Sections 56 to 58** of the **Indian Evidence Act**.

Key Sections Under the Indian Evidence Act Relating to Facts Not to be Proved:

1. **Section 56 – Facts which are admitted need not be proved**:

- According to Section 56, if a **fact is admitted by the parties**, there is no need to **prove it**. Admissions can be made either **expressly** or **impliedly** by the parties involved in the case.

Example: If **A** and **B** are involved in a property dispute, and **A** admits in writing that **B** is the legal owner of the property, then **B** does not need to provide further evidence to prove ownership of the property.

Fact: The fact of ownership is **admitted**, and it need not be **proved** further.

2. **Section 57 – Facts of which court takes judicial notice**:
   - Certain facts are so well-known or **universally accepted** that courts **take judicial notice** of them without requiring any proof. This includes facts that are common knowledge or facts that are easily accessible to the court through books, newspapers, or other public sources.

Examples of such facts include:

- **Geographical facts**: The **location** of major cities like **Delhi**, **Mumbai**, and **Kolkata**.
- **Historical facts**: The fact that **India** gained independence in **1947**.
- **Current affairs**: The fact that **India** has a **parliamentary system of government**.
- **Mathematical facts**: Basic **mathematical facts**, such as **2 + 2 = 4**.

Illustration: If in a case, the fact that India is a democratic republic is disputed, the court may take judicial notice of it without requiring proof.

3. **Section 58 – No fact needs to be proved in a case of Estoppel**:
   - **Estoppel** is a rule that prevents a party from denying or contradicting a fact that has already been **admitted** or **declared** in the past. In such cases, the law does not require proof of the fact again if the party is **estopped** from denying it.

Example: If A agrees in a written contract that they owe a debt to B, but later tries to deny the debt in court, A will be estopped from denying the fact of the debt. In this case, no evidence is needed to prove the existence of the debt.

General Categories of Facts That Need Not Be Proved:

1. **Admitted Facts (Section 56)**:
   - If the parties involved in the case **admit** a particular fact, there is no need for evidence to prove that fact.
   - **Example**: If a defendant admits to being at the crime scene but contests involvement in the crime, their presence at the scene does not need to be proved.
2. **Judicial Notice**:
   - As mentioned earlier, certain facts are so **obvious** or **widely accepted** that the court takes **judicial notice** of them without needing proof. Courts do this because such facts are **self-evident** and do not require any further explanation or evidence.
   - **Example**: The **current date** and the **day of the week** (e.g., "today is Monday, January 1, 2024") are facts the court will take judicial notice of.
3. **Matters of Common Knowledge**:
   - Facts that are **universally recognized** or **common knowledge** do not need proof. These are facts that every person with a **basic education** or understanding of **common events** would know.

- **Example**: The fact that **water freezes at 0°C** is a fact of common knowledge that the court does not require proof for.

4. **Official Records**:
   - The **court can take judicial notice** of facts recorded in official documents, such as **government gazettes**, **newspapers**, and **official publications**.
   - **Example**: A document stating the official **date of an election** in a particular year can be treated as true without needing additional proof.
5. **Presumed Facts**:
   - Certain facts may be **presumed by law** without needing evidence. For example, **Section 114 of the Indian Evidence Act** allows courts to presume certain facts based on the circumstances of a case.
     - For example, **Section 114(b)** allows the presumption that a person who was **present at a crime scene** at the time of a crime may have **committed the offense**.
   - **Example**: If **X** is seen running from the scene of a robbery and has **stolen goods** in their possession, the court may **presume** that **X** committed the robbery, based on the facts at hand, without further proof.

Illustrations of Facts Not Needing Proof:

1. **Illustration 1 – Admission**: A is sued by B for breach of contract. In the court, A admits that they signed the contract with B. The fact of A's signature does not need to be proved, as A has admitted it.
2. **Illustration 2 – Judicial Notice of Historical Fact**: A trial involves a dispute about the independence of India. The fact that India gained independence in 1947 is a historical fact that is widely accepted and does not need to be proved in court. The court can take judicial notice of this fact.
3. **Illustration 3 – Fact of Common Knowledge**: In a case involving a vehicle accident, the fact that vehicles generally cannot fly is common knowledge and does not need to be proved.
4. **Illustration 4 – Estoppel**: In a property dispute, A had once agreed in writing that B owns the property in question. Now, A tries to argue that B is not the owner. The court will estop A from making this argument based on the earlier admission, and the fact of ownership will not need to be proved again.

Conclusion: The Indian Evidence Act, 1872 recognizes that not all facts require proof in a trial. Facts that are admitted, self-evident, or part of common knowledge do not need to be proved. Sections 56 to 58 of the Evidence Act lay down these principles, aiming to reduce unnecessary evidence and simplify the legal process. Courts may also take judicial notice of facts that are widely known or recorded in public documents. The rule of not requiring proof for such facts helps ensure that the court's time is spent on matters that genuinely require examination and adjudication.

3. Explain the presumption as to dowry death with illustrations.

The **Indian Evidence Act, 1872**, provides for certain **presumptions** that courts are required to follow, particularly in cases related to **dowry deaths**. Dowry death refers to the death of a woman caused by any form of **burns**, **injuries**, or **suicide** that occurs under suspicious circumstances, particularly in the context of **dowry demands** or **dowry harassment**.

Under **Section 113B of the Indian Evidence Act**, the court is empowered to presume that a woman's death is a **dowry death** if it is shown that she died under unnatural circumstances within **seven years** of marriage, and it is proven that she was subjected to **cruelty** or **harassment** by her husband or his relatives for dowry or other related demands.

Section 113B: Presumption as to Dowry Death

- **Section 113B** of the Indian Evidence Act specifically provides that if a woman dies due to **burns, injuries, or other unnatural causes** within **7 years** of her marriage, and there is evidence of **cruelty or harassment** by her husband or his relatives in relation to dowry demands, the court may presume that the woman's death was caused by **dowry-related violence**.
- The **presumption** is **not conclusive**, and the accused can offer a **defense** to explain the death. However, the presumption operates in favor of the prosecution unless the accused provides sufficient evidence to rebut it.

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 the woman has died under unnatural circumstances within seven years of her marriage, and that she was subjected to cruelty or harassment by her husband or his relatives in connection with demand for dowry, the court shall presume that such a death was caused by dowry death unless the contrary is proved.

Explanation of Key Elements:

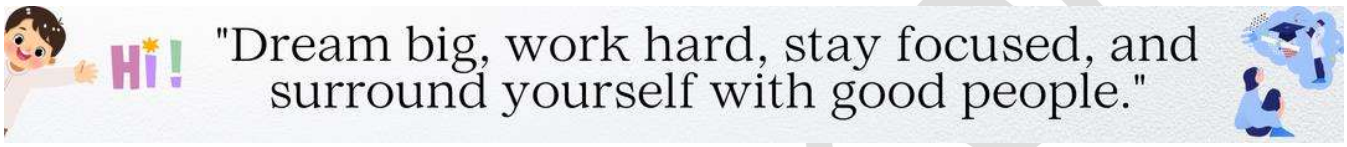
1. **Unnatural Death**: Unnatural death refers to a death caused by burns, injuries, or suicide. A death is considered unnatural if it is not from natural causes, such as disease.
2. **Cruelty or Harassment**: The woman must have been subjected to cruelty or harassment by her husband or his relatives in connection with a demand for dowry. Cruelty is defined under Section 498A of the Indian Penal Code (IPC) and refers to the infliction of mental or physical harm upon the woman by her husband or his family.
3. **Time Period (Within 7 Years)**: The death must have occurred within seven years of marriage. This period is considered critical in determining whether a woman's death was related to dowry demands.
4. **Presumption of Dowry Death**: Once the above conditions are proven, the court presumes that the death was caused by dowry-related violence. The presumption is rebuttable, meaning that the accused may present evidence to prove the contrary.

Illustrations of the Presumption of Dowry Death:

1. **Illustration 1 – Death within 7 Years of Marriage**:
   - **Facts**: **Rita** dies under suspicious circumstances due to burns within **six years** of her marriage. Her husband and in-laws had been demanding additional dowry from her family.
   - **Evidence**: Rita's family testifies that she was frequently harassed by her husband and in-laws for dowry and that she had confided in them about the abuse.
   - **Presumption**: Given that the death occurred within seven years and there is evidence of **dowry harassment**, the court will presume that **Rita's death** was a **dowry death**, unless her husband or in-laws can present evidence to disprove this presumption.
2. **Illustration 2 – Death Caused by Injuries (with Dowry Demands)**:
   - **Facts**: **Shalini** dies of **injuries** after allegedly falling from the second floor of her house. She had been married for four years, and during this period, her husband had often demanded money and gifts from her family as dowry.
   - **Evidence**: Her family provides evidence of regular **harassment** by the husband, and neighbors testify that Shalini appeared distressed and had expressed fear of her husband.
   - **Presumption**: The court may presume that Shalini's death was a **dowry death**, especially in light of the evidence of dowry-related harassment.
3. **Illustration 3 – Rebutting the Presumption of Dowry Death**:
   - **Facts**: **Neha** dies due to a **suicide** by hanging. She had been married for **four years**.

- **Evidence**: Neha had been emotionally distressed due to personal issues unrelated to dowry, and her husband's family was not involved in dowry demands. There are no complaints or evidence of harassment.
- **Presumption**: While the presumption under **Section 113B** may initially suggest a dowry death, the husband and his family can **rebut** the presumption by showing that Neha's death was caused by personal or unrelated factors, and not dowry harassment.

Conclusion: Section 113B of the Indian Evidence Act is a significant provision that aims to address the serious issue of dowry deaths in India. It creates a legal presumption in favor of the prosecution if a woman dies under unnatural circumstances within seven years of marriage and is shown to have been subjected to dowry-related cruelty. This presumption helps the prosecution in cases where proving the cause of death is difficult due to the nature of the crime. However, the presumption is rebuttable, and the accused can offer evidence to show that the death was not a dowry death. The provision serves as an important tool in combating dowry violence and provides legal recourse to ensure justice for women who suffer due to dowry-related oppression.



4. "Impeaching the credit of a witness is the main purpose of cross examination" Elucidate.

The statement "Impeaching the credit of a witness is the main purpose of cross-examination" reflects a fundamental principle of the law of evidence, particularly in the Indian Evidence Act, 1872. Cross-examination is one of the most important stages in a trial, and its primary goal is to test the credibility and reliability of the witness's testimony. While cross-examination serves several purposes, impeaching the credit of a witness—i.e., casting doubt on the truthfulness or reliability of their testimony—is one of the central objectives.

Meaning of Impeaching the Credit of a Witness: To impeach the credit of a witness means to challenge or undermine the reliability or truthfulness of the witness's testimony. This can be done by highlighting contradictions, inconsistencies, bias, or ulterior motives that affect the credibility of the witness. The aim is to show that the witness is not trustworthy, and therefore, their testimony should be given little or no weight by the court.

Role of Cross-Examination in Impeaching the Credit of a Witness: Cross-examination provides an opportunity for the opposing party (typically the defense in a criminal case) to question the witness of the opposing party (typically the prosecution in a criminal case) and attempt to expose any weaknesses in the witness's account. According to Section 137 of the Indian Evidence Act, cross-examination is the stage at which a party may question the credibility of a witness and try to discredit their testimony.

