

Mumbai University
3 Years LLB- Semester VI (April 2024),
Law of Evidence
Short Questions & Answers.

Q1) Define Affidavit?

Ans) An Affidavit is a voluntary, sworn statement made under oath, used as verification for various purposes. The person making the oath signs the affidavit form in front of a witness, most commonly a notary public, who verifies the identity of the person signing. The statement is witnessed and signed by a notary public or other law official authorized to do so. Once signed, the document is legally binding and the person signing is subject to being charged with perjury if the affidavit contains false information. It's a written statement that someone makes after promising officially to tell the truth. An affidavit can be used as proof in a law court. The definition of an affidavit is not explicitly provided under Section 3 of the Evidence Act. It is important to note that affidavits are exempt from the application of the Evidence Act as they do not qualify as evidence. The matters related to affidavits are governed by the Code of Civil Procedure (Order 19, Rules 1, 2, and 3) and the Code of Criminal Procedure (Sections 295 and 297).

Q2) Explain Issue of Fact & Issue in Law?

Ans) As per Section 3 of the Indian Evidence Act, a fact includes anything that is capable of being perceived by the senses or any mental condition of which any person is conscious. Facts are the basis of any legal case and are the raw material from which the arguments, evidence, and judgments are derived.

Facts in Issue: Facts in issue, also known as material facts or operative facts, are those facts that directly relate to the legal question or dispute that needs to be resolved by the court. They are the facts that are in controversy or dispute between the parties and affect the outcome of the case. For example, in a case of murder, the fact that A killed B is a fact in issue.

Issue in Law: An issue in law arises when there is a dispute on a matter of law. It involves the interpretation of laws, statutes, or any legal principles. While the Indian Evidence Act does not explicitly define 'issue in law', it is generally understood in legal parlance.

Section 5 of the Indian Evidence Act, 1872, states that evidence may be given of facts in issue and relevant facts, and of no others. This section lays down the principle of relevancy, which means that only those facts that are logically and legally relevant with the facts in issue are admissible as evidence.

Q3) Who is accomplice?

Ans) An accomplice under the Indian Evidence Act of 1872 is a person who knowingly or voluntarily cooperates with, aids, and assists another in the commission of a crime. The term "accomplice" is not explicitly defined in the Indian Evidence Act. An accomplice can be considered a "partner in crime" or "particeps criminis". Section 133 of the Indian Evidence Act states: "An accomplice shall be a competent witness against an accused person". A conviction is not illegal merely because it relies on the uncorroborated testimony of an accomplice. In simpler terms, an accomplice can testify against the accused, and their testimony alone can lead to a conviction, provided it is corroborated. While an accomplice's evidence is usually considered untrustworthy due to their involvement in the case, it can be admitted with the help of corroboration (Section 114(b) of the Evidence Act). Corroboration means supporting the accomplice's testimony with other material evidence.

Q4) Define Evidence?

Ans) As per the Indian Evidence Act of 1872, the term "evidence" encompasses the following:

- **Oral Evidence:** All statements made before the court by witnesses regarding matters of fact under investigation. These statements are presented before the court either because the court permits them or because it requires them to be presented.
- **Relevant Documents:** All relevant documents allowed by the court to be examined. This includes not only physical documents but also electronic records.

In summary, evidence refers to both oral statements made by witnesses and relevant documents presented in court during legal proceedings. It plays a crucial role in establishing facts and determining the truth in legal cases.

Q5) What are different kinds of evidence?

Ans) Under the Indian Evidence Act of 1872, various types of evidence play crucial roles in legal proceedings.

Oral Evidence: Oral evidence refers to statements made verbally by witnesses during court proceedings. It includes testimonies, depositions, and any spoken words that provide information about the matter under investigation.

Documentary Evidence: Documentary evidence consists of written or recorded materials presented before the court. Documents can include contracts, letters, records, certificates, and other written forms of communication.

Direct or Primary Evidence: Direct evidence directly proves a fact without any inference or presumption. For example, an eyewitness account of an event is considered direct evidence.

Indirect Evidence: Indirect evidence does not directly prove a fact but supports it through inference. Circumstantial evidence falls into this category, where facts are connected indirectly.

Real Evidence: Real evidence refers to tangible physical objects presented in court. Examples include weapons, stolen property, or any material object relevant to the case.

Hearsay Evidence: Hearsay evidence is information received from someone who heard it from another source. Generally, hearsay evidence is considered weak, but there are exceptions.

Judicial Evidence: Judicial evidence encompasses all evidence presented during legal proceedings. It includes both oral and documentary evidence, as well as any other relevant materials.

Q6) Who is a witness?

Ans) A witness under the Indian Evidence Act of 1872 is a person who has personally seen an event happen. This event could be a crime, an accident, or any other significant occurrence. Section 118, 121, and 133 of the Act address the capacity of a witness. A witness must have the capacity to understand the questions posed to them and provide rational answers. Any person who has witnessed the event is competent to testify, unless (i) the court considers that they are unable to understand the questions or give rational answers. Rational answers are not expected from those of tender age, extreme old age, or individuals with mental disabilities. Generally, a lunatic lacks the capacity to testify unless their lunacy does not prevent them from understanding and answering questions. Even a small child (around 6 or 7 years old) can testify if the court is satisfied that they are capable of giving a rational testimony. Courts consider the child's ability to perceive and narrate facts. The testimony of a child cannot be discarded as untrue if there is no reason for them to falsely implicate someone.

The credibility of a witness depends on their ability to provide rational testimony and their worthiness of belief. Courts evaluate the competence and reliability of witnesses based on their understanding and truthfulness.

Q7) What are private documents?

Ans) Private documents, as defined by Section 75 of the Indian Evidence Act, refer to all documents that are not public. These documents are created for personal interests and do not concern the public at large. Examples of private documents include mortgage deeds, contracts, and other documents prepared between individuals for their own use. Unlike public documents, which have broader significance, private documents are specific to individual rights and interests.

Q8) Define Court?

Ans) As per the Indian Evidence Act of 1872, the term "court" is defined in Section 3. It does not merely refer to the physical premises where justice is administered; rather, it encompasses a broader scope. The term "court" includes all judges, magistrates, and other persons legally authorized to take evidence. It goes beyond the physical boundaries and also includes those who play a role in judicial proceedings, such as presiding officers, adjudicators, and authorized individuals etc .

Q9) Distinguish between Direct Evidence and Circumstantial Evidence?

Direct Evidence	Circumstantial Evidence
Definition Direct evidence is evidence that explicitly proves a fact without requiring any inference or presumption.	Definition Circumstantial evidence is evidence that does not directly prove a fact but indirectly suggests guilt by linking a chain of related events.
Nature It is based on personal knowledge or direct observation by a witness.	Nature It is based on circumstances, incidents, or related facts.
Examples: Eyewitness accounts: A witness testifying about what they personally saw or heard. Confessions: A statement by the accused admitting guilt. Physical evidence: A murder weapon found at the crime scene.	Examples Scene appearance: The condition of a crime scene suggesting foul play. Testimony linking events: Witness statements connecting the accused to the crime. Fingerprints: Indications of the accused's presence.
Reliability While direct evidence is powerful, its reliability can vary	Reliability Circumstantial evidence can be comparatively high in reliability.
It is relatively easy to suppress or manipulate	It is difficult to suppress because it relies on multiple interconnected facts.
No inference or conclusion is required; it directly proves the fact.	The jury must draw inferences based on the facts obtained to reach a conclusion beyond a reasonable doubt.

Q10) What is res gestae?

Ans) Res Gestae, literally means 'things done' or liberally speaking, the facts of the transaction, explanatory of an act or showing a motive for acting. As per section 6 of Indian Evidence Act, Res gestae may be defined as "matter incidental to the

main fact and explanatory of it, including acts and words which are so closely connected with each other so as to set up a part of the transaction.

