



**Chapter-11 :**  
**Indian**  
**Evidence**  
**Act,**  
**1872**

**Contents**

Introduction ..... 2

Relevancy of Facts Connected with The Fact to be Proved ..... 7

Statements About The Facts To Be Proved..... 8

OPINION OF 3<sup>rd</sup> PERSONS WHEN RELEVANT ..... 14

Facts Of Which Evidence Cannot Be Given ..... 15

ORAL, DOCUMENTARY AND CIRCUMSTANTIAL EVIDENCE ..... 16

PRESUMPTIONS..... 19

ESTOPPEL ..... 19

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## Introduction

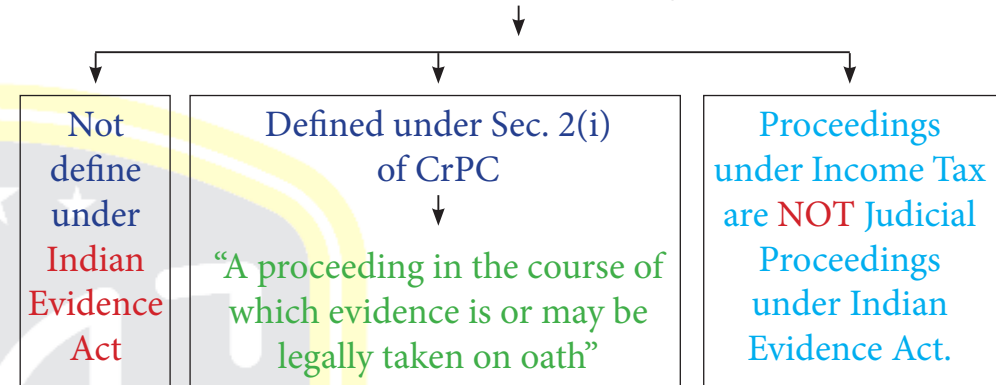
- A system of rules for ascertaining controverted questions of fact in judicial inquiries.



This system of ascertaining the facts, which are the essential elements of a right or liability and is the primary and perhaps the most difficult function of the Court, is regulated by a set of rules and principles known as “Law of Evidence”.

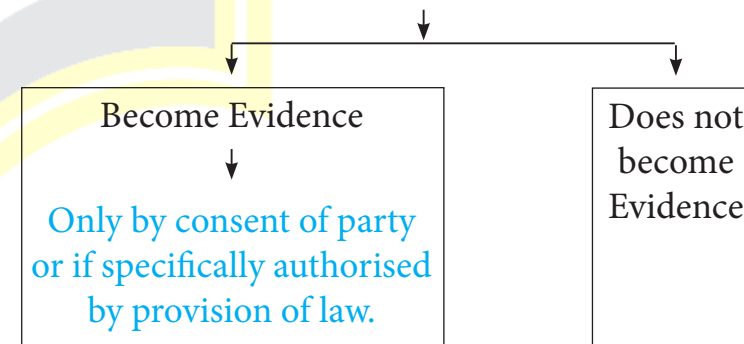
Extension	Indian Evidence Act, 1872 extends to whole of India
Applicability	(1) All Judicial proceeding in the court or before the court (2) Court martial [court were military cases a certain]
Non-Applicability	(1) Court-martial Convened under the Army Act, the Naval Discipline Act (or) the Indian Navy Discipline Act, 1934 (or) the Air Force Act (2) Affidavits presented to Court / officer (3) to Proceedings before an arbitrator.

### → Judicial Proceedings



### → Affidavit

- Meaning** - “Is a declaration sworn or affirmed before a person competent to administer an oath”.
- It is an affidavit per se (itself) does not become evidence in the suit but it can become evidence