Key Methods for Impeaching the Credit of a Witness:

1. **Contradictions**:
   - **Contradicting the Witness**: One of the most effective ways to impeach a witness's credit is by pointing out **inconsistencies** or **contradictions** between their earlier statements and what they are saying during the trial.
   - **Example**: A witness may testify that they saw the accused at the scene of the crime, but their previous statement to the police said they were unsure about the identity of the person. The inconsistency between the two statements may call into question the reliability of the witness.

2. **Bias or Motive**:
    - A cross-examiner may seek to show that the witness has a **bias** or an **ulterior motive** that could influence their testimony. This could involve exploring relationships, interests, or prior conflicts that might make the witness unreliable.
    - **Example**: If a witness has a personal **animosity** against the accused, the cross-examiner might try to establish that the witness is motivated by **hatred** or a desire for revenge, which could affect the truthfulness of their testimony.
3. **Inconsistent Statements**:
    - If the witness has made **inconsistent statements** or **contradictory assertions** in earlier testimony or documents (e.g., police statements or depositions), the defense can use this during cross-examination to suggest that the witness may not be telling the truth.
    - **Example**: A witness testifies that they saw the accused with a weapon at the crime scene, but in earlier statements, they did not mention the weapon or were unsure about it. This inconsistency can be used to undermine the credibility of the witness.
4. **Reputation for Truthfulness**:
    - Cross-examination may focus on the witness's **reputation** for truthfulness. If the opposing party can demonstrate that the witness has a poor reputation for honesty or has been involved in instances of dishonesty in the past, this may lead the court to question the witness's reliability.
    - **Example**: The defense may question a witness about prior convictions or instances where they were caught lying, suggesting that the witness is not trustworthy.
5. **Impeaching through Other Witnesses**:
    - If other witnesses contradict the testimony of the witness in question, it can serve to undermine their credit. The **defense** may present other witnesses who dispute the key facts that the witness is testifying to.
    - **Example**: If a key witness testifies that they saw the defendant commit the crime, the defense may bring in **alibi witnesses** who can establish that the defendant was elsewhere, thus discrediting the key witness.
6. **Leading Questions**:
    - In **cross-examination**, the lawyer is allowed to ask **leading questions**, which means suggesting the answer within the question itself. Leading questions can be used to **probe inconsistencies**, **induce admissions**, or highlight contradictions, thus undermining the witness's credibility.
    - **Example**: "Isn't it true that you were not at the scene of the crime at the time you claim to have seen the accused?" This is an example of a leading question aimed at discrediting the witness.

Legal Provisions for Impeaching the Credit of a Witness:

1. **Section 145** of the **Indian Evidence Act**: This section allows the **impeachment of a witness's credit** by cross-examining the witness about any prior statements they may have made. If the witness's testimony in court contradicts any previous statement, the cross-examiner can bring up the previous statement to highlight the contradiction.
    - **Example**: If a witness previously told the police one version of the events but later testifies differently in court, the defense can use Section 145 to point out the discrepancy and challenge the witness's credibility.
2. **Section 133** of the **Indian Evidence Act**: This section deals with **accomplice witnesses** and allows for the impeachment of their credit by showing that they may have been motivated to testify due to their **self-interest** or a promise of leniency. This can affect the weight the court gives to their testimony.

- **Example**: An accomplice who testifies against the accused in exchange for a reduced sentence may have their credibility impeached by suggesting that they are lying to secure a lighter sentence.

3. **Section 139** of the **Indian Evidence Act**: This section allows cross-examining a witness about their prior contradictory statements and also permits the introduction of evidence to show that a witness has been previously inconsistent, which can damage their credit.
    - **Example**: If the witness says something that contradicts their prior sworn affidavit, the opposing party may use Section 139 to point out the inconsistency.

Illustrations:

1. **Illustration 1**: A witness testifies that they saw the defendant at the crime scene, but during cross-examination, they are forced to admit that they did not mention this crucial detail when they were questioned by the police. The defense may use this **contradiction** to impeach the witness's credit.
2. **Illustration 2**: A witness gives a testimony that the defendant was at the scene of the crime, but during cross-examination, it is revealed that the witness has a long-standing personal grudge against the defendant. The defense can argue that the **witness's bias** undermines the credibility of their testimony.
3. **Illustration 3**: A witness testifies about the events of a crime, but the defense presents other witnesses who give conflicting accounts of the same event. This creates a **discrepancy** in the facts and may weaken the original witness's credibility.

Conclusion: Cross-examination serves as a crucial mechanism in the adversarial system of justice. Impeaching the credit of a witness is one of the primary purposes of this process because it directly affects the reliability of the evidence presented to the court. By highlighting contradictions, biases, motives, and prior inconsistent statements, a lawyer can cast doubt on the truthfulness of a witness, thereby influencing the court's decision. This process is fundamental to ensuring that only credible, truthful evidence is accepted in legal proceedings.

5. What is Evidence? State different kinds of Evidence.

and

Define Evidence. Distinguish between relevancy and admissibility of Evidence.

Evidence refers to anything that is presented in court to prove or disprove the existence of a fact in issue. It is the information presented in the form of testimony, documents, objects, or anything else that is deemed relevant and acceptable by the court to establish the facts of the case. Evidence can be in various forms, and it plays a central role in any legal proceeding, as it is used to convince the judge or jury of the truth of the allegations.

Under **Section 3 of the Indian Evidence Act, 1872**, evidence is defined as:

- **All statements** which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry.
- **All documents** including electronic records produced for the inspection of the court.
- **Objects**, such as material objects, used to establish the truth of the facts.

Different Kinds of Evidence:

1. **Oral Evidence**:
   - This refers to statements made by witnesses in the course of judicial proceedings. It is based on the testimony of individuals who have knowledge of the facts of the case, as seen or heard by them. Oral evidence is usually presented in court during examination-in-chief, cross-examination, and re-examination.
   - **Example**: A witness testifies in court about seeing the accused at the crime scene.
2. **Documentary Evidence**:
   - Documentary evidence includes written documents or records, which are presented in court to prove facts. These can include contracts, letters, receipts, government records, or other written materials.
   - **Example**: A written contract between the parties involved in a dispute, or a bank statement showing transactions relevant to the case.
3. **Real (Material) Evidence**:
   - Real evidence refers to physical objects presented in court, which can directly prove or disprove a fact in issue. These objects have a tangible connection to the case.
   - **Example**: A weapon used in a crime or a piece of clothing that contains forensic evidence, such as blood stains.
4. **Primary Evidence**:
   - Primary evidence is the original document or object presented in court. It is the best form of evidence, as it has not been altered or copied.
   - **Example**: The original will, or the original signed contract between the parties.
5. **Secondary Evidence**:
   - Secondary evidence is a copy or substitute for the original document. It is used when the original is not available, subject to certain conditions.
   - **Example**: A photocopy of a document when the original is lost or destroyed.
6. **Electronic Evidence**:
   - This category includes digital evidence such as emails, text messages, social media posts, computer files, and other data stored in electronic formats.
   - **Example**: A series of emails between two parties showing a transaction or conversation relevant to the case.
7. **Hearsay Evidence**:
   - Hearsay evidence refers to statements made outside the court by someone who is not testifying in the case. Generally, hearsay evidence is not admissible in court unless it falls under certain exceptions.
   - **Example**: A statement by a witness who claims that someone else told them about the events, rather than directly witnessing the event themselves.
8. **Circumstantial Evidence**:
   - This type of evidence does not directly prove a fact but rather infers the existence of a fact through circumstances surrounding the case.
   - **Example**: Fingerprints found at a crime scene, which can infer the presence of the accused at the location.

2. Define Evidence. Distinguish Between Relevancy and Admissibility of Evidence.

Definition of Evidence: As defined in **Section 3** of the **Indian Evidence Act, 1872**, **evidence** includes:

- All oral statements made by witnesses that are related to the facts of the case.
- Documents, including both paper-based and electronic records, presented for the court's inspection.
- Material objects that are connected to the fact in issue.

Relevancy vs. Admissibility of Evidence:

- **Relevancy**:
  - **Relevance** refers to the relationship between the evidence and the fact that it is intended to prove. For evidence to be considered relevant, it must have a direct bearing on the case and help establish a fact in issue.
  - Under **Section 5 of the Indian Evidence Act**, only relevant facts can be admitted as evidence in court.
  - **Example**: A witness testimony that directly describes the events of a crime is relevant because it helps prove what happened.
- **Admissibility**:
  - **Admissibility** refers to whether the evidence can be legally accepted by the court in the proceedings. Even if evidence is relevant, it may not be admissible if it violates certain rules of law, such as those governing hearsay or privileged communication.
  - **Section 136 of the Indian Evidence Act** lays down the principle that the court shall admit only **admissible** evidence, i.e., evidence that meets certain legal criteria.
  - **Example**: A witness's statement about something they overheard (hearsay) may be relevant but is **inadmissible** in court because it does not meet the criteria for admissibility under the law.

Distinction Between Relevancy and Admissibility:

Aspect	Relevancy	Admissibility
Definition	Relevance refers to the connection between the evidence and the fact in issue.	Admissibility refers to whether the evidence can be legally accepted in court.
Requirement	The evidence must be relevant to prove a fact in issue.	The evidence must comply with rules and exceptions set by law (such as hearsay, privilege, etc.).
Determining Factor	It is determined by the relationship between evidence and fact.	It is determined by whether the evidence violates any legal rules or exceptions.
Legal Basis	**Section 5** of the Indian Evidence Act: only relevant facts are admissible in evidence.	**Section 136** of the Indian Evidence Act: the court has discretion to admit or exclude evidence.
Example	Testimony of a witness about the crime scene is relevant to establish the occurrence of the crime.	A confession made under coercion, though relevant, is inadmissible due to the violation of legal principles.

Conclusion: While **relevancy** is about whether the evidence has any logical connection to the facts in dispute, **admissibility** deals with the legal rules that determine whether the evidence can be used in court. Evidence must be both relevant and admissible to be considered by the judge or jury. The **Indian Evidence Act, 1872** regulates these concepts, ensuring that the evidence presented is both **relevant** to the case and **lawfully** obtained and presented.

6. Define Admission and point out the differences between admission and confession.

Or

Distinguish between admission and confession. Can confession made by an accused person while in custody of police be proved against him?

Or

Define and distinguish 'Admission and Confession'.

Or

All confessions are admissions but all admissions are not confessions. Explain.

An **admission** is a statement made by a party to a case, or by their agent, in relation to the facts of the case that suggest the truth of the matter in dispute. Admissions may be made orally or in writing, and they are not necessarily made under compulsion. An admission can be a statement that indicates the existence of certain facts that would help the other party in proving its case.

- **Section 17 of the Indian Evidence Act, 1872** defines admission as:
  - A statement made by a party to a case or their agent that may suggest the truth of any fact in the case.
  - The statement could be about the fact in issue or relevant facts that might lead to the inference of the truth of the issue in dispute.

