

Lec. 1

* CH. 8 : Law Relating
to Evidence *

* Applicability -
→ applicable in all civil
& criminal matters

→ Court and martial courts

* Non-applicability -

→ Naval discipline Act or
air force Act.

→ Affidavits

→ Arbitrator

IMP
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FACT

• Fact means and includes
a) anything, state of things or relation of things
capable of being perceived by the senses
b) Any mental condition of which any person is
conscious. Fact are classified into physical & psychological
fact.

Ex. A man heard or saw something is a fact.

*

FACT IN ISSUE

• fact in issue means any fact having dispute
regarding existence, non-existence of any right,
liability or disability.

• Ex. A is accused of murder of B. Whether A
caused B's death is fact in issue.

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RELEVANT FACT

• Relevant fact are those which help in proving
fact in issue

* MEANING OF EVIDENCE

It includes two types of evidences

1] Oral Evidence

2] Documentary Evidence

• All statements which the court permits or require to be made before it, by witness or matter of fact under inquiry.

• All documents including electronic records produced for inspection of court

* DOCTRINE OF RES GESTATE

• Acts or declarations accompanying the transaction or facts in issue are treated as res gestate and admitted as evidence.

• It means surrounding or accompanying circumstances or situations which are inseparable from the fact in issue and which are necessary to explain nature of main act.

• It includes acts or declaration accompanying or explaining the transaction or fact in issue.

• Ex. A is accused of the murder of B by beating him. Whatever is said / done by A/B or by the bystanders or shortly before / after it as to form part of transaction, is relevant fact & is a Res Gestate.

- Fact which are not fact in issue, are so connected with a fact in issue as to form part of same transaction

* MOTIVE, PREPERATION & CONDUCT (Sec.8)

1] MOTIVE -

- Motive means which moves a person to act in a particular way. it is a psychological fact.

- Existence of motive is relevant fact in all criminal cases

2] PREPERATION -

- When question whether a person did a particular Act he had made preparations to do it is relevant fact.

3] CONDUCT -

- Conduct means behaviour.
- Conduct of parties is a relevant fact.

* Illustrations

- A is tried for murder of B by poison. The fact that before death of B, A procured poison similar to that what is administer to B is relevant.

The question is ~~not~~ what

- The question is whether A robbed B. The fact after B was robbed, C said in A's

presence - The police is coming to look for men who robbed B and that immediately after afterwards A ran away, are relevant.

- Question is whether A was revisited ^{destroy by sexual harassment}

Shortly after alleged rape she made a complaint relating to crime is relevant.

Q. 177

Admission	Confession
1) All admission are not confession	1) All confession are admission
2) Admission can be oral	2) Confession is recorded in writing & signed by party
3) Admission can be in civil & criminal case.	3) Confession is only in criminal case
4) Admission can be made by anybody	4) Confession is made by accused only
5) Admission may not be voluntary	5) Confession should be voluntary.

(+) point -

To accept anything is admission.

To accept the guilt is confession.

* Facts of which no evidence can be given -

Privileged communications

- 1) Evidence of a Judge or Magistrate in regard to certain matters.
- 2) Communications during marriage.
- 3) Affairs of state.
- 4) Official communications.
- 5) Source of information of Magistrate / Police officer or Revenue officer as to commission commission or offence / crime.
- 6) In case of professional communication between a client & his professional or attorney.

* STATEMENTS ABOUT THE FACTS TO BE PROVED

- Hearsay evidence is irrelevant.
- The general rule is that hearsay rule is that what is stated about the fact in question is irrelevant.
- There are 3 exceptions :-
 - 1) Admission & confession
 - 2) Statements as to some matters under some circumstances by persons who are not witness.
 - 3) Statements made under some circumstances.

* PERSON WHO CAN'T BE CALLED AS WITNESS

Following conditions must be fulfilled for the relevancy of statements:

- Statement must relate to fact in issue or relevant fact
- Statement must fall under following categories

1) The statement made by person as to cause of his death or any of circumstances resulting to his death.

2) Statement made in course of business.

3) Statement which is against interest of maker

4) Statement of giving opinion to public right or custom or matters of general interest

5) Statement of person who has special means of knowledge on subject

6) Statement in any will, deed or other document related to any transaction by which right was created, claimed etc.

7) Statement made by number of persons expressing their feelings or impression

* STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

The following statements becomes relevant on account of their having been made under special circumstances

1) Entries made in books or accounts

2) Entries made in public or official records or an electronic record made by public servant

3) Statements made in published maps or charts which are generally offered for public sale or in maps or plans made under authority of Central or State Govt.

4) Statements as to fact of public nature contained in certain acts or notification.

* ORAL EVIDENCE

- All facts except contents of documents or electronic records may be proved by oral evidence.
- All cases of oral evidence must be direct.
- The direct evidence means evidence of person who perceived the fact to which he deposes.

- If refers to the fact which could be seen, it must be evidence of witness who saw it.

- If refers to the fact which could be heard, it must be evidence of witness who says he heard it.

- It must be evidence of a witness who says he perceived it by that sense

- If it refers to an opinion.