Q11) What is plea of alibi?

Ans) A plea of alibi is a defense used in criminal proceedings by the accused. The term "alibi" is derived from Latin, meaning "elsewhere" or "somewhere else". When the accused makes a plea of alibi, they are trying to convince the court that they were at some other place at the time when the crime happened.

In evidence law, an alibi is a defense or an excuse used usually to avoid the blame or punishment given to the accused. The most essential part of proving the guilt of the accused is to prove that the accused was the person who committed the crime, and the prosecution shall have to prove that the accused was present at the place where the crime took place and has thus committed the crime. If the accused could defend that he was 'elsewhere' from the place where the crime took place, he is said to have the defense of a plea of alibi. Plea of alibi is admissible evidence under section 11 of Indian Evidence Act.

Q12) Define conclusive proof?

Ans) Conclusive proof refers to evidence that is so strong, it puts an end to debate or questioning. It is a fact, argument, or piece of evidence which shows that something is definitely true or definitely exists. In other words, conclusive proof shows that something is certainly true. Conclusive proof refers to a fact, argument, or piece of evidence which shows that something is definitely true or definitely exists. It is a type of evidence that is so strong it puts an end to debate or questioning. In other words, conclusive proof leaves no room for doubt, establishing the truth of a fact in a decisive manner.

In the context of law, conclusive proof is often associated with presumptions. These are inferences drawn by the court about the existence of certain facts. Some presumptions are conclusive, meaning they cannot be challenged after being established with probative evidence. This is in contrast to presumptions that are rebuttable, which can be challenged with contrary evidence.

Example: Sec. 112 of the Indian Evidence Act, 1872 prescribes conclusive proof of legitimacy to a child born within the wedlock or within 280 days after its dissolution. The only exception prescribed under the section being non access of the parties.

Q13) Define Admission?

Ans) Section 17 defines admission as a statement that relates to the fact in issue or to a relevant fact, and which is made by one of the persons, and under the circumstances, specified in the Act.

Q14) Short note on Confession?

Ans) In the Indian Evidence Act, a confession is not explicitly defined, but it is generally understood as a statement made by an accused person, either orally or in writing, admitting the commission of a crime. The Act outlines the conditions under which confessions are relevant and admissible in court. It is an acknowledgment by a person charged with a crime that he is guilty of that crime or of substantially all the facts that constitute the crime. According to Sections 24 to 30 of the Indian Evidence Act, a confession is relevant if it is made voluntarily and without any inducement, threat, or promise from a person in authority.

- **Judicial vs. Extra-Judicial Confessions:** A judicial confession is made before a magistrate or in court during legal proceedings, while an extra-judicial confession is made to any other person outside of court settings.
- **Retracted Confession:** A confession that the accused later withdraws or denies. It is still admissible in court but requires corroboration.
- For example, if an accused person states to the police, "I committed the burglary," this statement can be considered a confession if it is made voluntarily and without coercion. However, confessions made to police officers are generally not admissible unless they lead to the discovery of new facts (Section 27).
- The evidentiary value of a confession depends on its voluntary nature and the circumstances under which it was made. The court carefully scrutinizes confessions to ensure they are reliable and have been made freely and with full knowledge of the implications.

Q15) Distinguish between Admission and Confession

Admission	Confession
Section 17 defines admission as a statement that relates to the fact in issue or to a relevant fact, and which is made by one of the persons, and under the circumstances, specified in the Act	In the Indian Evidence Act, a confession is not explicitly defined, but it is generally understood as a statement made by an accused person, either orally or in writing, admitting the commission of a crime.
It is a statement that relates to a fact in issue or to a relevant fact	It is a direct acknowledgment of guilt by the accused in relation to the charge.
Admissions can be used against the person who makes them but are not conclusive proof of the facts admitted	Confessions, if voluntary and true, can be used as conclusive evidence of the facts confessed.
An admission does not necessarily mean an acknowledgment of guilt; it could be related to any relevant fact in the case	Only the accused or the person charged with the crime can make a confession
not all admissions are confessions	all confessions are admissions

Q16) What is dying declaration?

Ans) A dying declaration, derived from the Latin term "leterm mortem" which means "words said before death", is a statement made by a person before his/her death. It contains the circumstances or the reasons for the death. This statement can be in any form, i.e., oral or written. The admissibility of a dying declaration is explained under Section 32 (1) of the Indian Evidence Act, 1872. It states that when a person makes a declaration or statements when he is on the deathbed, it is admissible and treated as evidence in the Court of law. It is also presumed to be true as a person would not lie while dying.

Q17) When is opinion of expert relevant?

Ans) The opinion of an expert is considered relevant under the Indian Evidence Act, 1872, when the court needs assistance in understanding complex matters that require specialized knowledge. This is outlined in Section 45 of the Act. An expert, as defined by the Act, is a person who has special knowledge, skill, or experience in any of the following fields:

- a) Foreign law
- b) Science
- c) Art
- d) Handwriting
- e) Finger impressions

Examples of experts can include medical officers, chemical analysts, explosive experts, ballistic experts, fingerprint experts, etc.

The court requires the expert's opinion to form a judgment on these specific subjects. For instance, if the court needs to determine whether a particular piece of handwriting belongs to a certain individual, a handwriting expert may be called upon to provide their opinion.

However, it's important to note that the expert's opinion is considered a relevant fact for the case, but it's of an advisory nature. Section 46 of the Indian Evidence Act states that facts, not otherwise relevant, are relevant if they support or are in consistent with the opinions of the expert, when such opinions are relevant. This means that the facts which are not relevant will be relevant if the opinion of the expert is supported by them.

Q18) Write short note on "Character"

Ans) Under the Indian Evidence Act, the term "character" includes both reputation and disposition.

Section 52 states that in civil cases, evidence of a person's character is not relevant. Section 53 indicates that in criminal cases, evidence of previous good character is relevant.

Section 53A provides that evidence of character or previous sexual experience is not relevant in certain cases (Sec 354 A to D, 376 A to E).

Section 54: Specifies that previous bad character is not relevant, except in reply. In other words, the prosecution cannot present evidence of the accused's bad character as a part of the main case. However, when the character is itself a fact in issue then evidence of bad character can be submitted.

Section 55 of the Indian Evidence Act states that in cases of civil nature, the character of the person who is ought to receive the amount of damages is relevant. Character evidence is admissible under specific conditions and is used to establish a person's reputation or disposition within the community. It's important to note that while character evidence can be presented, it is not always determinative of the outcome of a case and must be weighed alongside other evidence.

Q19) Best Evidence rule?

Ans) The Best Evidence Rule, also known as the "original document rule", is a legal principle that holds an original of a document as superior evidence. The rule requires an original document, photograph, or other piece of evidence to be introduced to the court to prove the contents of that same item. This rule specifies that secondary evidence, such as a copy or facsimile, will not be admissible if an original document exists and can be obtained. The purpose of the Best Evidence Rule is to help ensure the court receives unaltered evidence that is legible, or clearly perceivable in the case of video and audio recordings. In India, the Best Evidence Rule is embodied in Sections 91 to 100 of the Indian Evidence Act, 1872. These sections aim towards deciding the genuineness of the documents presented in the court. It's important to note that the Best Evidence Rule does not mean that copies of documents or other evidence can never be used in court - only that, if the actual contents of that evidence are in question, the best evidence to prove it is the original.

Q20) What is Hearsay Evidence?

Ans) If a witness in court testifies that they heard another person say something, and this testimony is used to prove the truth of what was said, it is considered hearsay.

The general rule under the Indian Evidence Act is that any evidence that is hearsay is not admissible. This is because hearsay evidence is considered to be unreliable as it cannot be verified by direct cross-examination of the person who has direct knowledge.