Definition of Confession: A **confession** is a statement made by a person that acknowledges their involvement in a crime, or admits to the commission of a crime. A confession must be made voluntarily, and it must admit to the commission of a criminal act.

- **Section 24 of the Indian Evidence Act** defines a confession as:
  - A statement by an accused person acknowledging their guilt for the crime they are charged with.
  - A confession can only be admissible in court if it was made voluntarily and without any inducement, threat, or promise of any kind.

Distinction Between Admission and Confession:

Aspect	Admission	Confession
Definition	A statement made by a party or their agent that suggests the truth of a fact in issue or a relevant fact.	A statement made by an accused person that admits to the commission of a crime.
Nature	Admission may be made in both civil and criminal cases.	Confession is primarily related to criminal cases and involves acknowledging guilt.
Voluntariness	Admissions are not necessarily made voluntarily under duress.	Confessions must be made voluntarily, without threat or coercion.
Scope	Admissions can pertain to facts in issue or facts relevant to the case.	Confession specifically relates to the admission of guilt for a crime.
Effect in Court	An admission may be used against the party making it, but not as conclusive evidence.	A confession can be conclusive evidence against the accused if made voluntarily and without coercion.
Involvement in Crime	An admission does not necessarily imply guilt of a crime.	A confession directly implies the commission of a criminal offense.

Key Differences:

1. **Scope of Application**:

- **Admissions** can be made in both civil and criminal cases, while **confessions** are specific to criminal cases.

2. **Implication**:
   - An **admission** merely suggests the truth of a fact, and it does not necessarily imply that the party is guilty. It is a statement about a fact in issue or a relevant fact.
   - A **confession**, on the other hand, directly admits to committing a crime and acknowledges guilt.
3. **Effect on the Case**:
   - **Admissions** may be used as evidence against the party making them, but they are not conclusive proof of the fact.
   - **Confessions** are often considered powerful evidence and may be treated as conclusive proof of the accused's involvement in the crime, provided they are made voluntarily.

All Confessions are Admissions, but All Admissions are not Confessions.

- **All confessions are admissions**, as they are statements made by an accused person that acknowledge guilt or the commission of a crime. A confession, by its nature, is a type of admission.
- **Not all admissions are confessions**, because admissions may pertain to facts other than the commission of a crime. An admission can relate to the existence of a fact, which may be relevant to the case but not necessarily acknowledge criminality.

Example:

- **Confession**: An accused person confesses to committing a murder.
- **Admission**: A party admits to signing a contract, which is relevant to a breach of contract case, but this admission does not relate to any crime.

Conclusion: while a confession is always an admission of guilt, an admission is a broader concept that can pertain to any fact relevant to a case, not just the acknowledgment of criminal behavior.

7. What do you mean by secondary evidence? Stat the circumstances in which secondary evidence may be given.

Secondary evidence refers to a copy or reproduction of the original document or object, or any evidence that is not the original but serves as a substitute. It is used when the original evidence is unavailable, and it must meet certain legal conditions to be admissible in court.

Under **Section 63 of the Indian Evidence Act, 1872**, secondary evidence is defined as:

- A copy of the original document made from the original, provided it is verified and attested.
- A document that has been copied or reproduced but is not the original document.
- Any other evidence that serves as a substitute for the original document or object, as per the provisions of the law.

Circumstances in Which Secondary Evidence May Be Given: Secondary evidence may be admissible under the following circumstances:

1. **Loss or Destruction of the Original Document**:
   - If the original document has been lost, destroyed, or cannot be found after a diligent search, secondary evidence can be presented.

- **Section 65(a)** of the Indian Evidence Act allows secondary evidence when the original document is lost or destroyed.

Example: A contract that was signed several years ago is lost in a fire. A copy of the contract or a witness statement about the contents may be presented as secondary evidence.

2. **Original Document is in Possession of the Other Party**:
   - If the original document is in the possession or control of the other party (and that party refuses to produce it), secondary evidence may be given.
   - **Section 65(b)** of the Indian Evidence Act permits secondary evidence if the original is held by the opposing party and they do not produce it when requested.

Example: A deed of sale is in the possession of the defendant in a lawsuit, but the defendant refuses to produce it. The plaintiff may present a copy of the deed as secondary evidence.

3. **Original Document is Out of Reach or Unavailable**:
   - If the original document is located outside the jurisdiction of the court and cannot be easily produced, secondary evidence may be allowed.
   - **Section 65(c)** allows secondary evidence when the original document is not within the reach of the court due to geographical or other reasons.

Example: A foreign company's records, which are part of a contract dispute, cannot be obtained directly from the country where the records are held.

4. **Original Document is Withheld by a Third Party**:
   - If the original document is in the custody of a third party who refuses to produce it, secondary evidence may be presented after proving that the original document was in the possession of the third party.
   - **Section 65(d)** deals with secondary evidence when the original document is withheld by a third party.

Example: A person who is a third-party witness holds a document crucial to the case but refuses to give it to the court. A certified copy of the document may be used as secondary evidence.

5. **Original Document is Public in Nature and Accessible to the Court**:
   - If the original document is public, such as a government record, and the public can access it, a certified copy of the document may be presented as secondary evidence.
   - **Section 65(e)** provides for secondary evidence of public documents, including government records and certificates, which are easily accessible for public inspection.

Example: A certified copy of a birth certificate from a municipal registry can be used as secondary evidence when the original is not available.

6. **When the Original Document is Not Available Due to Some Legal Exception**:
   - If the document is not available because it is legally exempted from being produced, such as confidential documents covered by legal privilege, secondary evidence may be allowed in specific cases.

Example: A legal contract is protected under attorney-client privilege, and the original cannot be produced, but a copy or summary of the document may be submitted in evidence.

Forms of Secondary Evidence: According to **Section 63 of the Indian Evidence Act**, secondary evidence can take various forms, including:

- Certified copies of the original documents.
- Copies made from the original, provided they are verified or attested.
- Oral evidence about the contents of the document when the original is unavailable.
- Electronic copies or digital records when the original is inaccessible.

Conclusion: Secondary evidence is allowed when the original document or object is not available due to loss, destruction, or unavailability. However, it must be proven that the original was once in existence, and the conditions for using secondary evidence must be fulfilled as specified in the Indian Evidence Act, 1872.

8. Explain the provisions of Indian Evidence act relating to Burden of proof.

The concept of **burden of proof** refers to the obligation of a party to prove the truth of a claim in a legal dispute. The party who makes an assertion or claim is required to provide sufficient evidence to support it. The **Indian Evidence Act, 1872** provides comprehensive guidelines regarding the burden of proof in civil and criminal cases.

1. General Rule - Burden of Proof:

The general principle of burden of proof is enshrined in **Section 101 of the Indian Evidence Act**, which states:

- **Section 101**: *"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."*

This means that the party who makes an assertion or a claim must prove that the facts necessary to support their claim are true. This applies to both **civil** and **criminal** cases.

Example: In a civil suit for breach of contract, the plaintiff must prove that a contract existed and that the defendant breached the terms of the contract.

2. Burden of Proof in Civil Cases:

In civil cases, the burden of proof typically lies on the **plaintiff**, as they are the party who initiates the case and makes the assertion of a claim. The defendant only has to disprove the plaintiff's claim or prove any defense available.

- **Section 102** of the Indian Evidence Act states: *"The burden of proof as to any particular fact lies on the party who wishes the court to believe in its existence."*
    - For example, if the plaintiff asserts that a contract exists, they have the burden to prove the existence of the contract.

3. Burden of Proof in Criminal Cases:

In criminal cases, the burden of proof lies primarily with the **prosecution** (the State), who must prove the guilt of the accused beyond a reasonable doubt. However, the **accused** may sometimes bear a burden of producing evidence for certain defenses, but they are not required to prove their innocence.

- **Section 103** of the Indian Evidence Act states: *"The burden of proof in a criminal case lies on the prosecution and the accused does not have to prove their innocence."*
- The prosecution must prove every element of the crime charged, including the identity of the accused and their participation in the alleged offense.

Example: In a murder case, the prosecution has the burden of proving the elements of the crime, such as the cause of death, the intention of the accused, and the connection between the accused and the crime.

4. Shifting of Burden of Proof:

In some cases, the burden of proof may **shift** from one party to another, depending on the facts presented. The shifting of burden happens when a presumption arises, or when the defendant has raised a defense that requires rebuttal by the plaintiff or prosecution.

- **Section 104** provides that the burden of proof may shift when a party relies on a **presumption of law** (such as a statutory presumption).
    - For example, under **Section 113A**, a presumption may arise in a dowry death case that the accused has caused the death of the wife. In such a case, the burden shifts to the accused to prove their innocence.

5. Presumption and Burden of Proof:

The **Indian Evidence Act** also deals with certain presumptions where the burden of proof shifts to the opposing party, even without direct evidence.

- **Section 29**: In some cases, facts that are **presumed** by law require the opposing party to prove otherwise. For instance, in a case of **dowry death** (under Section 113B), if the death occurred within seven years of marriage and there was cruelty, the court presumes that the accused is guilty unless they can prove otherwise.
- **Section 113A**: It deals with the presumption of **abetment of suicide** if a woman commits suicide within a specified period after being subjected to cruelty by her husband or relatives.

6. Burden of Proof in Cases Involving Alibi:

In cases where the accused claims an **alibi** (that they were elsewhere when the crime occurred), the burden of proof is initially on the accused to raise the alibi.

- **Section 106**: *"When any fact is specially within the knowledge of any person, the burden of proving that fact is upon him."*
    - This means if the accused is claiming to have been elsewhere during the commission of the crime, they must provide evidence to support this claim, even though the prosecution still has to prove the defendant's guilt beyond a reasonable doubt.

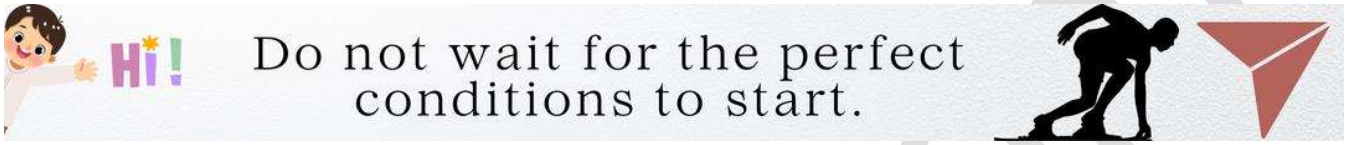
7. Burden of Proof in Civil and Criminal Liabilities:

- **Civil Liabilities**: The plaintiff, who asserts a civil claim, must prove the facts of the claim by a **preponderance of evidence**, meaning that the facts presented should be more likely true than false.
- **Criminal Liabilities**: The prosecution must prove the **guilt of the accused beyond a reasonable doubt**. The accused is presumed to be innocent until proven guilty.

8. Standard of Proof:

- In **criminal cases**, the burden of proof is on the prosecution, and the standard is **"beyond a reasonable doubt"**. This means that the evidence must be so compelling that there is no reasonable doubt in the mind of the court about the accused's guilt.
- In **civil cases**, the standard is **"preponderance of the evidence"**, meaning the evidence must show that one side's claim is more likely true than the other.