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DOCUMENTARY EVIDENCE

- A "Document" means any matter expressed upon any substance by letters, figures or marks or by more than one of those means.

- Document produced for inspection of court is called as documentary evidence.

- Contents of document must be proved by either primary / secondary evidence.

i] Primary evidence : It means document itself produced for inspection of court. It means the original document. Primary evidence is the best evidence.

ii] Secondary evidence : It is generally in form of compared copies, certified copies or copies made by mechanical processes.

Secondary evidence means & includes -

- Certified copies

- Copies made by mechanical process from original

- Copies made from / compared with original

- counterparts of document
- oral accounts of contents of a document given by person who has himself seen it.

• A photograph is a secondary evidence.

* ELECTRONIC RECORDS

Any information contained in electronic record which is printed on paper, stored, recorded or copied or produced by computer shall be deemed to be a document.

* ESTOPPEL

• It is based on maxim 'allegas contraria non est audiendus'. It means person alleging contrary facts should not be heard.

• It says that man cannot approbate / reprobate or that man cannot blow hot & cold or a man shall not say one thing at one time & later on say different thing.

- Estoppel by attestation
- Estoppel by contract
- Constructive by election
- Equitable estoppel
- Estoppel by negligence
- Estoppel by silence.

* ELECTRONIC EVIDENCE

- 1) In case of Arjun Panditrao Khotkar Vs Kailash Kushanrao Gorantyal Supreme Court held that Court may admit evidence of video recordings even though certificate in accordance with sec. 65B(4) had not been produced only if competent officer had testified that video recordings were authentic.
- 2) In Anvar Vs. Basheer it was held that sec. 65B (electronic evidence) shall supersede other provisions of sec. 62.

3) Sec. 65B is a complete code in itself for admissibility of evidence.

* LOGICAL RELEVANCY & LEGAL RELEVANCY

- Every fact which is legally relevant is logically relevant too, but every fact which are logically relevant are not necessarily legally relevant.
- Judge considers legal relevancy not the logical relevancy. So, judge ignores logical relevancy, on ground that they are not legally relevant.

IMP * OPINION OF 3rd PARTY

- Opinions of experts are relevant upon
 - Foreign law
 - Science
 - Art
 - identity of handwriting
 - finger impression
- Facts that supports experts opinion are also made relevant.
- Opinion as to handwriting of a person : If a person is giving opinion familiar with the handwriting of person in question
- Opinion as to digital signature : Opinion of the certifying authority which has issued with the Digital Signature Certificate (Dsc).
- Opinion as to existence of legal general rights or custom : If the person is giving opinion is likely to be aware of existence of such right / custom
- Opinion as to usages : If the person has special means or knowledge on subject.
- Opinion by existence of any relationship by person who has special means or knowledge on the subject.

* FACTS NECESSARY TO EXPLAIN / INTRODUCE RELEVANT FACT

According to sec. 9 -

- facts which are necessary to explain fact in issue / relevant fact.

- facts that supports interference suggested by fact in issue / relevant fact.

- facts that establish identity of a person or thing whose identity is relevant or fix time & place at which relevant fact is happened.

- facts that shows relation of parties by whom any fact was transacted are relevant, because they are necessary for that purpose.

* JUDICIAL PROCEEDINGS

• It is defined in sec. (2)(i) of Criminal procedure code, 'a proceeding in the course of which evidence is or may be legally taken on oath.'

• Proceeding under Income Tax are not judicial proceedings.

• Act is not applicable to proceedings before arbitrator.

* ADMISSION

- It is defined in Sec. 17
- It means any statement made by any person, that suggests any ~~interfe~~ inference to any fact in issue or relevant fact & under any certain circumstances.
- Admission may be verbal or contained in documents as maps, bills, receipts, letters, books etc.
- Admission can be made by party or agent of party.
- Admission is the best evidence against the party making the same unless it is untrue.
- Admission must be clear, precise.

* CONFESSION

- Confessions are special form of admission.
- To accept the guilt is an confession.
- Every confession must be admission but every admission is not amount to confession.
- Confession is evidence only against its maker and against another person who is being jointly tried with him.
- Confession caused by inducement, threat or promise is irrelevant.
- Confession is classified as-
 - i] Judicial
 - ii] Extra-Judicial
- Extra-Judicial confession are valid.

* ELECTRONIC EVIDENCE (MEANING)

- Any information contained in electronic record, which has been stored, recorded or copied as computer output is known as 'document' hence, it is a electronic evidence.

17th Aug

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* Writing practice

Q1) → Extra - Judicial confession was made before a witness who was a close relative of accused and testimony of said witness was reliable and truthful. Examine the relevancy of this confession.

→ Confession are of Two types

1) Judicial confession : Confession which are made before a court or magistrate are judicial confession

2) Extra - Judicial confession : Extra-judicial confession are made before any other person other than judges or Magistrate.

Extra - Judicial confession are valid and can be relied along with other evidence if made voluntary

In Ram khilari Vs State of Rajasthan, Supreme Court held that, where an extra-judicial confession was made before a witness who was a close relative of accused and testimony of said witness was reliable and truthful.

Confession was held relevant