However, there are certain exceptions where hearsay evidence may be admitted. These exceptions are based on the principle that hearsay evidence may be considered reliable in certain circumstances. Some notable exceptions include: (i) Dying Declarations (Section 32): A statement made by a person who is about to die, under the belief of impending death, is admissible as evidence; (ii) Statement of a Person

Who is Dead (Section 32): Statements made by a person who is dead can be admitted if they relate to the cause of death or any of the circumstances of the transaction that resulted in the person's death; (iii) **Statement Against Interest (Section 32):** Statements made by a person against their own interest are admissible.

Write a short note on Public Document?

Ans) As per the Indian Evidence Act, a public document is defined in Section 74. It includes documents forming the acts or records of the acts of sovereign authority, official bodies and tribunals, and public officers, legislative, judicial, and executive, of any part of India or of the Commonwealth, or of a foreign country.

Examples of public documents are:

- Records of government agencies
- Judgments, orders of courts, and all other judicial proceedings
- Public records kept in any state of private documents, such as a register of births, deaths, and marriages

Public documents are presumed to be genuine and are admissible as evidence without further proof, as they are considered to have been properly kept and maintained.

Q21) Who is Hostile Witness?

Ans) A hostile witness under the Indian Evidence Act of 1872 is a witness who makes a statement against the interests of the party who called them. When a party's own witness denies giving a statement in their favor before the court, it is considered that the witness has become hostile. A Hostile Witness, also known as an adverse witness, is someone who testifies against the party who has called them to testify. There can be various reasons for a witness becoming hostile, such as threats from the other party or fear for their safety if they testify against the accused. Section 154 of the Indian Evidence Act addresses the concept of a hostile witness. It allows the court to permit a party to cross-examine their own witness who has turned hostile. While the general rule is that a party can cross-examine opposite-party witnesses, this section provides an exception. If the court deems it necessary in the interest of justice and fair hearing, it may allow a party to cross-examine their own witness. This term is used when a witness refuses to tell the truth in court after having previously declared they would do so, or if they show bias against the case of the party who called them. If a witness changes their account under oath significantly from what was provided in their pre-trial statement, they can be declared as hostile. The judge has the discretion to declare a witness as hostile, often at the request of the attorney posing the questions. If a witness is declared hostile, the attorney who called that witness may be given permission to pose questions as though they were cross-examining the witness.

In the context of Indian law, Section 154 of the Indian Evidence Act allows a party to question their own witness if such witness is found to be hostile or unwilling to

answer the questions put to them. However, a witness making a statement different than that made by him before the committing magistrate does not necessarily make him a hostile witness.

Q22) Explain the evidentiary value of CCTV footage?

Ans) As per Indian Evidence Act, electronic documents are admissible as material evidence. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65B of the Evidence Act. CCTV footage is a strong piece of direct evidence which would have indicated the presence of accused at the scene of the crime, or even record the crime itself

Q23) Define Proved, Disproved and Not Proved?

Ans) Section 3 of Indian Evidence Act has defined the term 'Proved', 'Disproved' and 'Not Proved' as follows:

Proved : A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

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

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

Q24) What is presumption of Fact?

Ans) A presumption of fact is an inference or conclusion drawn about the existence of a fact based on the knowledge or experience of the relationship between a known fact and the fact inferred from it. It is a process of ascertaining facts on the basis of possibility or it is the consequence of some acts in general which strengthen the possibility. When one fact or set of facts in a case or circumstance is taken as prima facie evidence, and if that evidence supports the other facts relating to that fact, the facts can be taken as proven until contradicted. Presumptions of fact are always rebuttable and can be challenged after establishing probative evidence. Section 114 of the Indian Evidence Act deals with the concept that 'the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Q25) What is secure digital signature?

Ans) A secure digital signature is a type of digital signature that provides a higher level of security. It is created in a way that is uniquely under the control of the

person using it and is linked to the data in such a manner that if the data were altered, the signature would be invalidated. This ensures the authenticity and integrity of the digitally signed data.

Under the Indian Evidence Act, secure digital signatures have a specific legal standing. Here are some key points:

- **Section 67A:** It considers the attachment of a digital signature to an e-contract as enough proof for consent, though such needs to be proved if the digital signature is alleged to be affixed without consent.
- **Section 85B:** In any proceeding involving secure electronic/digital signatures, the court is required to presume that the secure electronic/digital signature is affixed by the subscriber with the intention of signing or approving the electronic record, unless proved otherwise.
- **Section 65B:** It recognizes electronic records as documentary evidence and makes the e-signature admissible in Courts.

These sections collectively ensure that digital signatures are treated with the same level of seriousness and legal validity as traditional signatures in the context of electronic agreements and records.

Long Question & Answers

Q1) Discuss the object of Examination-in-Chief, Cross-examination and Re-examination of a witness.

Ans) In the context of the Indian Evidence Act, the examination of a witness comprises three stages: Examination-in-Chief, Cross-examination, and Re-examination. Each serves a distinct purpose in the judicial process:

- **Examination-in-Chief:** This is the initial phase where the witness gives their testimony in support of the case of the party who has called them. The objective is to lay out the facts to the court as the witness perceives them. It's governed by Section 137 of the Indian Evidence Act. After the witness has been sworn the oath as required under Section 5 of Indian Oath Act, the party who calls, the witness will examine him first. It is known as examination in chief. The object of examination in chief is to obtain testimony in support of version favourable to party calling him. In examination in chief the witness should be asked about relevant facts showing any special means of knowledge, opportunities of observations etc. A witness can give evidence of fact only and no evidence of law. During the examination in chief, as provided in Section 142 of the Act, leading questions must not, if objected by adverse party, be asked except with the permission of the Court.
- **Cross-examination:** Conducted by the opposing party, the aim here is to test the accuracy, reliability, and truth of the evidence presented during the Examination-in-Chief. It's an opportunity to challenge the witness's credibility and the veracity of their statements. This is detailed in Section 138 of the Act. Cross examination of a witness is the right of an opposing party. Testimony of a witness is not complete unless it is subjected to test of cross examination by opposing party. After the examination in chief of a witness, unless the court allows the party who has called the witness to cross examine such witness under Section 154 of the Act, the adverse party will cross examine the witness. Scope of cross examination is wider than examination-in-chief because examination-in-chief is confined only to relevant facts but cross examination need not to be confined to the facts to which the witness testified on his examination-in-chief. Since the purpose of cross examination to elicit the truth or to test the veracity of the witness, so during cross examination, adverse party can ask any question which will (i) impeach the credibility of the witness (ii) touch the matters which were left in examination-in-chief (iii) give favourable answers to party cross examining the witness (iv) give contradiction of what has been stated by other witness.
- **Re-examination:** This stage allows the party who called the witness to clarify any issues or answer any new matters that arose during Cross-examination. The objective is to explain or rebut any discrepancies or inconsistencies that may

have emerged. This process is also covered under Section 138. The examination of a witness subsequent to cross examination, by the party who called him, shall be called re-examination. The party who called the witness if he like and feel necessary, may request the court to grant permission to re-examination of witness But the re-examination shall be directed to the Explanation of the matter referred to in cross examination. The proper purpose of re-examination is by asking questions as may be proper to draw forth an Explanation or meaning of expression used by witness in cross examination, if they are doubtful.

These stages are designed to ensure that the evidence presented is scrutinized thoroughly, allowing for a fair trial and aiding the court in discovering the truth. The provisions for these are found in Sections 135 to 165 of the Indian Evidence Act, which detail the rules and procedures for the examination of witnesses in legal proceedings.

Q2) What is burden of proof? Explain the law relating to burden of proof?