Conclusion: The **burden of proof** under the Indian Evidence Act plays a critical role in both **civil** and **criminal cases**. The general rule is that the **party making the assertion** must prove it. In criminal cases, the prosecution has the burden of proving the guilt of the accused beyond a reasonable doubt. Various provisions under the Indian Evidence Act, such as **Sections 101 to 106**, define the circumstances under which the burden of proof can shift, the role of presumptions, and the standard required for the proof of facts.



9. Discuss the principles relating to relevancy of "dying declaration" of a person. Can such declaration be sole basis of conviction of the accused.

A **dying declaration** refers to a statement made by a person who is about to die, regarding the cause or circumstances of their death. Under **Section 32(1)** of the **Indian Evidence Act, 1872**, a dying declaration is admissible in evidence when it is made by a person who believes that their death is imminent, and the statement pertains to the cause of their death or the circumstances leading to it.

1. Section 32(1) of the Indian Evidence Act:

The section states:

- *"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 a case in which the cause of that person's death comes into question, and the person who made the statement believes at the time of making it that his death is imminent and that he will not survive, such a statement is relevant."*

Thus, a dying declaration is relevant when:

- The person making the statement is **unavailable to testify** (typically because they are dead).
- The **statement is made under the belief of imminent death**.
- The declaration is made **about the cause or circumstances of the death**.

2. Imminence of Death:

For a statement to qualify as a dying declaration, it is crucial that the person making it must have been under the **belief that their death was imminent**. It is not necessary for the person to actually die, but the statement must have been made in circumstances where the declarant genuinely thought they were about to die.

The **imminence** of death is subjective and is determined by the declarant's state of mind at the time of making the statement. It is often inferred from the circumstances surrounding the death.

3. Relevancy and Admissibility:

The statement made by the deceased is considered relevant because it is presumed that a person facing imminent death would not lie. The belief of impending death is expected to inspire **truthfulness** due to the seriousness of the situation. It is based on the **maxim** *"nemo moriturus praesumitur mentire"*, meaning "a man will not die with a lie in his mouth".

- The relevancy of the statement arises from its perceived truthfulness, not from the absence of an oath or the opportunity for cross-examination.

4. Sincerity and Truthfulness of the Declaration:

The principle behind the relevancy of dying declarations is that, when facing imminent death, a person is presumed to speak the truth. This presumption arises from the natural instinct to speak the truth when there is no hope of survival.

5. No Requirement for Oath or Cross-Examination:

Unlike other testimony in court, a dying declaration is **not made under oath** and the person making it **cannot be cross-examined**. However, the declaration is still considered admissible based on the belief that it was made voluntarily and with a genuine belief in impending death.

Can Dying Declaration Be the Sole Basis of Conviction?

Yes, a **dying declaration** can serve as the sole basis for the **conviction** of an accused person, provided the court is satisfied that the statement is **truthful**, **voluntary**, and **reliable**. However, there are certain safeguards and conditions under which a dying declaration can be used to convict the accused:

1. The Statement Must Be Voluntary:

The dying declaration must be made voluntarily, without any external influence, coercion, or pressure. If there is any suspicion that the declaration was made under duress, its credibility may be questioned. The declarant must not have been coerced or influenced by others to make a false statement. It must be given freely in the belief that the person's death is imminent.

2. Corroboration and Consistency:

While a dying declaration can be the sole basis for conviction, the courts generally prefer corroborative evidence to support the claim. The court will look for consistency in the statement made by the deceased, and if the circumstances corroborate the content of the declaration, it enhances the reliability of the declaration. Corroboration may include circumstantial evidence, medical reports, or eyewitness testimony that aligns with the dying declaration.

3. Credibility of the Dying Declaration:

The court must ensure that the dying declaration is **credible**. Factors that can affect its credibility include:

- The state of mind of the declarant (whether they were mentally sound at the time).
- Whether the declaration was made in a lucid, coherent, and clear manner.
- Whether the declarant was in a fit state of health to make a statement (i.e., not suffering from a delirium or confusion due to illness or injury).

If the court finds that the declaration is credible, consistent, and reliable, it can be accepted as the sole basis for conviction.

4. Cases Where Dying Declaration is Solely Relied Upon:

In many cases, courts have convicted an accused based solely on the dying declaration when the declaration is found to be credible and consistent with the surrounding circumstances.

Example: In the case of *K. Ramakrishna Reddy v. State of A.P.* (2000), the Supreme Court upheld the conviction of the accused based solely on the dying declaration made by the deceased, as the statement was found to be reliable and credible.

Conclusion: A **dying declaration** is an important form of evidence under **Section 32 of the Indian Evidence Act**, 1872. It is considered relevant because of the presumption that a person facing imminent death would speak the truth. While it can be the **sole basis for conviction**, the court must ensure that the declaration is voluntary, coherent, and credible. Ideally, it should be corroborated by other evidence, but in cases where it is reliable, a dying declaration can lead to the conviction of the accused.

10 Enumerate the cases in which secondary Evidence relating to documents may be given.

Secondary evidence refers to any evidence that is not the original document itself, but a copy or substitute of the original. The Indian Evidence Act, 1872, outlines the circumstances under which secondary evidence can be admissible.

The provisions regarding the admissibility of secondary evidence are primarily covered in **Sections 63 to 66** of the **Indian Evidence Act, 1872**. These sections deal with the types of secondary evidence and the situations when they may be given.

Section 63 of the Indian Evidence Act - Types of Secondary Evidence:

1. **Certified copies** – A copy of the original document that is certified by a person who has the legal authority to make such certification.
2. **Copy made from the original by a mechanical process** – A photocopy or a printout made by a mechanical process from the original document.
3. **Oral accounts of the contents** – When the original document cannot be produced, a person who has seen the document may testify about its contents.
4. **Duplicate documents** – If the document has been lost or destroyed, a duplicate document can serve as secondary evidence.
5. **Electronic records** – In the case of electronic documents, copies or printouts of the electronic record are considered secondary evidence.

Section 64 of the Indian Evidence Act - Requirement for Primary Evidence:

The general rule is that **primary evidence** (the original document) is required, but in certain situations, secondary evidence may be given when the original document cannot be produced for valid reasons.

Cases in Which Secondary Evidence May Be Given

The Indian Evidence Act provides certain circumstances where secondary evidence can be used. These are outlined in **Section 65** of the Indian Evidence Act, which lists the situations in which secondary evidence may be admitted:

1. When the Original Document is in Possession of the Opponent and They Refuse to Produce It (Section 65(a)):

If a document is in the possession of the other party to the suit and they refuse to produce it despite a request, secondary evidence may be admitted. This is based on the principle that a party should not be allowed to hide or withhold evidence.

- **Example**: If a defendant refuses to produce a contract, the plaintiff may present a copy of the contract as secondary evidence.

2. When the Original Document is Lost or Destroyed (Section 65(b)):

If the original document has been lost or destroyed, secondary evidence of the contents can be given. In this case, it is important to prove the loss or destruction of the original.

- **Example**: If a person loses their original will, a copy of the will can be produced as secondary evidence after proving the loss.

3. When the Original Document is in Possession of a Third Party Who is Not a Party to the Suit (Section 65(c)):

If the original document is in the possession of a third party who is not a party to the case, secondary evidence can be produced. However, efforts must be made to obtain the original document from the third party.

- **Example**: If a bank holds a loan agreement, the borrower can present a copy as secondary evidence if the bank refuses to produce the original.

4. When the Document is Part of a Public Record (Section 65(d)):

Documents that are part of public records or government archives can be given as secondary evidence. These records are usually accessible to the public and can be used in court if needed.

- **Example**: A certified copy of a birth certificate or a government-issued document can be used as secondary evidence.

5. When the Original Document is in a Foreign Country and Cannot be Produced (Section 65(e)):

If the original document is in a foreign country and cannot be produced due to practical difficulties, secondary evidence can be given. This might require the production of certified copies of the document from that foreign country.

- **Example**: A contract executed in a foreign country can be substituted with a certified copy if the original document cannot be retrieved.

6. When the Original Document is Not Available for Legal or Practical Reasons (Section 65(f)):

If the original document is not available because it is **not produced** by the person having control over it, **secondary evidence** can be admitted. This includes situations where the original document cannot be obtained for reasons outside of the control of the party.

- **Example**: If a person has lost a deed of title and it is impossible to obtain the original from the person who created it, a copy of the deed may be presented.

7. When the Document is of Such a Nature that It is Not Practicable to Produce the Original (Section 65(g)):

In some cases, the original document may be so bulky or large that it cannot be easily produced in court. In such situations, secondary evidence may be admissible.

- **Example**: A large map or blueprint that cannot be physically brought into court may be presented as a smaller, scaled copy.

8. When the Document is in the Possession of the Court (Section 65(h)):

If the document is in the possession of the court or has been produced during the case proceedings, secondary evidence may be used to refer to it.

- **Example**: If the court has a record of previous court judgments or orders, copies of those records can be used as secondary evidence.

9. When the Document is Part of Electronic Records (Section 65A and 65B):

In the case of **electronic records**, copies or printouts of electronic documents are considered secondary evidence. The procedure for producing such secondary evidence is specified under **Section 65B** of the Indian Evidence Act, which includes the requirement for certification of the electronic record.

Example: A screenshot of an email or a copy of a digital file can serve as secondary evidence, provided the appropriate certification is attached.

Conclusion: The **Indian Evidence Act, 1872** allows secondary evidence to be presented in several circumstances where the **original document** cannot be produced for valid reasons. The key sections (63-66) and **Section 65** outline the types of secondary evidence and the specific conditions under which they may be used. Secondary evidence includes copies, oral accounts, and other substitutes for the original document. Courts must ensure that the conditions for admissibility are met, and that secondary evidence is reliable and trustworthy before accepting it.

11. Explain about the examination in chief, cross examination and Re-examination.

The **examination of witnesses** is a critical part of the trial process in the **Indian legal system**. Witnesses are questioned to elicit the facts that support the case of either party. The **Indian Evidence Act, 1872** provides the framework for examining witnesses in a trial. The three primary types of witness examination are:

1. Examination-in-Chief
2. Cross-Examination
3. Re-Examination

1. Examination-in-Chief: Examination-in-chief refers to the initial questioning of a witness by the party who has called the witness to testify. This is the first opportunity for the witness to present their account of the facts relevant to the case.

Key Features of Examination-in-Chief:

- **Purpose:** The main objective is to elicit information that supports the case of the party calling the witness. This includes establishing the facts that are favorable to their side.
- **Questioning Style:**
  - The questions asked during examination-in-chief must be **open-ended** (i.e., questions that cannot be answered with a simple "yes" or "no").
  - Questions should allow the witness to explain and narrate the facts in their own words, providing detailed testimony.
  - Leading questions (i.e., questions that suggest the answer) are **not allowed** during examination-in-chief, unless the witness is hostile.
- **Legal Provisions:**
  - **Section 138** of the **Indian Evidence Act** deals with the examination of witnesses.
  - The party calling the witness conducts this examination, and it is primarily aimed at **introducing the witness's version of the facts**.
- **Example:**
  - Lawyer: "Can you tell the court what you saw on the night of the incident?"
  - Witness: "Yes, I saw the accused leaving the scene with a knife."

