

All about Documentary Evidence

under

Indian Evidence, 1872

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Q.1 What are Primary and Secondary Evidence? Give Illustrations.

Ans- **Primary Evidence**: - Section 62 of The Indian Evidence Act, 1872

- i) Primary evidence means the document itself produced for the inspection of the court.

Explanation: - where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is the primary evidence of contents; but, where there are all copies of a common original, they are not primary evidence of the contents of the original.

For example- In the case of a cheque, the main cheque is signed by drawer so that it is primary evidence against him, and the counter foil may be signed by the payee of the cheque so that it will be primary evidence against the payee.

Secondary Evidence: -Section-63 of The Indian Evidence Act, 1872 deals with secondary evidence which includes –

Secondary evidence of the contents of written instruments cannot be given, unless there is some legal excuse for non- production of the original. Further, secondary evidence can only be given when the primary evidence or the document itself is admissible. Secondary evidence cannot be given of a document when the original is found to be in admissible. If a deed of gift is inadmissible in evidence for want of registration, no secondary evidence of the deed can be given in a suit to recover the gifted property.

Q.2 When attesting witness not necessary?

Ans. Section 68 states that no attesting witness is necessary to be called in the case of document, which has been registered under The Indian Registration Act, 1908, and the person executing it does not specifically deny its execution. If there is a denial, then, an attesting witness has to be present or called.

According to this section, it is important that document must be attested by law, a document cannot be used in evidence until at least one witness, if alive, has called for the purpose of proving its execution. The witness present is known as attesting witness.

Q.3 What are the sources of electronic evidence and its records?

Ans. Electronic evidence is the information that is stored, recorded or copied in a computer. Section 65 A and 65B of The Evidence Act, 1872 provides that-

- a) Information produced by the person who is having a lawful control over the computer's use.
- b) The electronic record contained must be regularly fed onto the computer.
- c) The computer must be in proper use or in the accuracy of records,
- d) Recording must reproduce the information properly and such information fed into the computer in the ordinary course of activity.

Section 65B lays down the conditions which have been laid down above, it states that electronic record must contain a genuine statement and it must be signed by the officer in charge of the management of related activities.

Q.4 Mandatory authentication of digital evidence?

Ans. i) Electronic evidences are invisible and it is in a digital form.

ii) The data which is recorded or stored must recovered from digital device.

iii) Electronic records can easily be destroyed

iv) It requires precautions to protect from the alteration

v) It requires special tools, devices and files for storing of records.

E.g, Computers, CD's, DVD'S, Floppy disk, hard disk, phones cameras, etc

Q.5 Which are the rules as to produce notice?

Ans. Section 66 lays down that notice must be given before the secondary evidence. The notice is to be given who has the original documents or his prosecutor. It should be given according to the law.

The notice shall not be required in some cases as mentioned below-

- a) When document itself a notice.
- b) When the other party know that they will be required to produce the documents.
- c) When it appears or is proved that the adverse party to the original document by fraud or force.
- d) When opposite party accepts that the original document has been lost.
- e) When the possession of documents is out of reach from the person who possess the original documents.

Q.6 Why the Execution of Document is required to be attested?

Ans. According to section 68 of evidence act, it is very important that every documents must be attested by law because if it's not attested then, it cannot be used as in evidence until at least one person. Attestation means a document must be signed in the presence of two witnesses who themselves add their signatures and addresses in the proof of the fact of documents, two witness are called 'attesting witnesses'. According to section 3 of Transfer of property act which defines the 'attestation' means, a document attested by two or more witnesses, each of whom signed the documents.

Q.7 Distinguish between Public and Private Documents?

Ans. **Public document** section 74 defines the public documents;

- a) Public documents kept in Sovereign authority (namely, the parliament and the legislative assembly)
- b) Kept under the official bodies and tribunals and

- c) Under public officers, judicial, executive, legislative or of any part of India and of foreign country

Private document-section 75 defines that all other documents are private documents

- a) These types of documents are kept under the hands of a private person
b) Certified copies do not present in private custody
c) it is a documents which is use by private person for their business transactions and communications
d) tin private document, there is no such protection .

Q.8 How Court satisfy the signature, writing or seal on a document is original? Also, mention the case laws.

Ans. According to section 73, court hast] to satisfy itself that the signature, seal or writing is genuine. Court enables to present that person in the court to sign or write the same so as to court verify or figures out the written document. This section provides direct method of comparison the signature or writing; it is very important to prove the documents for the satisfaction of the judge.

CASE LAWS:-

1. In *Murari Lal v State of M.P* (AIR 1980 SC 531), SC held that that court should not venture the argument to compare writing itself, it would assume that it is the role of an expert itself without any force. It is the plain duty of the courts to compare the documents and come to its own conclusions. In this case, it is also observed that the expert's opinion would only aid the court. If there's no involvement of any expert then, court will take guidance from textbooks, and the court's own experience and knowledge.