Ans) The burden of proof refers to the responsibility of substantiating statements with evidence. The term "burden of proof" is not explicitly defined in the Evidence Act, but it encompasses the principles of Onus Probandi (the duty to prove) and Factum Probandi (the fact to be proved). It refers to the legal requirement or responsibility of parties to establish facts that assist the court in reaching a decision in their favor. As a general principle, the presumption of innocence lies with the accused unless otherwise proved. For example, in criminal cases, the prosecutor bears the burden of proving the defendant's guilt beyond reasonable doubt. In civil cases, plaintiffs are responsible for presenting evidence to support their claims. Provision regarding burden of proof are provided in Chapter VII of Indian Evidence Act. Section 101 of Act provide:

"Whoever desires any court to give judgement as to any legal right or liability dependent upon the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person." So burden of proof means in the sense of proving the case and for this purpose, duty to prove all facts necessary for taking the judgement of court.

Section 101 has to be read along with Section 102 of Evidence Act which provide that *"Burden of proof in any suit or proceeding lies on that person who will fail if no evidence at all were given on either side."*

So Section 101 of Act says about the burden of proof in the sense of proving a case and provide whoever wishes the court to give judgement in his favour for any legal right or liability dependent on existence of some facts, law lies onus on him to prove that those facts exist Burden of proof in the sense of proving case as

contemplated in Section 101 is constant one and never shifts. Section 102 of Act does not provide a different Rule, it simply looks from different angle on same Rule and says about burden of adducing evidence. Section 102 says burden of adducing evidence rests upon party who would fail if no evidence at all or no more evidence were adduced either party. So Section 101 of Act provide regarding Burden of proof in the sense of proving the case i.e. onus probandi and Section 102 provide burden of proof in the sense of adducing evidence.

A files a suit in the court against B on the ground that plot of land which is in B's possession belongs to him (A) and B is in unlawful possession. Now A wants the court to give judgement that B is in unlawful possession of suit land and A is lawful owner of this land. Now if A desire this decision, he is bound to prove all facts as asserted by him. It means he has to prove his case i.e. he is lawful owner of suit land and that B is in unlawful possession. This is burden of proof in sense of proving case as provided under section 101. If supposing A does not prove those facts or does not lead any evidence then naturally for want evidence, he will fail, so he is under burden to adduce evidence. If supposing A proves his case, then duty to lead evidence shifts to B to present any disproof evidence to the claim of A. If B will not lead any evidence then naturally B will fail. Thus, burden of adducing evidence keeps on shifting from one to another party. Burden of proof in the sense of proving case never shift It remains on plaintiff in civil proceeding and on prosecution in criminal proceeding. Then Section 103 of Evidence Act provides;

"The burden of proof as to any fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that proof of that fact shall lie on any particular person."

Section 103 substantially says similarly what Section 101 of Act provide. Only difference is that Section 103 is confined to proof of particular fact whereas Section 101 provide for proving who case or all facts as asserted.

Section 105 of Indian Evidence Act provides for a general rule in criminal proceeding that burden of proving the offence against the accused lies on prosecution and it has to prove all ingredients of offence alleged beyond reasonable doubt. Section 105 of Act lays down important qualification to Rule that every thing essential to establishment of charge against accused lies upon the prosecution and Section 105 provide that whenever any accused of an offence wishes to take advantage of any general exception of I.P.C. or other special exception or proviso of I.P.C. or any other law defining the offence, then burden of proving existence of circumstances bring the case in such exceptions lies on accused and court shall presume the absence of such circumstance. In *Vijayee Singh v. State of U.P.* AIR 1990 SC 1459, it was observed that if the prosecution has discharged its duty to prove the guilt of accused may raise the plea of exception either by pleading the same specially or by relying on probability. He may adduce evidence in support of his plea directly or may rely on prosecution case itself.

Q3) Write a short note on "may presume" and "shall presume"

Ans) In the context of the Indian Evidence Act, "may presume" and "shall presume" have distinct legal implications:

- **The meaning of "may presume" and "shall presume" is given in Section 4 of Indian Evidence Act**
- **May Presume: When the Act states that a court may presume a fact, it means the court has the discretion to consider the fact as proven unless it is disproved. The court can also ask for proof of the fact if it deems necessary. For example, if a person is in possession of stolen goods shortly after the theft, the court may presume that the person is either the thief or has received the goods knowing them to be stolen, unless the contrary is proved**
- **Shall Presume: In contrast, "shall presume" indicates that the court is obliged to regard the fact as proven unless it is disproved. There is no discretion involved; the court must accept the fact as established until evidence is presented to the contrary. An example of "shall presume" can be found in Section 113A of the Act, which pertains to the presumption as to abetment of suicide by a married woman. If a married woman commits suicide within a period of seven years from her marriage and there is evidence that her husband or his relatives subjected her to cruelty, the court shall presume that such suicide has been abetted by her husband or by such relatives.**

These presumptions are part of the judicial process of inferring facts and are essential for the administration of justice, allowing the court to deduce certain conclusions from established facts without requiring additional proof unless challenged.

Q4) Define the word "Evidence" and distinguish between oral and documentary evidence and direct and circumstantial evidence.

Ans) "Evidence" has been defined in Section 30 Indian Evidence Act as : "Evidence" means and includes -

- (1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;**
- (2) all documents produced for the inspection of the court such documents are called documentary evidence."**

The word "evidence" means instruments by which relevant facts are brought before court. Expression "Evidence" Signifies the state of being evident. According to prof. Green Leaf - "evidence in legal acceptance includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved."

Oral Evidence : Oral evidence means statement made by a witness before a court in relation to matter of fact under inquiry. So oral evidence is such deposition of

witness who have witnessed the facts or who became acquainted with the facts they are deposing and which has to be recorded by court.

Documentary Evidence : The 'documentary evidence' is a document produced for inspection of the court or the judge. A document is evidence only when it is produced for the inspection of court

Direct Evidence :- The direct or positive evidence is evidence about the real point of controversy. Oral evidence must be always direct. The evidence is direct if the court to set upon it has to rely upon only the witness whereas it is hearsay if it has to rely upon not only the witness but some other persons also.

Circumstantial Evidence : In simple words 'Circumstantial Evidence' mean evidence relating to series of circumstances which if taken together, assist the court to come to any determination, in the absence of any eyewitness evidence. Circumstantial evidence is not to be confused with hearsay or secondary evidence. The circumstantial evidence is always direct but prove any relevant circumstance.

Normally facts which could be seen are proved by an eye witness, but sometime in the absence of any eye witness to give the eye witness version, court rely on series of circumstances which assist the court to determine the fact in issue. When a witness has not seen the commission of crime by accused, then court can rely upon surrounding circumstances before or after the commission of crime which connect the accused with the crime. In *Joseph v. State of Kerala 2000 (2) RCR 738 (SC)* Supreme Court held in cases based on circumstantial evidence, sometime witness may lie but circumstance will not. It is necessary that all circumstances must cautiously be scrutinised to see that incriminating circumstances are such as to lead only to an hypothesis of guilt of accused and reasonably exclude every possibility of his innocence.

Q5) What is the meaning of Estoppel and relevant sections under Indian Evidence Act 1872?

Ans) Estoppel refers to a legal principle that prevents a person from alleging facts which are contrary to past claims or actions. Accordingly, estoppel precludes someone from arguing anything contrary to a claim made or act done previously by that person.

Theoretically, estoppel means protecting people from any unjust action due to the inconsistencies of any other person's acts or words

Doctrine of Estoppel is that provision which prohibits a person from giving false evidence by preventing them from making contradicting statements in a Court of Law.

This doctrine holds a person accountable for false representations made by him, either through his words or through his conduct. Relevant Sections of Indian Evidence Act, 1872 are Section 115 to 117.

Conditions for Application of Doctrine of Estoppel

- The representation must be made by one person to another person.
- The representation made must be as to facts and not as to the law.
- The representation must be made as to an existing fact.
- The representation must be made in a manner which makes the other person believe that it is true.
- The person to whom the representation is being made must act upon that belief.
- The person to whom the representation would be made should suffer a loss by such representation.