2. Cross-Examination: Cross-examination is the questioning of a witness by the opposing party after the examination-in-chief. It is an essential part of the adversarial system of justice, allowing the opposing party to challenge the credibility of the witness and the truthfulness of their testimony.

Key Features of Cross-Examination:

- **Purpose:** The primary goal of cross-examination is to **discredit** or challenge the testimony of the witness. It aims to test the reliability, consistency, and credibility of the evidence provided during the examination-in-chief.
- **Questioning Style:**
  - The questions asked during cross-examination can be **leading** (i.e., suggesting the answer in the question).
  - The opposing party is allowed to ask questions that may **undermine the witness's reliability** or **highlight inconsistencies** in their testimony.
  - The questions are usually **closed-ended** to control the witness's response.
- **Legal Provisions:**
  - **Section 137** of the **Indian Evidence Act** defines cross-examination as the questioning of a witness by the opposite party.
  - **Section 142** of the Indian Evidence Act allows leading questions during cross-examination.
- **Example:**
  - Lawyer (Cross-examining the witness): "Isn't it true that you didn't actually see the accused leave the scene?"
  - Witness: "No, I didn't see the accused leaving, I just heard footsteps."

3. Re-Examination: Re-examination is the questioning of the witness by the party who initially called the witness, after the cross-examination has been completed. The purpose of re-examination is to clarify any points that may have been raised during cross-examination and to address any discrepancies or inconsistencies in the testimony.

Key Features of Re-Examination:

- **Purpose:**
  - The main goal of re-examination is to **clarify** or **resolve** any doubts raised during cross-examination. It helps restore the credibility of the witness and corrects any confusion that may have arisen during cross-examination.
- **Questioning Style:**
  - In re-examination, the questions must be **non-leading** (i.e., the questions cannot suggest the answer).
  - The questions asked are usually meant to **clear up ambiguities** or to **reaffirm** the original testimony that may have been questioned during cross-examination.
- **Legal Provisions:**
  - **Section 138** of the **Indian Evidence Act** also applies to re-examination.
  - The re-examination should only address issues raised during cross-examination and should not be used to introduce new facts or evidence.
- **Example:**
  - Lawyer (Re-examining the witness): "You were asked whether you saw the accused leaving the scene, can you clarify what you actually saw that night?"
  - Witness: "I saw the accused standing near the door, and then heard a loud noise. I didn't see him leave because it was dark, but I saw him standing there."

Legal Framework and Principles

1. **Section 137** of the **Indian Evidence Act, 1872** defines the terms "examination" and "cross-examination." It states that the examination of witnesses should follow the order: examination-in-chief, cross-examination, and re-examination.
2. **Section 138** of the **Indian Evidence Act, 1872** explains that leading questions are not allowed during examination-in-chief, except in certain circumstances, such as when the witness is hostile.
3. **Section 142** allows leading questions during cross-examination. It is a vital tool for challenging the witness's testimony.

Conclusion:

- **Examination-in-Chief** is the first round of questioning where the party calling the witness presents their version of the facts. It is done using open-ended questions.

- **Cross-Examination** follows, and the opposing party seeks to undermine the witness's testimony through leading questions and by highlighting inconsistencies or contradictions.
- **Re-Examination** occurs after cross-examination and serves to clarify or address any issues raised during cross-examination.

Together, these processes help ensure that the witness testimony is thoroughly examined, challenged, and clarified, contributing to a fair trial.

12. Statement by persons who cannot be called as witness - In what circumstances are they relevant?

Under the Indian Evidence Act, 1872, certain statements made by persons who cannot be called as witnesses are considered relevant in specific circumstances. These statements are addressed primarily under Section 32 of the Indian Evidence Act, which deals with the admissibility of statements made by

persons who are dead, unavailable, or incapacitated to testify.The law acknowledges that in some cases, statements made by such persons may be of significant evidentiary value. Therefore, these statements are admissible in court under certain conditions.

Section 32 – Relevance of Statements by Persons Who Cannot Be Called as Witnesses

Section 32 of the Indian Evidence Act, 1872 deals with the relevance of statements made by persons who are either dead, unavailable, or incapacitated to testify. The section outlines the conditions under which their statements may be relevant, especially when such persons are not available to give oral testimony due to death, illness, or other reasons. Section 32 of the Act is divided into several subsections that highlight the circumstances under which statements by persons who cannot be called as witnesses are relevant. These include:

1. Statement Made by a Deceased Person (Section 32(1))

Circumstances when a statement is relevant:

- **When the declarant is dead** – A statement made by a person who has died is admissible in certain cases, such as when it is related to the cause of death or a transaction in which the deceased person was involved.
- **Statements about the cause of death or circumstances leading to death** – If the statement is related to the cause of death, and the statement was made while the declarant was **conscious of impending death**, it is considered a **dying declaration** and is admissible.
- **Statements about facts in issue or relevant facts** – A statement made by a deceased person about any facts in issue or relevant facts in a case is admissible if it was made when the declarant had no reason to lie, such as in the case of declarations made against interest.

Illustrations:

- **A** is found dead with a stab wound, and before his death, he says, "It was **B** who stabbed me." This statement is admissible under Section 32(1) as a **dying declaration**.
- A person, while on their deathbed, confesses to committing a crime. This is admissible as a statement made under the **fear of death**.

2. Statement Made by a Person Who Cannot Be Called as a Witness Due to Incapacity (Section 32(2))

Circumstances when a statement is relevant:

- **Incapacity to testify** – If a person is **unable** to testify due to reasons such as **mental incapacity** or **infancy**, any statement made by that person when they were competent to speak is relevant.

Illustration: A **mentally incapacitated** person made a statement about a crime before they lost the ability to testify. The statement is admissible as it was made when the person had the mental capacity to understand and convey the facts.

3. Statement Made in the Course of a Transaction, by a Person Whose Knowledge is Relevant (Section 32(3))

Circumstances when a statement is relevant:

- **Statement made during the course of a transaction** – A statement made by a person who was involved in a transaction that is relevant to the case is admissible if that person is no longer available to testify. This applies to statements made at the time of or during the course of transactions that are in issue in the case.

Illustration: A person who was a witness to a contract being executed dies before trial. The statement made by that person about the details of the contract can be admitted as secondary evidence.

4. Statement by a Person in the Course of Public or Business Duty (Section 32(4))

Circumstances when a statement is relevant:

- **Statements made in the course of public or business duty** – Statements made by persons while fulfilling a **public duty**, such as an official record, or in **the course of their business**, may be admissible. These are deemed trustworthy because such statements are made as part of a person's regular duties.

Illustration: A statement made by a police officer in the regular course of their duty regarding the status of an investigation can be admitted as evidence, even if the officer is unavailable to testify.

5. Statement Made by a Person in Reference to a Transaction by a Person Who is Dead (Section 32(5))

Circumstances when a statement is relevant:

- **Statements about a deceased person's transaction** – A statement made by a person referring to a transaction or event involving someone who is now deceased is also relevant. The person who made the statement must have had knowledge of the transaction or event and the statement must have been made contemporaneously with the event or transaction.

Illustration: If a person, before their death, made a statement saying, "I was present when **X** sold land to **Y**," this is admissible as evidence in a case concerning that land transaction, provided the declarant was in a position to know about it.

Relevance of Statements under Section 32 – General Principles

The main principle under **Section 32** is that statements made by a person who is no longer available to testify are only admissible in court if they are made **in a situation where the declarant had no reason to lie**, such as in the face of death, when under an official or business duty, or when describing a transaction that directly relates to the facts in dispute.

These statements can be **reliable evidence**, especially when they are:

1. **Made in circumstances suggesting the declarant's honesty and sincerity**, such as when the person is about to die or making a statement in the course of their business or public duty.
2. **Directly related to the facts of the case**, particularly in cases where the declarant's statements are about a transaction in which they were involved.

Conclusion: Statements made by persons who cannot be called as witnesses are relevant under the Indian Evidence Act, 1872, primarily under Section 32. The circumstances where these statements become relevant include situations where the declarant is dead, incapacitated, or unavailable to testify, but their statements pertain to issues of fact in the case. These statements are admitted as evidence if they are made

under conditions that suggest reliability, such as dying declarations or statements made in the course of regular duties.

13. "Oral evidence must be direct in all cases" - What are the exceptions to this rule?

The **Indian Evidence Act, 1872** provides that oral evidence must be **direct**, meaning that a witness should testify to what they have personally observed, heard, or experienced regarding the facts of the case. This is the general rule under **Section 60** of the Indian Evidence Act. However, there are **exceptions** to this rule. These exceptions allow indirect evidence to be admitted under certain circumstances. The exceptions to the rule that **oral evidence must be direct** are outlined below.

1. Hearsay Evidence (Section 60 of the Indian Evidence Act)

Hearsay evidence refers to statements made by a person who is not testifying in court, but is reported by another person. In general, **hearsay evidence** is **inadmissible** as it is not considered direct oral evidence. However, certain exceptions to this general rule allow hearsay to be admitted as evidence under specific conditions.

Exceptions to Hearsay Rule (Under the Indian Evidence Act):

1. **Dying Declaration (Section 32)**: A statement made by a person who is **dying** and has no hope of recovery can be admitted as evidence, even though it is **hearsay**. This is an exception to the hearsay rule as the statement is considered trustworthy under the assumption that a person near death will speak the truth.
    - **Example:** A person, about to die, says, "It was **X** who attacked me." This statement is admissible in court as a **dying declaration**, even though it is hearsay.
2. **Statements Made in the Course of Business (Section 32(2))**: A statement made by a person who is no longer available to testify, regarding a transaction in which they were involved, may be admissible. The statement must be made **in the course of business** or **public duty**, which lends reliability to it.
    - **Example:** A statement made by a deceased person in a company register about a financial transaction may be admissible, even though it is hearsay.
3. **Statements Made Under Special Circumstances (Section 6 of the Indian Evidence Act) – Res Gestae**: Statements that form part of the **res gestae** (things done or events spoken of during the commission of an offense or transaction) can be admissible even if they are hearsay.
    - **Example:** If a witness says, "I heard the accused shout, 'Don't run, I'll shoot!'" at the moment of a robbery, this statement can be admitted as **part of the res gestae**, even though it is hearsay.
4. **Confessions (Section 24–30)**: A **confession** made by the accused person to a police officer or another individual (under specific conditions) can be admitted as evidence. Although a confession made by someone other than the accused would typically be hearsay, a confession by the accused can be admissible under **Section 24 to Section 30**.
    - **Example:** If the accused confesses to a friend about committing a crime, this confession, if voluntarily made, may be admissible under the provisions of the Indian Evidence Act.

2. Admission (Section 17–23)

An **admission** is a statement made by a party to the case which acknowledges or supports the truth of a matter in dispute. **Admissions** are an exception to the general rule about direct oral evidence, as **even hearsay admissions** made by a party are admissible under certain conditions.

Examples of Admissible Admissions (Under Sections 17–23):

- **Oral admissions** made by a party in the course of negotiations or conversations can be admitted, even if the party is not testifying directly.
- **Admissions in writing** made by a person (even in hearsay form) may be admissible in certain circumstances.