2. *Ajit Savant v State* (AIR 1997 SC 3255), court observed that in relation to the above case that, the proceedings of any case is very long and court itself can be slow in making comparison. In the case of slightest doubt, court can rely upon wisdom of experts. The court cannot replace its own opinion to that of the expert.

Q.9 What are the types of Evidence?

Ans. Following are the types of evidence:-

- i) **Direct Evidence**: - it is direct evidence given by a eye-witness of fact or fact-in-issue to any incident. It is also known as 'positive evidence'.
- ii) **Indirect evidence**: - indirect evidences are those evidences which do not include direct evidence which tends to establish fact in issue by proving another fact. Indirect evidence also called as 'circumstantial evidence'.
- iii) **Original evidence**:- these evidences, where a witness himself have seen or heard of his own senses. For e.g. A says that he saw B shoot out C with gun.
- iv) **Personal evidence**: - it is an oral testimony of the witnesses, which is done by voluntary signs of human agents.
- v) **Real evidence**: - it is a material fact brought to the knowledge of court by inspection. It is not by the information collected by the witnesses or documents.
- vi) **Oral evidence**: - all statement which court requires to be made before by the witnesses.
- vii) **Hear-say evidence**: - in this witnesses made a statement to the court. Hear-say evidence is also known as second-hand evidence because the evidence is collected by the third person or reported by the hearing of the facts from the another person, he himself not a witnesses or was not present at the moment of incident.

Q.10. Explain the term 'judicial', 'non- judicial' and 'documentary' evidences with examples.

Ans. **Judicial evidence**- these types of evidences are present to the magistrate in the court. Judicial evidence, received by the court to prove the facts and come to the fair justice.

For example- a confession made by accused in the court or in front of judge is judicial evidence.

Non-judicial- these are the evidence which is confessed by accused out of the court, not in the presence of the Magistrate.

For example- confessions made to police officer or any other person would termed as 'non-judicial' evidence.

'Documentary evidence'- all documents which represents for the inspection of the court are documentary evidences. It could be in electronic form, in document form, papers, in writing, etc.defined under section 3 of the act.

Examples-

- photographs recorded in electronic instrument
- Writing is a document.

FAQ ON "PRESUMPTIONS AS TO DOCUMENTS"

Q.1 Why it is necessary to produced certified copy of a document before the court?

Ans. According to Section 79 of Act, when a certified copy of a original documents is produced before the court, law assume that copy is a genuine copy of a original evidence. But, it is also very important that a copy must be certified by an officer of central/ state government and it should also pretend in a lawful manner. The document which is signed by an officer, court presumes that the signature is by a genuine or certified officer and believes the certified copy of a document as to make a judicial process.

Q.2 What is the Presumption as to document admissible in England or Ireland without proof of seal or signature?

Ans. Under Section 82 of the act, says that the documents according to English and Ireland laws would be admissible without proof of seal, signature etc.Court believes that the stamp, signature on the document is genuine and in a judicial manner and proved to be as a admissible documents.

The court presumes that the maps or plans under the authority of Central/State government is admissible by court but, it must be proved to be accurate or genuine.

Q.3 Define 'Power of Attorney'.

Ans. The term 'power of attorney' means, ' a document by which an agent conceives the power to act upon the principal, which are executed and authorized before the court by a

notary public, judge/magistrate, Indian counsel/vice-counsel or representative of the central government and assumed to be genuine or certified by a authorized person.

Section 85 provides, that the court shall presume that, a power of attorney executed before the court by a genuine authorized person.

Conditions of a valid power of attorney:-

- It must be executed by the notary public and authenticated by the court.
- It is done by a board of directors and its attestation by a notary public.

Q.4 Explain the term ‘ancient documents’?

Ans. The term ‘ancient documents’ means, documents which are presumed to be as thirty years old. Section 90 of the Act, lays down that the document is proved to be thirty-year old and produced from the custody, the court assumes that the signature on the document and every part of documents is related to the person who has been signed, attested or executed the document. The presumptions can be made only on the genuine or original documents not on the copies of the documents.

Essentials conditions under 90 of The Indian Evidence Act, 1872 -

- It must be of thirty years old
- Must be in proper custody
- Presumptions as to signature
- There would be no presumption as to certified copy
- Document must be original

Q.5 ‘Presumptions as to electronic records five years old’? Explain

Ans. Section 90A deal with the presumptions as to electronic records as to five years old, states that the recording by means of any electronic instrument produced from a legal custody or proved by the court would be considered as original, if the digital signature is found and that person was authorized by any legal authority.