Classification/Types of doctrine of estoppel

- **Estoppel by a Matter of Record or Quasi-Record:** This type of estoppel arises from the judgments of the court.
- **Estoppel by Deed:** This type of estoppel arises from the terms of a contract or deed.
- **Estoppel by Pais or Estoppel by Conduct:** This type of estoppel arises from the conduct, admissions, or representations of a party.
- **Estoppel by Election:** This type of estoppel arises when a person, having two inconsistent rights, chooses to exercise one, thereby excluding the other.
- **Equitable Estoppel:** This type of estoppel prevents a person from taking advantage of his or her wrongdoing.
- **Estoppel by Negligence:** This type of estoppel arises when a person's negligence causes another person to suffer loss or damage.
- **Estoppel by Benami Transaction:** This type of estoppel arises in cases of benami transactions.
- **Proprietary Estoppel:** This type of estoppel arises when a person is prevented from denying the right of another person to property.
- **Estoppel by Convention:** This type of estoppel arises when parties to a contract agree to accept a certain state of affairs.
- **Estoppel by Acquiescence:** This type of estoppel arises when a person, by his silence or inaction, allows another person to believe in a certain state of affairs.
- **Contractual Estoppel:** This type of estoppel arises when parties to a contract agree that certain facts are true.

Exceptions to doctrine of estoppel

The doctrine of estoppel has certain exceptions where it does not apply:

- **Knowledge of Truth:** This doctrine does not apply to those matters where both parties have the knowledge of truthfulness.
- **Both Parties Plead Estoppel:** This doctrine does not apply when both parties plead estoppel.
- **Questions of Law:** This doctrine does not apply to questions of law.
- **Sovereign Act of the Government:** This doctrine does not apply to the sovereign act of the government.

- Against a Minor: This doctrine does not apply against a minor who fraudulently misrepresents his or her age.
- Against Statutes and Regulations: Estoppel cannot be applied against statutes and regulations. It should not come in conflict with the statutes and regulations.
- Ultra-Vires Orders and Decisions: It does not apply to ultra-vires orders and decisions.

Q6) What are the provisions of Indian Evidence act relating to Electronic Evidence?

Ans) The Indian Evidence Act includes specific provisions for electronic evidence, primarily under Sections 65A and 65B. These sections were introduced with the amendment to the Act in 2000 to address the admissibility and evidentiary value of electronic records in legal proceedings.

- **Section 65A**: Provides that the contents of electronic records may be admitted as evidence. This section acknowledges the relevance of electronic records as evidence.
- **Section 65B**: Outlines the procedure for presenting electronic records as evidence. It specifies that any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media produced by a computer (referred to as the computer output) shall be deemed to be also a document. Section 65B(4) mandates that a certificate is required to accompany the electronic record, attesting to the conditions mentioned in Section 65B(2) relating to the functioning of the computer during the period of production of the record.
- The certificate under Section 65B acts as a safeguard to ensure the authenticity of the electronic evidence. It must confirm the accuracy of the content and provide details regarding the functioning of the device or process that produced the electronic record. If these conditions are satisfied, the electronic evidence becomes admissible in court.
- The provisions of Section 65B also apply to digital signatures, which can be used to further strengthen the authenticity of electronic records.
- The Indian Information Technology Act, 2000, also plays a role in electronic evidence by providing legal recognition to digital signatures and electronic records.

For an electronic record to be admissible as evidence, it must satisfy the following conditions:

- **The information must be stored, recorded, or copied in optical or magnetic media:** This covers a wide range of electronic devices and storage formats. The manner and time of storage, recording, or copying must be such as to indicate its authenticity, this requires proper maintenance of records and a clear chain of

custody. The device used for storage, recording, or copying must be in proper working condition at the time the record is produced. This ensures the reliability of the data. The information must be produced on a computer output. This includes printed copies, screenshots, or other forms of electronic display. The information must be certified by a person occupying a responsible official position in relation to the operation of the device or the management of the relevant activities. This certificate acts as a guarantee of authenticity and integrity of the record.

These provisions ensure that electronic evidence is given the same weight as traditional physical evidence, provided it meets the criteria set forth in the Act, which includes proper authentication and certification. The Act recognizes the growing importance of digital records and data in legal matters and provides a framework for their admissibility in court proceedings.

Situational Problems

Q1) A' is tried for a crime.

a) The Fact that he said something indicating an intention to commit that particular crime is relevant. Give reason.

Ans) The fact that 'A' expressed an intention to commit a particular crime is relevant under the Indian Evidence Act because it can show the existence of a motive or intent, which is a crucial element in establishing the commission of a crime. According to Section 8 of the Act, the conduct of any party, or of any agent to any party, to any suit or proceeding, is relevant if such conduct influences or is influenced by any fact in issue or relevant fact.

Furthermore, Section 14 deals with facts showing the existence of any state of mind, including intention, knowledge, good faith, negligence, rashness, ill-will, or good-will towards any particular person, which are relevant when the existence of such a state of mind is in issue or relevant.

Therefore, if 'A' stated something that indicates an intention to commit the crime he is being tried for, it becomes a relevant fact as it could demonstrate his state of mind and potential motive for committing the crime. This is especially pertinent if the intention is directly connected to the facts of the case.

b) The fact that he said something indicating a general disposition to commit crimes of that class is relevant. Give reason.

Ans) The statement indicating a general disposition to commit crimes of a particular class is generally considered irrelevant under the Indian Evidence Act. This is because the Act focuses on the facts directly related to the case at hand, rather than the accused's character or disposition in general.

According to Section 14 of the Indian Evidence Act, facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will, or good-will towards any particular person, are relevant when the existence of such a state of mind is in issue or relevant. However, this section also includes an explanation that a fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

Therefore, while a statement indicating an intention to commit a particular crime is relevant because it pertains to the specific matter in question, a statement indicating a general disposition to commit crimes of a certain class is not directly relevant to the particular crime being tried and is thus considered irrelevant. The law seeks to prevent unfair prejudice against the accused based on their general character or past behaviour, focusing instead on the specific act or intention related to the crime in question.

Q2) Peter was arrested by police on suspicion of murder of Ajay. While he was taken for medical examination, Peter told the doctor and nurse carrying out the examination that "I killed Ajay". This statement was heard by the police constable, who was standing near the doctor at the time of medical examination.

i) Is the confession made by Peter to the doctor admissible in evidence ?

Ans) In the context of Indian law, a confession made to a doctor is not directly admissible in evidence if it is made in the presence of police or within their hearing. According to Section 25 of the Indian Evidence Act, a confession to a police officer cannot be proved against a person accused of any offense. However, if the confession is made in the absence of police and is recorded by the doctor, and if the doctor can substantiate it with evidence and testify in court, then there is a possibility that the confession may be used against the accused.

It's important to note that the admissibility of such a confession would ultimately depend on the court's discretion, which would consider whether the confession was made voluntarily, without any inducement, threat, or promise. The court would also consider the circumstances under which the confession was made and whether it was corroborated by other evidence.

ii) What shall be the effect of such confession on Peter ?

Ans) The effect of Peter's confession on his case in the context of Indian law can be significant. If the confession is deemed admissible, it could potentially be used as evidence against him. However, the admissibility of such a confession is subject to strict legal scrutiny.

Under Section 25 of the Indian Evidence Act, a confession made to a police officer is not admissible in evidence against an accused person. However, if the confession is made in the presence of a doctor without police influence and is recorded, it may be considered by the court if it is voluntary and corroborated by other evidence.

The court will carefully examine the circumstances under which the confession was made to ensure it was voluntary and not coerced. If the confession is admitted, it could have a substantial impact on the outcome of the case, potentially leading to a conviction if it is supported by other evidence. However, if the confession is found to be involuntary or influenced by the police, it may be disregarded and not affect the proceedings. The ultimate decision lies with the court after considering all aspects of the confession and the surrounding circumstances.