4. Expert Opinions (Section 45–51)

Although an **expert's opinion** is technically not direct oral evidence, it can be admissible in court. Experts are allowed to give their opinion on matters outside the common knowledge of the average person, such as in **scientific**, **medical**, or **technical** cases.

- **Example:** A forensic expert may testify about the results of a post-mortem examination, even if they were not the one to directly observe the victim's condition, since their opinion is based on their expertise and analysis.

Conclusion: Thus, while the general rule under **Section 60** of the Indian Evidence Act is that oral evidence must be **direct**, there are various **exceptions** where indirect evidence (such as hearsay or expert opinions) can be admitted based on the circumstances and legal provisions that ensure the reliability of the evidence.

14. Explain the law relating to Burden of Proof.

The concept of **burden of proof** is fundamental to the law of evidence, as it determines which party in a legal dispute is responsible for proving the facts they assert. Under the **Indian Evidence Act, 1872**, the provisions relating to the **burden of proof** are primarily governed by **Sections 101 to 114-A**.

1. Burden of Proof - Section 101

Section 101 of the **Indian Evidence Act** states that:

"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."

This means that the **burden of proof** rests on the party who asserts a particular fact or claim. In civil cases, the **plaintiff** generally has the burden of proving the facts they allege, while in criminal cases, the **prosecution** has the burden of proving the guilt of the accused.

Explanation:

- If a party asserts a fact, they must provide evidence to establish that fact. For example, in a **civil case** about breach of contract, the **plaintiff** must prove the existence of the contract and the breach by the defendant.
- In **criminal cases**, the **prosecution** has the burden of proving the guilt of the accused beyond a reasonable doubt.

2. Presumption of Innocence in Criminal Cases (Section 101)

In criminal law, the **presumption of innocence** plays a critical role. Under **Section 101**, the **burden of proof** rests on the prosecution, which must establish the **guilt** of the accused. The accused is presumed innocent until proven guilty.

- **Illustration:** In a murder trial, the **prosecution** must prove beyond a reasonable doubt that the accused is guilty. The accused does not have to prove their innocence, but may offer evidence to **disprove** the prosecution's claims.

3. Standard of Proof (Section 101)

- **Civil cases** – The **burden of proof** in civil cases is based on the **preponderance of probabilities**, meaning the party with the stronger evidence will prevail. The standard of proof is not as high as in criminal cases.
- **Criminal cases** – The **burden of proof** is higher in criminal cases, where the prosecution must prove the **guilt of the accused beyond a reasonable doubt**.

4. Burden of Proof in Civil Cases

In a **civil case**, the **plaintiff** generally bears the burden of proof, meaning they must prove the facts alleged in their claim. However, if the **defendant** raises a defense or asserts a counterclaim, the burden may shift to the defendant.

Example: If a person sues for recovery of a loan, the **plaintiff** must prove that the loan existed, the defendant borrowed the money, and failed to repay it. If the defendant claims they have repaid the loan, the burden shifts to the defendant to prove that the repayment was made.

5. Burden of Proof in Criminal Cases

In **criminal law**, the **prosecution** carries the burden of proof. The prosecution must prove the **guilt of the accused beyond a reasonable doubt**. The **accused** is presumed innocent until proven guilty.

Illustration: If a person is charged with theft, the **prosecution** must prove the theft occurred and the accused committed the crime. The **accused** is not obligated to prove their innocence.

6. Shifting of Burden of Proof

Although the initial burden of proof rests on the party asserting a fact, this burden can shift in certain circumstances. Once the party with the initial burden introduces enough evidence to make their case plausible, the burden may shift to the other party to disprove the fact or claim.

Illustration of Shifting Burden of Proof:

- **Presumption of a Married Woman's Legitimacy**: In a case concerning the legitimacy of a child, if a woman has given birth to a child during the marriage, it is presumed that the child is legitimate. However, if the husband denies this, he must prove that the child is not his.

7. Presumptions Under the Indian Evidence Act (Sections 111-114)

The **Indian Evidence Act** provides certain **presumptions** that can shift the burden of proof. Under Sections **111** to **114**, certain facts are presumed unless disproven.

Examples:

1. **Presumption of a Marriage** (Section 112) – A child born to a married woman is presumed to be the legitimate child of the husband, and the burden is on the person challenging this presumption to disprove it.

2. **Presumption of Guilt in Certain Cases** (Section 113A) – In cases of **dowry death**, a presumption of **guilt** arises against the accused, and the burden is shifted to the accused to rebut this presumption.

Illustration: If a **person** is found in possession of stolen property, the court may presume that the property was stolen, and the **burden of proof** shifts to the person to prove that they lawfully came into possession of the property.

8. Exceptions to the General Rule Regarding Burden of Proof

Certain sections of the **Indian Evidence Act** provide specific exceptions to the general rule regarding the **burden of proof**:

1. **Section 106 – Burden of Proving Facts within the Knowledge of the Accused**: In certain cases, if the fact is within the knowledge of the accused (e.g., where the accused was at the time of the incident), the burden shifts to the accused to prove that fact.
    - **Illustration:** In a case of murder, if the accused claims they were not at the scene of the crime, they may be required to provide evidence of their alibi.
2. **Section 113B – Presumption of Dowry Death**: In cases of **dowry death**, if a woman dies within seven years of marriage, the court may presume that her death was caused by dowry harassment, and the accused must prove otherwise.

Conclusion: The **burden of proof** plays a vital role in determining the outcome of a legal case. Under the **Indian Evidence Act**, the general rule is that the party asserting a claim must prove it, but there are **several exceptions** where the burden may shift, especially in cases where specific presumptions are provided under the law. In **criminal cases**, the **prosecution** bears the burden of proving the accused's guilt beyond a reasonable doubt, while in **civil cases**, the **plaintiff** has the initial burden of proving the facts of the case by a **preponderance of probabilities**.

15. When facts not otherwise relevant become relevant? Illustrate your answer.

The **Indian Evidence Act, 1872** specifies certain circumstances where facts that are not typically relevant may become relevant under particular conditions. These exceptions allow for the introduction of facts that would not otherwise be admissible in the course of a legal proceeding, but which can provide important insights into the matter at hand. The **relevance** of these facts is governed primarily by **Section 11** of the Evidence Act.

Section 11 of the Indian Evidence Act:

Section 11 states that facts not otherwise relevant become relevant when they are necessary to prove or disprove the following:

1. **The existence of a particular relationship between the parties**

- Facts that establish a relationship between the parties in a case can become relevant, even if they don't directly pertain to the fact in issue.

2. **The motive, preparation, or previous conduct of a person**
   - If facts are required to show the motive behind an act, they may become relevant.
3. **The existence of facts in dispute or the identity of persons**
   - Facts not directly related to the issue but that may assist in establishing the identity of persons involved can also be considered relevant.

Illustrations of Facts Becoming Relevant under Section 11:

1. **Motive or Intention**:
   - **Example 1**: In a **murder case**, the fact that the accused had a prior argument with the deceased about a property dispute may be irrelevant on its own but can become relevant to establish **motive**.
     - **Explanation**: The existence of a prior quarrel can help explain why the accused may have had a motive to kill the deceased. Even though the quarrel is not directly related to the murder, it is relevant to establish the accused's motive.
2. **Previous Conduct of the Parties**:
   - **Example 2**: In a case of **theft**, if the accused was previously caught attempting to steal from the same store, this fact may not directly establish the theft in the current case. However, it becomes relevant as it shows a pattern of behavior that might suggest the accused's involvement.
     - **Explanation**: The accused's prior conduct can help establish their likelihood of committing a similar crime, thus affecting the judgment in the case.
3. **Relationship between Parties**:
   - **Example 3**: In a case of **fraudulent transfer of property**, the fact that the seller and buyer have a **father-son** relationship could be relevant to indicate the possibility of undue influence or coercion.
     - **Explanation**: The familial relationship between the two can make certain actions (like a questionable transfer of property) more likely or explain the lack of adequate consideration.
4. **Identity of a Person**:
   - **Example 4**: In a case involving **misappropriation of funds**, the fact that the accused has been seen frequently visiting the bank where the transaction took place may be irrelevant by itself, but becomes relevant to help establish the accused's presence at the scene.
     - **Explanation**: The accused's visits to the bank may indirectly support claims of their involvement, helping to establish their identity or presence at the location of the alleged crime.
5. **Reputation or Good Character**:
   - **Example 5**: In some cases, facts about the **reputation** or **good character** of the accused or any person related to the case may be relevant, especially when their character is put into question.
     - **Explanation**: For example, in a defamation case, a person's reputation is a fact that, while not directly related to the core of the matter, could be vital in proving that the defamatory statement was damaging to their image.

Exceptions and Limitations: While facts not directly related to the issue at hand can become relevant under the conditions specified above, there are several considerations to keep in mind:

1. **Relevance must be necessary for the case**: These facts must not only be relevant but also **necessary** to prove or disprove a point in the case (e.g., proving motive, intent, or identity).

2. **Prejudicial Effect**: Even if a fact is relevant, the court may exclude it if it has the potential to unduly prejudice or confuse the jury, as outlined under **Section 9 of the Indian Evidence Act**.
3. **Relationship to the Facts in Issue**: The fact must be shown to have a **direct or indirect relationship** to the facts in issue, and not be entirely extraneous.

Conclusion: In the Indian legal system, facts that are not directly related to the issue at hand can still become **relevant** under certain circumstances. This can be to prove the **motive**, **intention**, **identity**, **previous conduct**, or **relationship** between parties involved in the case. Section 11 of the **Indian Evidence Act** provides the framework for determining when these facts become relevant. However, the court also exercises discretion to ensure that such facts do not lead to undue prejudice or confusion, maintaining fairness in the trial.

16 Explain the different kinds of expert's opinion and their admissibility as evidence.

The **Indian Evidence Act, 1872** recognizes the value of **expert testimony** in certain situations where specialized knowledge or skill is required to understand a particular aspect of a case. **Section 45 to 51** of the Evidence Act deals with the **admissibility of expert opinions** in judicial proceedings.

An **expert opinion** refers to the testimony of a person who possesses specialized knowledge, skills, experience, training, or education in a specific field and can provide opinions on matters beyond the understanding of the general public or the court. Experts may be called to testify on various subjects like **medicine**, **forensic science**, **engineering**, **accounting**, **psychology**, etc.

Under **Section 45** of the **Indian Evidence Act**, **expert opinion** is **admissible as evidence** under certain conditions and when relevant to the matter at hand. The opinion is not considered conclusive but assists the court in understanding complex or technical issues.

Types of Expert Opinions and Their Admissibility

1. **Opinion of a Medical Expert (Section 45)**: A medical expert is often called upon to provide opinions in cases involving injuries, medical conditions, cause of death, mental health, or medical malpractice.
    - **Admissibility**: Medical expert opinions are admissible under Section 45. If the expert has the requisite qualifications and experience in medicine, their opinion regarding the cause of death or nature of injuries is admissible. However, the court is not bound to accept the opinion of the medical expert and may exercise discretion.
    - **Example**: In a **murder trial**, a **forensic pathologist** may testify about the **cause of death** based on the autopsy report and the injuries found on the body.

