

**Mumbai University**  
**3 Years LLB- Semester VI (February 2024),**  
**Law of Evidence**  
**Short Questions & Answers for Internal Exam.**

**Q1) Define Affidavit?**

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?**

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 Hostile Witness?**

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. 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

**Q4) Who is accomplice?**

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.

**Q5) Define Evidence?**

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.

**Q6) What are different kinds of evidence?**

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.

**Q7) Who is a witness?**

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.

**Q8) What is burden of proof?**

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.

**Q9) What are private documents?**

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.

**Q10) Define Court?**

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 .

**Q11) Distinguish between Direct Evidence and Circumstantial Evidence?**

<b>Direct Evidence</b>	<b>Circumstantial Evidence</b>
<b>Definition</b> Direct evidence is evidence that explicitly proves a fact without requiring any inference or presumption.	<b>Definition</b> Circumstantial evidence is evidence that does not directly prove a fact but indirectly suggests guilt by linking a chain of related events.
<b>Nature</b>	<b>Nature</b>

It is based on personal knowledge or direct observation by a witness.	It is based on circumstances, incidents, or related facts.
<p>Examples:</p> <p><b>Eyewitness accounts:</b> A witness testifying about what they personally saw or heard.</p> <p><b>Confessions:</b> A statement by the accused admitting guilt.</p> <p><b>Physical evidence:</b> A murder weapon found at the crime scene.</p>	<p>Examples</p> <p><b>Scene appearance:</b> The condition of a crime scene suggesting foul play.</p> <p><b>Testimony linking events:</b> Witness statements connecting the accused to the crime.</p> <p><b>Fingerprints:</b> Indications of the accused's presence.</p>
<p><b>Reliability</b></p> <p>While direct evidence is powerful, its reliability can vary</p>	<p><b>Reliability</b></p> <p>Circumstantial evidence can be comparatively high in reliability.</p>
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.

**Q12) What is conclusive proof?**

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.

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) What is res gestae?**

Res Gestae, literally means 'things done' or liberally speaking, the facts of the transaction, explanatory of an act or showing a motive for acting. 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.

**Q14) What is plea of alibi?**

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.

**Q15) Define conclusive proof?**

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.

**Q16) What is dying declaration?**

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?**

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) Best Evidence rule?

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.

#### Q19) What is Hearsay Evidence?

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.

**Q20) Who is Hostile Witness?**

A Hostile Witness, also known as an adverse witness, is someone who testifies against the party who has called them to testify. 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.

**Q21) 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

**Q22) Define Proved, Disproved and Not Proved?**

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.



**Q23) What is presumption of Fact?**

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.'