Q3) A on purpose, makes B believe that a particular plot of land belongs to him, and thereby, induces B to buy that plot of land. A was not the owner of the land at the time of Sale, but after one month, A became the owner of the said land. A, now intends to set aside this Sale with B.

i) Can the Sale between A and B be set aside ? Why?

Ans) In the above case, the sale between A and B involves a misrepresentation by A regarding the ownership of the land at the time of sale. Under Indian law, such a transaction can be challenged and potentially set aside on the grounds of fraud or misrepresentation only by the suffering party.

According to the Indian Contract Act, 1872, a contract is voidable at the option of the party whose consent was obtained by fraud or misrepresentation. Since A intentionally made B believe that he owned the land to induce B to purchase it, B has the right to void the contract upon discovering the truth.

However, the fact that A became the owner of the land after the sale complicates the matter. If B chooses to ratify the contract upon learning of A's subsequent acquisition of the land, the sale may stand. But if B decides to rescind the contract, A may have to return the sale consideration, and the sale could be set aside.

The Supreme Court of India has held in various judgments that if a sale transaction is vitiated by fraud, it can be set aside. Additionally, the Specific Relief Act, 1963, provides remedies for the rescission of contracts that involve misrepresentation or fraud.

Therefore, whether the sale can be set aside depends on B's response to the revelation of A's initial lack of ownership and the legal actions B decides to take. If B opts to rescind the contract, A's intention to set aside the sale may not be necessary as B's action would suffice to void the transaction. Conversely, if B ratifies the contract, A's attempt to set aside the sale may not succeed unless A can prove other grounds for rescission under the law.

ii) Explain the doctrine applicable in such kind of situations. State relevant provisions.

Ans) Here A was not the owner of the land at the time of sale but later became the owner, is addressed by the doctrine of "feeding the grant by estoppel," which is provided encapsulated in Section 43 of the Transfer of Property Act, 1882. This doctrine applies in Indian law and operates under the principle that if a person sells property pretending to be the owner, and subsequently acquires interest in such property, the buyer's title to the property is validated.

The relevant provision from Section 43 of the Transfer of Property Act is "Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists."

This means that if A, after selling the land to B under false pretences, later acquires the property, B can enforce the sale against A due to the doctrine of estoppel. A cannot deny the sale on the basis that he was not the owner at the time because his subsequent acquisition of the property validates the sale, and he is estopped from going back on his representation.

The doctrine ensures that a person cannot take advantage of his own wrong. It protects the buyer (B in this case) who was misled by the seller's false representation. Therefore, A's intention to set aside the sale with B would likely not succeed because of the doctrine of estoppel, as A's subsequent acquisition of the property feeds into the grant made to B.

Q4) Y, a suspect, is arrested for murder of P. While in police station, Y confessed to the Police Officer that he had committed murder of P.

i) Is this Confession valid ?

Ans) In the context of Indian law, a confession made to a police officer is not considered valid evidence in court. According to Section 25 of the Indian Evidence Act, 1872, a confession made to a police officer cannot be used as evidence against the person who made the confession. This provision is designed to prevent the possibility of coercion or undue influence by police on the accused.

Furthermore, Section 164 of the Criminal Procedure Code allows a confession made during police investigation to be recorded by a magistrate, which can then be admissible in court to the extent permitted by the Indian Evidence Act. This ensures that the confession is made voluntarily and without any coercion.

Therefore, if 'Y' confessed to the murder of 'P' while in police custody and without the presence of a magistrate, this confession would not be admissible in court as valid evidence under the Indian Evidence Act. However, if the confession was recorded by a magistrate under the proper legal procedure, it could be considered valid. It's important to note that the admissibility of any confession would ultimately be determined by the court based on the specific circumstances of the case.

ii) State the evidentiary value of this Confession.

Ans) The evidentiary value of a confession in Indian law, particularly when made to a police officer, is quite limited. As per Section 25 of the Indian Evidence Act, 1872, a confession to a police officer cannot be used as evidence against the accused in a court of law. This is to prevent the possibility of coercion and to ensure that any confession made is voluntary and true.

However, Section 80 of the same act gives judicial confessions, which are those made in the presence of a magistrate, a presumption of truthfulness and genuineness. Such confessions are admissible in court, provided they are recorded as prescribed by law. The court will consider a judicial confession along with other evidence to determine its probative value.

In summary, a confession made to a police officer has no evidentiary value in court, whereas a judicial confession has significant evidentiary value and can be used to convict the accused if it is corroborated by other evidence.

Q5) Raj was arrested by police for the murder of Shyam. The police officer who was to interrogate him was very strict and well-built. Fearing that he would be beaten, Raj said to the police officer "I murdered Shyam with a knife. I have kept the knife in my house. Take me there and I shall show it to you".

i) Is this confession by Raj valid? Why?

Ans) The confession made by Raj to the police officer under fear of being beaten is not considered valid under Indian law. According to Section 24 of the Indian Evidence Act, 1872, a confession that is caused by an inducement, threat, or promise from a person in authority, such as a police officer, is deemed to be irrelevant unless it can be shown that the inducement, threat, or promise has been fully removed.

In Raj's case, his statement was made out of fear of physical harm, which could be construed as a threat. Therefore, this confession would likely be considered involuntary and thus inadmissible in court. The law aims to prevent convictions based on coerced confessions, which may not be truthful.

ii) Is any part of the confession valid? Explain with proper reasons.

Ans) Though , the confession would likely be considered involuntary and thus inadmissible in court, the part of Raj's statement indicating that he can show the police where the knife is kept could fall under Section 27 of the Indian Evidence Act, which deals with the discovery of facts in consequence of information received from an accused person in custody. If such information leads to the discovery of evidence that is relevant to the crime, that portion of the statement may be admissible, even if the confession itself is not.

b) X is accused of murder. X alleges that he committed murder of Y under grave and sudden provocation from Y.

i) On whom the Burden of Proof shall lie in this scenario?

Ans) In Indian law, the general principle is that the burden of proof lies on the prosecution to prove the guilt of the accused beyond a reasonable doubt. However, when an accused claims to have acted under grave and sudden provocation, the burden shifts to the accused to establish the conditions that would bring the case within the scope of the relevant exception under the Indian Penal Code.

Specifically, under Section 105 of the Indian Evidence Act, 1872, when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances.

Therefore, in the scenario where 'X' alleges that he committed murder under grave and sudden provocation from 'Y', 'X' would have to provide evidence to substantiate this claim. If 'X' can successfully prove that the provocation was indeed grave and sudden, and that it caused him to lose self-control and commit the act, then the

legal classification of the act may be reduced from murder to culpable homicide not amounting to murder, as per Exception 1 to Section 300 of the Indian Penal Code.

ii) State the relevant provisions of law to this effect. What would be the impact if Ans) X fails to prove the element of grave and sudden provocation?

The relevant provisions of law regarding the defence of grave and sudden provocation in India are primarily found in the Indian Penal Code (IPC), 1860, and the Indian Evidence Act, 1872. Specifically:

- Section 300, Exception 1 of the IPC states that culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.
- Section 105 of the Indian Evidence Act, 1872 places the burden of proof on the accused to establish the existence of circumstances bringing the case within any of the General Exceptions in the IPC.

If 'X' fails to prove the element of grave and sudden provocation, the impact would be significant:

- a) The defense of grave and sudden provocation would not be available to 'X', and therefore, 'X' could not benefit from the reduced liability that this defense provides.
- b) 'X' would likely be convicted of murder under Section 302 of the IPC rather than a lesser offense like culpable homicide not amounting to murder, which carries a less severe penalty.
- c) The failure to establish this defense would mean that the court would not consider the killing to have occurred in the "heat of passion," which is a key factor in reducing the severity of the offense.