2. **Opinion of an Expert in Forensic Science (Section 45)**: Forensic experts are often involved in cases dealing with **fingerprints**, **DNA analysis**, **ballistics**, or **toxicology**.
    - **Admissibility**: Expert opinions in forensic science, such as DNA evidence or fingerprint matching, are admissible in court. Forensic experts may testify regarding the authenticity or interpretation of scientific evidence. The court will evaluate the method used and the qualifications of the expert.
    - **Example**: In a **theft case**, a forensic expert may testify regarding the matching of fingerprints found at the crime scene with those of the accused.

3. **Opinion of an Expert in Accounting or Financial Matters:** Experts in accounting or financial matters are often called in cases involving **fraud**, **embezzlement**, or **company disputes** where specialized knowledge of financial records is necessary.

- **Admissibility**: Expert opinions on accounting and financial matters are admissible when the court finds that the person giving the opinion has sufficient expertise and qualifications. The opinion will assist the court in understanding complex financial records or transactions.
- **Example**: In a case of **corporate fraud**, an **accountant** may be called to provide an expert opinion on **unusual transactions** in financial records that indicate fraud.

4. **Opinion of Experts in Engineering or Architecture**: Engineering or architectural experts may be called in cases of **building collapses**, **construction defects**, or **accidents** related to infrastructure failures.
   - **Admissibility**: The opinion of engineering experts is admissible when it is relevant to the issues before the court, such as the **cause of a building collapse** or whether a structure was built according to standards.
   - **Example**: In a case involving **building collapse**, an **engineer** might testify about whether the collapse was due to structural defects or negligence in construction.

5. **Opinion of Experts in Psychology or Psychiatry**

   Experts in psychology or psychiatry are often called in criminal cases to determine the **mental state** of the accused at the time of the crime or to assess the **competency** of witnesses.

   - **Admissibility**: Opinions given by psychiatric or psychological experts are admissible under Section 45 if they have the relevant qualifications. These experts may testify about the **mental condition** of an accused person and whether they were capable of committing the crime.
   - **Example**: In a **murder case**, a **psychiatrist** might testify whether the accused was suffering from a **mental disorder** that impaired their ability to understand the consequences of their actions.

6. **Opinion of Experts in Art, Literature, or Historical Matters**

   Experts may also be called to testify in cases involving the **authenticity** of **artworks**, **documents**, or **historical artifacts**.

   - **Admissibility**: Experts in art, literature, or history may provide testimony about the **authenticity** of documents or artworks, or the interpretation of historical facts, based on their specialized knowledge. Such opinions are admissible under Section 45.
   - **Example**: In a **counterfeit document case**, a **historian** or **art expert** may testify about the **authenticity** of the document based on their knowledge of historical writing styles.

General Provisions for Admissibility of Expert Opinion (Section 45)

1. **Qualification of Expert**: The person giving an expert opinion must possess **specialized knowledge** and experience in the relevant field. The court may assess whether the person is qualified to give an opinion.
2. **Relevance to the Case**: The expert's opinion must be **relevant** to the case. If the opinion is unrelated to the facts in issue, it may not be admitted as evidence.
3. **Not Binding on the Court**: Expert opinions are not **conclusive** or binding on the court. The court may accept or reject the opinion based on its evaluation of the evidence and the qualifications of the expert.

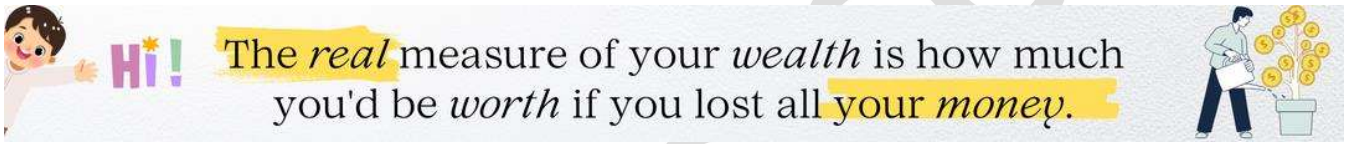
4. **Basis of Expert Opinion**: The expert's opinion should be based on **facts**, **data**, and **reliable methods**. The court may examine whether the expert's opinion is supported by sound reasoning and credible evidence.

Exception to the Rule - Opinion on Law

While experts are allowed to provide opinions on **technical or factual matters**, they are **not permitted** to give opinions on questions of **law**. A person who is an expert in a particular field cannot provide an opinion on whether a particular act or situation is **legally justified** or not.

- **Example**: A **medical expert** cannot opine on whether the defendant's actions **constituted murder** or **manslaughter**. This is a matter of law, for the judge to decide.

Conclusion: In conclusion, the **Indian Evidence Act** provides a framework for the admissibility of expert opinions in various fields such as medicine, forensic science, accounting, engineering, and psychology. Expert testimony is valuable when it comes to complex or technical matters that the court may not be able to understand without assistance. However, the court has the discretion to accept or reject expert opinions based on the expert's qualifications, the relevance of the opinion, and the method used to reach it.



17 Who is competent to testify as a witness? Explain with special reference to privileged communication.

The **Indian Evidence Act, 1872** outlines the rules governing the **competence** and **compellability** of witnesses. The concept of **competence** refers to a person's ability to give testimony in court, while **compellability** refers to whether a person can be compelled to testify, even if they are unwilling.

Competency of a Witness: According to **Section 118 of the Indian Evidence Act**, every person is competent to be a witness except:

1. **Persons who are of unsound mind**: A person who is unable to understand the nature of the oath or the significance of the evidence they are about to give is not competent to testify. A **mentally challenged person** or one with **severe cognitive impairment** may be considered incompetent if they cannot comprehend the consequences of their testimony.
2. **Children**: Children who are too young to understand the nature of an oath or the seriousness of providing testimony may not be competent witnesses. However, children may be allowed to testify if they can demonstrate an understanding of the difference between truth and falsehood and the importance of telling the truth. The judge has the discretion to determine the child's ability to testify based on their mental maturity.
3. **Persons who are physically incapable of speaking**: If a person cannot communicate through speech or any other means (e.g., through sign language or writing), they may be declared incompetent to testify unless they can otherwise provide testimony, such as through a translator or assistive technology.

Testimony by an Incompetent Witness

- **Section 119**: Even if a person is incompetent to testify in the normal way, they may still be allowed to provide testimony if they **understand the nature of the proceedings** and can communicate in

some other manner. For instance, a person who cannot speak may use sign language, and a person who cannot hear may provide testimony through a translator.

Privilege and Privileged Communication

Privileged communication refers to certain types of information that cannot be disclosed in court because of the relationship between the parties involved. These privileges protect the confidentiality of sensitive communications and are exceptions to the general rule of admissibility of evidence.

The **Indian Evidence Act** recognizes several categories of privileged communications. These include:

1. **Communication between a lawyer and client (Section 126)**:
   - A lawyer is prohibited from disclosing any confidential communication between themselves and their client made for the purpose of obtaining legal advice or assistance. This privilege encourages open and honest communication between lawyers and their clients, which is essential for the administration of justice.
   - **Example**: If a client tells their lawyer about a criminal act they committed, the lawyer cannot disclose this information without the client's consent, even if it is relevant to a court case.
2. **Communication between a husband and wife (Section 122)**:
   - A husband and wife cannot be compelled to testify against each other in matters relating to their private communications during marriage. This is aimed at protecting the sanctity of marital privacy.
   - **Example**: If a husband tells his wife about an act he committed, she cannot be forced to testify about it in court, even if the statement is relevant to a case.
3. **Official communications (Section 123)**:
   - Public officers cannot disclose communications that are made to them in their official capacity unless the government grants permission. This protects the confidentiality of official documents and communications.
   - **Example**: A police officer cannot disclose a confidential letter from their superior regarding an investigation unless authorized by the government.
4. **Confession made to a religious advisor (Section 127)**:
   - A confession made to a **priest, minister, or religious advisor** is privileged and cannot be disclosed in court. The principle behind this is to ensure the confidentiality of spiritual or confessional matters, which are considered sacred.
   - **Example**: A person's confession to a priest during confession cannot be disclosed in court.

Competency of a Witness in Relation to Privileged Communication

Even though certain communications are privileged, the competency of a witness to testify is generally unaffected by this privilege. In other words, **a person who has knowledge of privileged communications may still be competent to testify** unless the court determines that the privilege applies and protects the confidentiality of the communication.

However, **privilege can prevent certain witnesses from being compelled to testify about specific matters**. For example:

- **A lawyer cannot be compelled to testify about a client's confidential communications**, even though the lawyer is competent to testify about other matters.
- **A wife cannot be compelled to testify about confidential communications with her husband**, even though she is otherwise competent to testify on other matters.

In such cases, the witness may still be competent but cannot be compelled to testify regarding privileged matters.

Conclusion: The **Indian Evidence Act** specifies who is competent to testify and provides for various exceptions. While every person is competent to be a witness, **persons of unsound mind, young children, and those who cannot communicate** are generally considered incompetent. Additionally, **privileged communications**—such as those between a lawyer and client, a husband and wife, or a public officer and the government—are protected from being disclosed in court, even if the person testifying is otherwise competent. The privilege ensures the protection of confidential and sensitive communications that are vital to the functioning of society and relationships.

18. "Oral evidence in all the cases what ever be direct". Explain the statement with exceptions.

The principle that **oral evidence must be direct** is a foundational concept in the **Indian Evidence Act, 1872**. It is encapsulated in **Section 60**, which states that **oral evidence** must be **direct evidence** of what the witness has seen, heard, or experienced personally. This principle ensures that the evidence presented in court is firsthand and not based on hearsay or secondary information.

According to **Section 60**, **oral evidence** refers to the testimony given by a witness in court, narrating facts based on their own perception. This evidence must be **direct**, meaning that it must be based on the witness's own knowledge or experience of the event in question.

- **Direct evidence** refers to evidence given by a person who has **directly observed** an event or action. For instance, if a witness testifies that they saw the accused **commit a crime**, that testimony is direct evidence.
    - **Example**: If a person testifies that they saw the defendant **steal a wallet**, this is direct oral evidence of the theft.

Exceptions to the Rule of Direct Oral Evidence: While **Section 60** mandates that oral evidence must be direct, the Indian Evidence Act acknowledges certain **exceptions** where indirect or circumstantial oral evidence may be admitted. These exceptions arise primarily from **hearsay** evidence and certain circumstances where indirect evidence is necessary to establish a fact.

1. **Hearsay Evidence** (Sections 32 and 33)
    - **Hearsay evidence** is testimony given by a witness who did not directly observe the event in question but is merely repeating what someone else has said. Normally, hearsay evidence is **inadmissible** because it is considered unreliable. However, **Section 32** of the Evidence Act provides exceptions where **hearsay evidence is admissible**, such as:
        - **Statements made by a person who is dead or cannot be found**: If the person who made a statement is unavailable (e.g., dead, insane, or out of the country), their statement may be admitted under certain conditions as **dying declarations** or **statements made in the course of business** (Section 32).