Essential elements-

- Records must be in digital form
- It must be of five years old
- Must be produced from the custody
- Original must be conducted by a authorized legal person.

CHAPTER VI

FAQ ON “EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE”

Q.1 What is meant by ‘best evidence rule’?

Ans. ‘Best evidence’ is framed to protect the introduction of any evidence which it believes that there is better evidence behind it, which is under control or possession of the party.

Party must always give evidence that must be in a fact or proved by a oral evidence or directly perceives the fact of a document.

- Original document must be present before the court
- The contents of the documents must be proved
- The production of large amount of evidence is not required
- The main object of best evidence rule is to prevent from fraud and provide aid to the judicial or the administrative processes.
- There is no need of secondary rule

Q.2 What do you understand by the maxim – *falsa demonstratio non-necet*?

Ans. According to Section 95 of the Act, where the language of any document is simple or plain but its application has no sense, or the evidence was tried or intended to prove those meaningless facts. This is based on maxim – *falsa demonstratio non-necet*.

Section 95 is an example of latent ambiguity. According to Stephen’s Digest, where the evidence is shown in a plain language but meaningless facts would not be admissible. In

North Eastern Railway v Hastings (1900) AC 260, court observed and held that written document in a plain language must be constructed in a plain and unambiguous language of the instrument itself.

Q.3 What is meant by evidence by non-parties?

Ans. Evidence by non-parties means, the evidence which is given by the third person out of the parties or who is not involved in any party.

Section 99 of the Act, says that a third party give evidence relating to the case if he/she affected by it.

Illustrations-

A and B make a contract in writing in which it is finalised that B shall sell A certain amount of chemicals, and the payment of that will be on delivery. Also, made an oral agreement that two month's credit shall be given to A. this could not be shown between A and B but might be affected C's interest.

Q.4 What do you understand by term 'ambiguous documents'?

Ans. Ambiguous document does not clear the facts of a document and creates a doubt in its application. To clarify the language or to remove the doubts, section 93-98 lays down the rules and prevent it from such outside evidence (extrinsic evidence).

There are two types of ambiguities:-

- i) Patent ambiguity- defect which is apparent on the face of the document. In this oral evidence is not allowed to remove the defect of the document.
- ii) Latent ambiguity- these are not apparent on the face of document or record. This evidence can be given to remove such defects.

Q.5 What happens when application of language apply to one only of several persons?

Ans. When the language of a document is clear enough and is apply to only one thing or person, but in its application it is not intended or mentioned clearly to whom person or thing it has applied so, evidence can be demanded to clarify such doubts.

Illustrations-

- i) A agrees to sell to B, for Rs. 20,000 'my brownish dog', A has two brownish color dogs. Evidence may be given on the facts which one of them was meant to be sold.
- ii) A agrees to sell to B his Punjab house for Rs. 45,000 and A has many houses in Punjab, has not mentioned which house.

Q.6 When evidence is found to be defected? Explain in relation to ambiguous documents.

Ans. Section 93 says that, when a language used in documents, on its face, ambiguous or defective and has not been given facts meaningless or supply its defects.

Illustrations-

- i) A agrees, in writing, to sell to B his house of Rs. 1 lakhs or 2 lakhs. Evidence cannot be given to show on which amount it was to be given.

Section 93 states that rules for the construction of document with the help of oral evidence or extrinsic evidence.

Q.7 Evidence as to meaning of illegible characters and provisions of Indian Succession Act relating to Wills. Explain

Ans. According to section 98 of the Act, evidence may be given to show the meaning of illegible or not commonly intelligible characters of foreign, technical, local and of words used in peculiar sense. It deals with the miscellaneous ambiguity.

Indian succession act as to construction relating to will under section 100 of the Indian evidence act, nothing in this chapter contained to affect the provisions of Indian Succession Act because , it has been replaced by Indian Succession Act, 1925.

CHAPTER VII

FAQ ON

“BURDEN OF PROOF”

Q.1 On whom does the burden proof lies?

Ans. When a person is bound to prove the present facts, burden of proof lies upon him. For example- A says that B has committed murder and A wants court give punishment to B. A must have to prove that B committed an offence.

Section 101 of the Act, lays down that a party who desires to give a judgement in his favour or to give punishment of any offender must have to prove or presents the related evidence against him in front of the magistrate. The issue must be proved by the affirmative facts not the negative or opposed party.

Q.2 What is Plea of Alibi?

Ans. Plea of alibi means, accused was not present at the moment of incident; it means he was elsewhere at the scene of the offence. Accused in court suggest that he was women where else at time of offence; it is known as ‘plea of alibi’.