It's important to note that the success of this defense depends on the ability of 'X' to demonstrate that the provocation was indeed grave and sudden enough to cause a reasonable person to lose self-control. The absence of such proof would typically result in a conviction for murder if the other elements of the offense are satisfied.

Q6) A witness about whom, nothing is known, is asked at random whether he is a dacoit ?

i) Is this question allowed? Explain with reasons.

Ans) Under Indian law, specifically Section 149 of the Indian Evidence Act, 1872, asking a witness whether they are a dacoit without any reasonable grounds is not allowed. This section states that no such question as is referred to in section 148 (questions that are intended to insult or annoy, or which, though proper in form, are not relevant, nor permitted by the court) should be asked unless the person asking has reasonable grounds for thinking that the imputation which it conveys is well-founded.

In the given scenario, if nothing is known about the witness, there are no reasonable grounds for asking the witness at random whether they are a dacoit. Such a question

could be seen as insulting or annoying and could potentially damage the credibility of the witness without any basis. Therefore, the question would not be allowed.

The rationale behind this provision is to protect individuals from being subjected to defamatory questions that could harm their reputation, especially when there is no evidence to justify such an inquiry. It ensures that the cross-examination process is not used as a means to harass or intimidate witnesses.

ii) Explain relevant provisions under the Indian Evidence Act regarding asking such kinds of questions

Ans) Under the Indian Evidence Act, 1872, there are specific provisions that govern the questioning of witnesses, including the type of questions that can be asked. The relevant sections are:

- a) Section 146: This section allows for the cross-examination of a witness to test their veracity, discover their identity and position in life, or shake their credit by injuring their character. However, such questions must be relevant to the matters at hand and not solely for the purpose of harassment.
- b) Section 148: It gives the court the discretion to decide whether a witness should be compelled to answer questions that are not relevant to the case. The court also sets the limits and manner in which such questions can be asked and answered.
- c) Section 149: This section specifically states that no question should be asked if there are no reasonable grounds for suggesting that the imputation it conveys is well-founded. Asking a witness at random whether they are a dacoit, without any basis, would fall under this prohibition.
- d) Section 165: This section empowers the judge to ask any question, at any time, to any witness, about any fact relevant or irrelevant, in order to discover or obtain proper proof of relevant facts. However, the judge cannot ask questions that would be improper for any other person to ask under sections 148 or 149.

These provisions are designed to protect witnesses from being subjected to irrelevant, insulting, or harassing questions during their testimony, while also allowing the court to elicit the truth and obtain necessary proof for the case.

Q7) Sunita was set on fire over suspicion of her character and was tortured for not being able to conceive. In the hospital, Sunita succumbed to her injuries but before dying she made multiple dying declarations relating to her injuries before the doctor and nurse who were treating her and present there. Sunita in one statement implicated her husband and mother-in-law, while in the second statement she implicated her mother-in-law and brother-in-law and in her final statement before dying she did not implicate anybody and that she had set herself on fire.

i) Does the multiple dying declaration made by Sunita be considered as relevant?

Ans) The admissibility of a dying declaration is explained under Section 32 (1) of the Indian Evidence Act, 1872. It states that when a person makes a declaration

or statements when he is on the deathbed, it is admissible and treated as evidence in the Court of law. It is also presumed to be true as a person would not lie while dying. Thus, the multiple dying declarations made by Sunita can be considered relevant under Indian law. According to Section 32(1) of the Indian Evidence Act, 1872, statements made by a person who believes that death is imminent concerning the cause of their death or the circumstances of the transaction which resulted in their death are relevant facts.

The fact that Sunita made multiple statements that vary in whom they implicate does not automatically render them irrelevant. Each statement must be considered independently to assess its credibility and evidentiary value. The courts have held that dying declarations are a significant piece of evidence, as the person making them is not likely to lie when on their deathbed. However, the inconsistencies in Sunita's declarations would require the court to examine the circumstances under which each statement was made, including her mental and physical state at the time, to determine their reliability.

If the court finds that the statements were made voluntarily and without coercion, and if they are corroborated by other evidence, they may be given considerable weight. However, the final statement where Sunita did not implicate anyone and stated that she set herself on fire would be particularly scrutinized, as it contradicts her earlier declarations.

In conclusion, while all of Sunita's dying declarations are relevant, their inconsistencies will require careful judicial scrutiny to determine which, if any, accurately reflect the true circumstances of her death.

Q8) A child was kidnapped. The parent of the child received a handwritten postcard followed by an inland letter demanding Rs. 10 Lakhs and Rs. 50 Lakhs respectively as a ransom for the child. The author of the letters was traced but he denied that the letters were written by him. The handwriting expert testified in the court that he was not too sure that the letters were in the handwriting of the accused. In this situation:

i) Can the accused be convicted solely on the basis of this evidence of handwriting expert by the court?

Ans) In the given situation, the accused cannot be convicted solely on the basis of the handwriting expert's testimony, especially when the expert is not certain that the letters were written by the accused. The Supreme Court of India has established that the opinion of a handwriting expert must be corroborated by either direct or circumstantial evidence before it can be acted upon.

The science of handwriting identification is not perfect, and there is a risk of error in the expert's opinion. Therefore, courts approach the opinion of handwriting experts with caution. The testimony of the expert is considered a relevant piece of evidence under Section 45 of the Indian Evidence Act, but it is not conclusive proof.

For a conviction, there needs to be additional evidence that supports the expert's opinion and links the accused to the crime. This could include other forensic evidence, witness testimony, or circumstantial evidence that corroborates the expert's findings. Without such corroboration, a conviction based solely on the handwriting expert's testimony would not be legally sound.

ii) What are the modes of proving handwriting?

In Indian law, there are several modes of proving handwriting, which include:

- a) Direct Evidence: The person who wrote the document can testify that the handwriting is own handwriting.
 - b) Expert Opinion: An expert in handwriting analysis can examine the writing and give their opinion on whether it matches the handwriting of a particular individual.
 - c) Comparison by Court: The court itself can compare the disputed writing with a sample of writing admitted or proved to be that of the person in question.
 - d) Evidence of Acquaintance: A person who is familiar with the handwriting of the individual in question can testify that the writing is indeed that person's.
 - e) Admission: The person whose handwriting is in question can admit to the writing.
- These methods are outlined in the Indian Evidence Act, 1872, particularly in sections related to expert evidence (Section 45) and the comparison of disputed writings (Section 73). It's important to note that the court typically requires more than just expert testimony to convict someone, especially if the expert is not certain about the handwriting match. Corroborative evidence is often sought to support the expert's opinion.

Q9) A, accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of act.

i) On whom is the burden of proof?

Ans) The burden of proof in this case is on A to prove that by unsoundness of his mind he was unable to know the nature of his act.

ii) Under what provision ? If A fails to prove what the consequence is ?

In Indian law, when an accused person alleges unsoundness of mind as a defence for not knowing the nature of the act, the burden of proof lies on the accused. This is established under Section 105 of the Indian Evidence Act, 1872, which states that when a person is accused of an offense, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offense, is upon them.

Furthermore, Section 84 of the Indian Penal Code, 1860, provides legal immunity from criminal liability to individuals of unsound mind, stating that nothing is an offense which is done by a person who, at the time of doing it, is incapable of knowing the nature of the act, or that what they are doing is either wrong or contrary to law.

Therefore, 'A' must provide evidence to support the claim of unsoundness of mind at the time of the act to avail of the defense under Section 84 IPC. If 'A' fails to establish this, the defense may not be accepted, and 'A' could be held criminally responsible for the murder. If he fails to prove the existence of the same, the Court shall presume the absence of such circumstances and the accused will not be granted that defence of unsoundness of mind.