        - **Statements relating to the cause of death**: A statement made by a deceased person regarding the **cause of death** may be admissible under the exception in **Section 32(1)**.
        - **Statements made in the course of business**: Statements made in the regular course of business, such as **bank statements** or **commercial documents**, may be admissible under **Section 32** and **Section 34**.
    - **Example**: In a **dying declaration**, if a person who is dying tells a witness that they were attacked by the accused, this statement is admissible as hearsay under **Section 32**.
2. **Circumstantial Evidence** (Section 8)
    - While **circumstantial evidence** is indirect, it is often used in the form of **oral testimony** to establish facts. **Circumstantial evidence** refers to the evidence of surrounding facts and events that, when put together, lead to a logical conclusion about a matter in question.
    - **Section 8** allows the admission of **circumstantial evidence** to show **motive, opportunity, and conduct** of a party involved. The **oral evidence** of a witness regarding **conduct, statements, or behavior** of the accused may be used as circumstantial evidence to support the charge, even if the witness did not directly observe the event.
    - **Example**: If a witness testifies that the accused was seen near the scene of the crime with **blood-stained clothes** shortly after the murder, this circumstantial evidence can be used to establish the accused's involvement, even though the witness did not directly see the crime itself.
3. **Dying Declaration (Section 32(1))**
    - **Dying declarations** are statements made by a deceased person regarding the circumstances of their death. While such declarations are generally **hearsay**, they are admitted as exceptions to the hearsay rule under **Section 32** because the statement is made under the **belief of impending death**, and thus, is assumed to be truthful.
    - **Example**: A dying person declares that the accused is the one who attacked them. This statement is admissible in court, even though the person giving the statement is not available to testify in court.
4. **Admissions (Sections 17-23)**
    - **Admissions** made by a party to the case or an agent of the party are considered relevant under **Section 17** of the Evidence Act. These statements, while not directly witnessed by the person giving them, are allowed as **direct evidence** of the facts in issue.
    - **Example**: If the accused admits to a police officer that they were present at the scene of the crime, this statement may be considered as **direct evidence** of the accused's involvement, even though the officer did not directly witness the crime.
5. **Confessions (Section 24-30)**
    - A **confession** made by the accused to a police officer, or to anyone else, is treated as **direct evidence** of guilt, provided it is admissible under certain circumstances. The confession must be voluntary, and not coerced, and it must be made in a legally acceptable manner.
    - **Example**: An accused person may confess to the police that they committed the crime, and this **oral confession** becomes **direct evidence** of their involvement, subject to the rules of admissibility.
6. **Recollections or Statements of Witnesses Made to Others (Section 159)**
    - **Recollections** of a witness made to another person before being formally recorded in court are sometimes allowed, provided the **witness is able to testify** in the court about what they said.
    - **Example**: A witness may recall making a statement to a police officer during an investigation, and this statement could be considered **direct evidence** if it is deemed relevant to the case.

Conclusion: While **oral evidence** generally refers to **direct evidence** of what a witness has personally observed or experienced, the Indian Evidence Act recognizes several **exceptions** where **indirect oral**

evidence is allowed. These include situations involving **hearsay evidence**, **circumstantial evidence**, **dying declarations**, **admissions**, and **confessions**. The law permits such exceptions to ensure that **all relevant facts** are considered in the interest of justice, even when the evidence may not be direct in the strictest sense.

20. What are leading questions? When these can be asked?

A **leading question** is a type of question that suggests the answer within the question itself, thereby directing or guiding the witness toward a specific response. These questions often contain an implied answer or force a particular response, making it easier for the questioner to control the outcome of the testimony.

Example of a Leading Question:

- "You were at the scene of the accident, weren't you?"
- "Isn't it true that the defendant was at the meeting on the 5th of March?"

These questions suggest the answer (yes or no) within the question itself, which is why they are called "leading."

When Can Leading Questions Be Asked?

Under **Indian Evidence Act, 1872**, **leading questions** are generally prohibited during **examination-in-chief**, but they can be asked in **cross-examination** and in certain specific situations during **re-examination**. Here's a breakdown:

1. Examination-in-Chief (Direct Examination):

- Leading questions **are not allowed** during examination-in-chief, as the purpose of examination-in-chief is to allow the witness to provide their own narrative of the facts. Leading questions would interfere with this process by suggesting answers.
- **Example**: During examination-in-chief, the lawyer should ask:
  - "Where were you on the night of the 5th of March?"
  - Not: "You were at the event on the 5th of March, weren't you?"

Exceptions:

- **When a witness is hostile**: A leading question may be asked when the witness is hostile (i.e., when the witness refuses to testify in favor of the party who called them, or when their testimony is evasive or contradictory).
  - **Section 154 of the Indian Evidence Act, 1872**: This section permits the asking of leading questions during cross-examination of a hostile witness.

2. Cross-Examination:

- **Leading questions are allowed** during cross-examination. The purpose of cross-examination is to challenge the credibility of the witness and to test the accuracy of their testimony. Leading questions are used to control the direction of the witness's testimony and to expose contradictions or biases.
- **Example**: During cross-examination, the lawyer may ask:
  - "You were present at the scene of the crime, weren't you?"
  - "You never saw the defendant at the event, did you?"

3. Re-examination:

- In **re-examination** (which takes place after cross-examination), the lawyer can ask leading questions **only to clarify** any issues raised during cross-examination or to correct any ambiguities or contradictions in the witness's testimony.
- **Section 138 of the Indian Evidence Act**: This section permits re-examination, but only to clear up matters arising from the cross-examination. Leading questions are generally not allowed in re-examination unless the witness has been made hostile or there is an issue that needs clarification.

Special Circumstances Where Leading Questions May Be Asked:

1. **Hostile Witness**: If the witness is hostile and unwilling to provide truthful testimony, leading questions can be used to control the flow of their testimony.
    - Example: If a witness gives inconsistent answers or refuses to testify, the lawyer can ask leading questions to assert facts.
2. **Witness Unable to Speak or Understand**: If a witness is mentally or physically incapable of understanding the questions or is unable to communicate in the normal way (e.g., a child or a person with a speech impediment), leading questions may be allowed in order to help them provide answers.
3. **Established Facts or Agreements**: If a witness is asked to confirm an established or agreed-upon fact, leading questions may be permitted. This helps avoid unnecessary repetition of well-known facts.

Legal Provisions Regarding Leading Questions

1. **Section 142 of the Indian Evidence Act, 1872**:
    - States that **leading questions** are generally not allowed during **examination-in-chief**, except in cases where the witness is hostile.
2. **Section 154 of the Indian Evidence Act, 1872**:
    - This section specifically permits **leading questions** during **cross-examination**, as the purpose of cross-examination is to test the witness's reliability, memory, and honesty.
3. **Section 138 of the Indian Evidence Act, 1872**:
    - Allows for the **re-examination of a witness** after cross-examination, but leading questions are generally prohibited unless they are required to clarify matters raised during cross-examination.

Conclusion:

- **Leading questions** are those that suggest the answer within the question, prompting a yes or no response.
- They **cannot be asked** during examination-in-chief (except when the witness is hostile or has difficulty answering).
- **Leading questions can be asked** freely during cross-examination to challenge the witness's testimony.
- **Re-examination** may involve leading questions, but only to clarify issues that arose during cross-examination.

PART-C

Note: There is no standard solution for any type of problem in Part C, as law students we have different perspectives and interpretation so we need to focus on the Draft, Section, Articles to support your discussion.

Anyways we will upload sample solutions for these problems on our website for your reference

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There is a case of forgery against B at Calcutta on a certain day. But the fact is that on that day B is in Singapore. Decide the case with relevant doctrine and case law.

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. Explain the authenticity of C's statement in this regard. Decide the case by analyzing on whose side the burden of proof will lie.

In a civil case, a party seeks to introduce a document as evidence. The opposing party argues that the document is not admissible as it was obtained illegally. Explain the admissibility of such documents under the provisions of Indian Evidence Act.

An accused of a criminal case seeks to introduce evidence of the victim's prior bad acts to support a defense of self defense. The prosecution objects to this evidence on the grounds that it is not relevant to the case. Explain the relevant provisions of IEA dealing with admissibility of evidence of prior bad acts in criminal cases.

The question is whether 'A' committed a crime of Calcutta on certain date, the fact that, on that day, 'A' was at Lahore. Is this fact relevance?

'X' is accused of 'Y' murder by beating him. At the time of incident there was on exchange of words between 'A' and 'B'. Is this fact relevant.

'A' is accused of murder of 'C'. During trial 'A' confesses, I and 'B' murdered 'C'. Can this confession be considered against 'B'?

'A' sues 'B' for money due on a bond. 'B' has admitted the execution of bond but contends that it was obtained by Fraud. 'A' denies it. On when does the burden of proof lies?

'A' sues 'B' for Rs. 10,000, 'A' produces relevant account books where entries are made upto Rs. 10,000. 'B' say they are false. Are the entries in books relevant to prove debt?

To prove that 'A' murdered 'Y', evidence of 'C' a child of 7 years studying second class is bought as on eyewitness A is it sufficient to prove the case?

A, on accused in case of sedition, faces the test of the lie detector. Can statements of A made in the lie detector test be admitted?

'A' produces a document which is forty five years old. 'B' states that the contents of the documents are not true. On whom does the burden of proof be?

A came to the court as eye witness in the case of a murder. He gave a statement in favour of prosecution in the chief examination. Afterwards he gave a statement in favour of defence. Decide the legality of the statement of A.

A intentionally and falsely leads B to believe that certain land belongs to A, there by induced B to buy and pay for it. The land afterwards become 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. Can he succeed?

A sues B for inducing C to break a contract of service made by him with A. C on leaving A's service, says to A-"I am leaving you because B has made me a better offer" is this statement relevant to prove the conduct of C- Decide.

X and Y are jointly tried for the murder of Z. X made a statement that "I myself and Y murdered Z". The prosecution intents to use this statement against Y. Is its relevant - Decide.

'A', an accused person admitted that he along with 'B', the fellow accused committed Robbery. What is the admissible value of confession made by one accused person against the co-accused person?

'A' is charged for committing murder. A alleges that by reason of unsoundness of mind, he did not know the nature of the act. On whom the burden of proof lies? Discuss.

'A' owns a piece of land over which 'B' has no right. But 'B' builds a house on it 'A' keeps quiet and after the building is completed sues for its demolition. Discuss whether 'A' can be estopped from asserting his right.

Soon after commission of theft, stolen goods are found in possession of 'X'. What type of presumption can be raised by the court in the trial of 'X'? Refer to relevant provisions of the Indian Evidence Act.

'A' is tried for the murder of 'B' by Poison. Before the death of 'B', 'A' procured Poison similar to that one which was administered to 'B'. is it the relevant fact?

'A' is accused of murder of 'C'. During the trial, he confesses, 'I' and 'B' murdered 'C'. Can this confession be considered against 'B'?

The question is whether 'A' robbed 'B'. Does the fact that shortly before the robbery, 'B' went to a shop with money in his possession and showed it to third persons, become relevant?

The question is whether 'A' was a legitimate son of 'B'. Does the fact that, 'A' was always treated as such by the members of the family relevant?