Elements of plea of alibi:-

- Accused must be absence at the time of offence
- A plea of alibi must be taken by an accused
- There must physical impossibility
- There has to prove the plea of alibi by evidence
- Accused has burden of proof
- It should be consideration of whole crime or offence.

Q.3 What do you understand by term onus proof’ and onus probandi’?

Ans. Onus of proof is continuous process in the evaluation of evidence. The term onus probandi means, a person whose facts has to be proved, and adduce some evidence which he desires to court shall find out. When entire evidence come before the court by any source, the burden of proof becomes useless or immaterial.

A burden cannot be relieved from his burden of proving, even if a fact is impossible to prove, the burden of proof still binds to that person.

Q.4 Why a person is bound to prove the facts relating to the dead person?

Ans. Section 104 of the Indian Evidence Act, lays down the rules regarding the burden of proving the fact to be proved to make evidence admissible.

For examples- A desires to prove the dying declaration of B. A has to prove B's death.

Q.5 Why burden of proof is exceptional in criminal cases?

Ans. According to section 105, 'burden of proof lies upon the alleged person, a circumstance in which an accused has committed crime decides by the Indian penal code (IPC) or any other special provisions laid down under the code.

Illustrations- a) A, accused of murder, alleges that, by unsoundness of mind he did not know the nature of the act. The burden of proof lies on A.

b) A, accused of murder, alleges that due to sudden incident, he has taken that step. A, has 'burden of proof'.

The fundamental principle that, 'burden of proof' lies upon the prosecution and he has to prove that the alleged person is innocent and prove the guilt beyond any reasonable doubts.

Q.6 Section 113 B 'Presumption as to Dowry Death'? Explain with case laws.

Ans. 'Dowry-death' where a woman's death is subjected by harassment in connection with demand of dowry by his husband's family.

Section 113B of Evidence Act, the court assumes that the person is suffered from the demand of dowry and the burden is on the accused. Presumption that, woman was subjected to cruelty or harassment for the dowry and the prosecution has to prove with the evidence.

In *Amarjeet Singh v State of Punjab*, 1989 – a woman last time seen alive in the company of an accused, she being at the moment in his special care and custody. The question of death was unnatural and homicide, that there was a strong motive of a woman's death. Court held that by virtue of section 106 of Indian Evidence Act, the burden of proof of the evidences was upon the accused as those circumstances must be specially known to him only.

Q.7 Define the term ‘Survivorship’.

Ans. Section 107-108 deals with the term ‘survivorship’, it is also known as ‘burden of proving death’.

Section 107, says that, if a person is shown within last thirty years it means, he is alive and if anybody says that he’s dead then he must have to prove his statement. And, in section 108, if person is not being heard for 7 years, it is presumed that he has died , and if anybody alleges that he is alive , then he must prove that fact., it is rebuttable presumption of death.

Q.8 Explain the conditions in abatement of suicide by a married woman?

Ans. Presumptions as to abatement of suicide by married woman, section 113A deals with it or the question whether the death of woman by her husband or of his relatives.

Conditions-

- i) The suicide must be committed within a period of 7 years from the date of her marriage
- ii) Woman’s husband and his relatives has subjected cruelty’or harassment’.

The presumptions can only be done by the court after covering all the evidences and documents. Once things are proved, abatement of suicide prevails; if not then there is no abatement of suicide.

In case state of *West Bengal v Orilal Jaiswal* (AIR 1994 SC 1418), it was held that , the requirement to prove the doubt of ‘Dowry Death’ cases do not stand altered even after the introduction of section 498 and section 113A of the Indian Evidence Act.

Q.9 Define the term ‘presumption and ‘proof’?’

Ans. ‘presumptions are the ‘means’ and proof’ is the end of judicial inquiry. ‘Proof is the conclusion of the findings of evidence and court takes a decision a valid inquiry as proof documents. Whereas, ‘presumption’, it is not a evidence itself but only makes a prima facie case. It indicates a person on whom burden of proof lies. Court presumes that the fact which is in existence in the favour to whom burden of proof lies.

Q.10 Describe the term ‘presumption in Rape cases’?

Ans. In section 114-A court presumes, whether there is a sexual intercourse between man and woman and where woman states that it was against her consent, the court shall presume that it was without a woman’s consent. Burden of proving shifted on the accused and if he fails in proving that there was consent, he becomes guilty.

The presumptions arise under section 114-A, where woman has no consent, when the accused who commits rape is a police officer, public servant ,gang rape, etc.

Sharrighan v State of M.P., 1993, it was a case of alleged ‘gang rape’ of a girl, the F.I.R. filed after the 7 days of the occurrence and girl accepted that she wanted to marry one of the accused, and the chemical examiner’s report ran counter to any sexual intercourse ,it was held that the presumption under section 114-A could not be invoked.



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