Q10) 'A' and 'B' are jointly tried for the murder of 'C'. It is proved that 'A' said - " 'B' and I murdered 'C'".

a) Whether the Court may consider the effect of this confession as against 'B' Explain with reason.

Ans) Section 30 of the Indian Evidence Act, 1872 states that the court may take into consideration the confession of one accused person against another jointly accused of the same crime. However, this does not mean that the confession is conclusive evidence against the co-accused.

The Supreme Court of India has held that a confession made by one accused can be used as a corroborative piece of evidence but cannot be the sole basis for conviction of the co-accused. There must be other substantive evidence that implicates the co-accused in the crime. The rationale behind this is to safeguard against the possibility of a false confession or one made under duress or coercion.

Therefore, while 'A's confession that both 'A' and 'B' murdered 'C' can be considered by the court, it cannot be the sole basis for convicting 'B'. The prosecution must present additional evidence that independently establishes 'B's involvement in the crime to secure a conviction against 'B'.

b) Whether the Court can consider the said statement against A? Explain with reason and provision.

Ans) Yes, the court can consider the statement made by 'A' against 'A' himself. Section 24 of the Indian Evidence Act, 1872, stipulates that a confession made by an accused person is admissible if it is made voluntarily and is relevant to the matter in question.

However, the court will also consider the circumstances under which the confession was made to ensure that it was not a result of coercion, inducement, or threat, as per the same section. If the confession is found to be influenced by any such factors, it may be deemed inadmissible.

Moreover, Article 20(3) of the Constitution of India protects individuals from being compelled to testify against themselves, which encompasses protection against self-incrimination. Therefore, 'A's statement can be used against him provided it was made voluntarily and without compulsion, fulfilling the legal requirements for a valid confession. The court will evaluate the confession's voluntariness, truthfulness, and relevance before considering it as evidence against 'A'.

Q11) "A" desires a court to give judgement that he is entitled to a certain land in the possession of "B". By reason of facts which he asserts, and which "B" denies to be true.

i) Can the judgement be passed in favour of "A"?

Ans) In the scenario where "A" desires a court to give judgment that they are entitled to certain land in the possession of "B", and there is a dispute over the facts asserted by "A" and denied by "B", the court cannot pass judgment in favor of "A" solely based on assertions. The court requires evidence to support the claims made by "A".

The judgment would depend on the evidence presented by both parties regarding their claims and rights over the land. "A" would need to provide sufficient legal proof, such as title deeds, records of rights, or any other relevant documents or witness testimony, to establish their entitlement to the land. Similarly, "B" would have the opportunity to present their evidence to counter "A"'s claims.

The court would then evaluate all the evidence, apply the relevant laws, and decide on the merits of the case. If "A" successfully proves their claim, the court may pass judgment in their favor; otherwise, the court may dismiss "A"'s claim if they fail to establish their entitlement.

The Indian legal system provides various laws and precedents regarding land entitlement and property disputes, including the Indian Evidence Act, 1872, and the Transfer of Property Act, 1882, which guide the courts in such matters. The court's decision will be based on the principles of justice, equity, and good conscience, considering the evidence and the applicable legal provisions.

ii) Who has to prove the existence of fact in burden of proof?

Ans) In the Indian legal system, the burden of proof generally lies on the person who asserts a fact. Specifically, Section 101 of the Indian Evidence Act, 1872, states that the burden of proof rests upon the person who would fail if no evidence at all were given on either side. The person who desires the 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.

In civil cases, the burden of proof typically falls on the plaintiff, who must establish their case by a multitude of the evidence. In criminal cases, the prosecution bears the burden of proving the accused's guilt beyond a reasonable doubt.

When a defendant raises specific defences or claims, such as insanity or self-defence, the burden may shift to the defendant to prove these defences, usually by a preponderance of the evidence or sometimes by clear and convincing evidence, depending on the jurisdiction and the nature of the defence.

Q12) The advocate for the accused appeared in the case at trial and observed that one of the witness tendered by the prosecutor is a 'dumb' person and the prosecutor himself was narrating to the court what the dumb witness had seen at the crime scene.

i) Can such a witness testify in the court? Explain citing relevant provision.

ii) Was the prosecutor correct in narrating what the witness had seen? Explain why?

Ans) Yes, a 'dumb' person, or someone who is unable to speak, can testify in court. The Indian Evidence Act, 1872, under Section 119, provides for the examination of witnesses who are unable to speak. It states that witnesses who are unable to communicate verbally can give their evidence in any other manner in which they can make it intelligible, as by writing or by signs. If the witness can read and write, it is the most desirable method. However, if they cannot, signs and gestures may be used with the assistance of an interpreter if necessary.

The law recognizes that such individuals can be just as intelligent and capable of providing reliable testimony as anyone else. The court has the responsibility to ensure that the witness understands the nature of an oath and that the witness possesses the requisite amount of intelligence to provide meaningful testimony.

The prosecutor narrating what the witness had seen would not be appropriate unless it's a direct interpretation of the witness's signs or written communication. The court must record the signs and gestures made by the witness, not the interpretation of those signs by another, unless it is done by a qualified interpreter in the presence of the court.

Relevant Sections

Sections	Remarks
(Order 19, Rules 1, 2, and 3) and the Code of Criminal Procedure (Sections 295 and 297)	Provisions related to affidavits
Section 3 of the Indian Evidence Act	Meaning of Fact.
Section 133 of the Indian Evidence Act	An accomplice shall be a competent witness against an accused person
Section 118, 121, and 133 of the Evidence Act	Capacity of witness
Section 75 of the Indian Evidence Act	Private documents definition
Section 3 of the Indian Evidence Act	Definition of Court
Section 11 of Indian Evidence Act	Plea of alibi is admissible evidence.
Section 17 of Indian Evidence Act	Definition of Admission
Section 25 of Indian Evidence Act	confessions made to police officers are generally not admissible unless they lead to the discovery of new facts.
Section 32(1) of Indian Evidence Act	admissibility of a dying declaration
Section 52 of the Indian Evidence Act	in civil cases, evidence of a person's character is not relevant
Section 53 of the Indian Evidence Act	in criminal cases, evidence of previous good character is relevant.
Section 55 of the Indian Evidence Act	the character of the person who is ought to receive the amount of damages is relevant
Sections 91 to 100 of the Indian Evidence Act	Provisions relating to Best Evidence Rule
Section 74 of the Indian Evidence Act	Definition of public document
Section 154 of the Indian Evidence Act	allows a party to question their own witness if such witness is found to be hostile
Section 3 of Indian Evidence Act	defines the term 'Proved', 'Disproved' and 'Not Proved'
Section 65B	It recognizes electronic records as documentary evidence and makes the e-signature admissible in Courts
Section 67A	It considers the attachment of a digital signature to an e-contract as enough proof for consent
Section 137 of the Indian Evidence Act	Examination-in-Chief
Section 138 of the Indian Evidence Act	Cross-examination. & Re-examination of witness

Chapter VII of Indian Evidence Act. Section 101 of Act	a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person
Section 4 of Indian Evidence Act	meaning of "may presume" and "shall presume"
Section 30 Indian Evidence Act	Meaning of Evidence
Section 115 to 117	Doctrine of Estoppel
Section 164 of the Criminal Procedure Code	allows a confession made during police investigation to be recorded by a magistrate, which can then be admissible in court to the extent permitted by the Indian Evidence Act
Section 300, Exception 1 of the IPC	culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.
Section 45 of the Indian Evidence Act	testimony of the expert is considered a relevant piece of evidence under Section 45 of the Indian Evidence Act, but it is not conclusive proof
Section 30 of the Indian Evidence Act	court may take into consideration the confession of one accused person against another jointly accused of the same crime. However, this does not mean that the confession is conclusive evidence against the co-accused
Section 24 of the Indian Evidence Act	a confession made by an accused person is admissible if it is made voluntarily and is relevant to the matter in question.