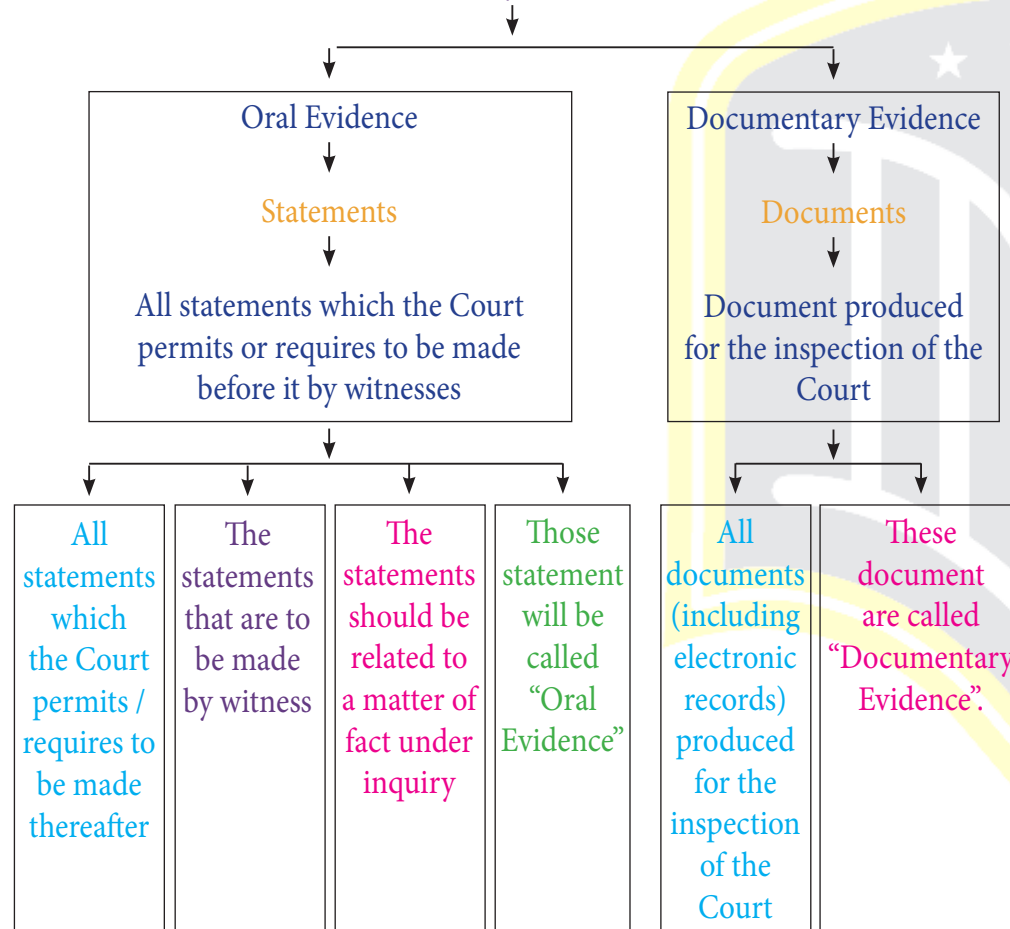




→ Evidence [Section-3]

**Define :** The definition uses the words “Means and Includes”.

- It include two types of Evidence :

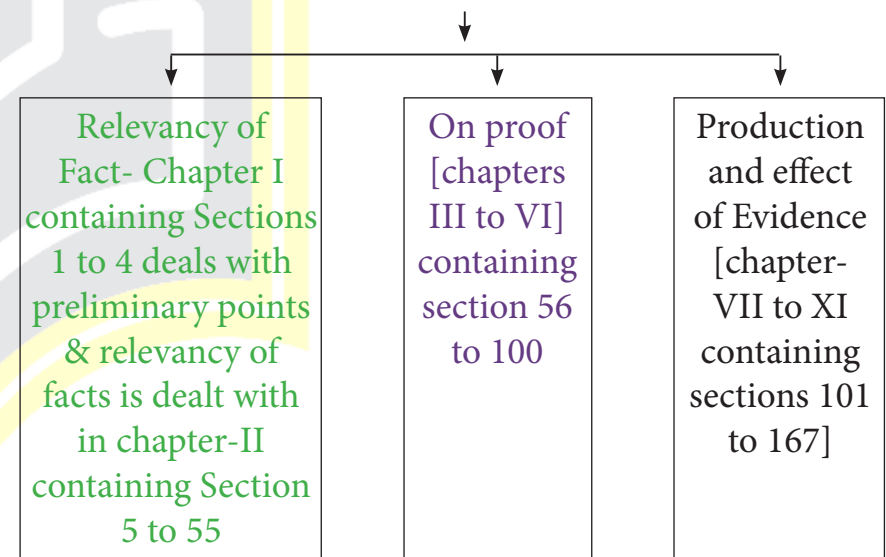


- In general the rules of evidence are same in civil & criminal proceedings but there is a strong and marked difference as to the effect of evidence in civil & criminal proceedings.

**In Civil Cases** - The principal “mere preponderance of probability” is sufficient basis of a decision

**In Criminal Cases** - The principle “beyond all reasonable doubt” is required for taking decision

→ Scheme of the Act





## → Relevancy of Facts

- The Act deals with relevancy of facts. A fact is also known as **Factum Probandum** or the fact that proves

### → Fact [Section-3]

Means and includes

Anything, state of things, or in relation of things capable of beings perceived by the senses

Any mental condition of which any person is conscious.

Thus facts are classified into

Physical facts

Psychological facts

Certain objects arranged in a certain order

Man heard or saw something

Man said certain words

Man holds a certain opinion

Man has a certain reputation

## → Evidence may be given of facts in issue and relevant facts.

### FACT IN ISSUE [Section-3]

Meaning - Any fact from which, either by itself or its connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, inserted or denied in any suit or proceedings, necessarily follows

- It is called as the principal fact to be proved / factum probandum
- The fact which constitute the right or liability
- It depends upon the rule of the substantive law which defines the rights & liabilities claimed

### Illustrations

A is accused of the murder of B

At his trial the following facts may be in issue

That A caused B's death

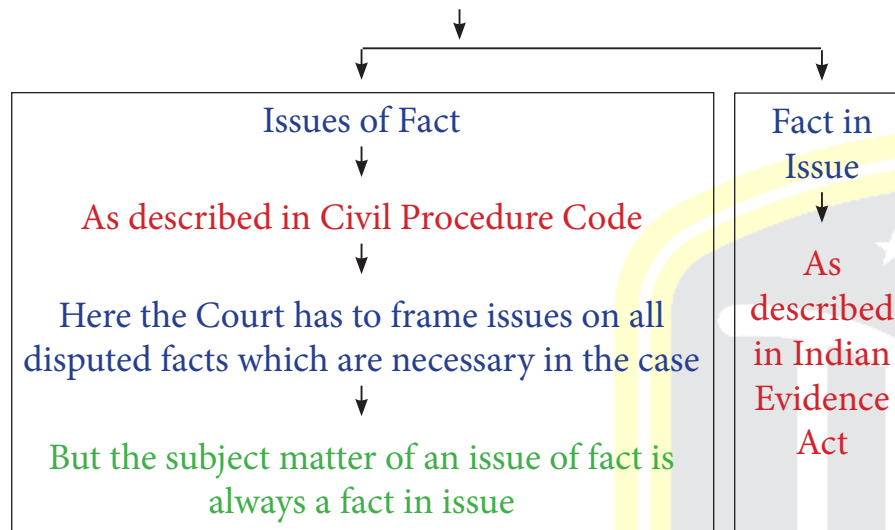
That A intended to cause B's death

That A had received grave & sudden provocation from B

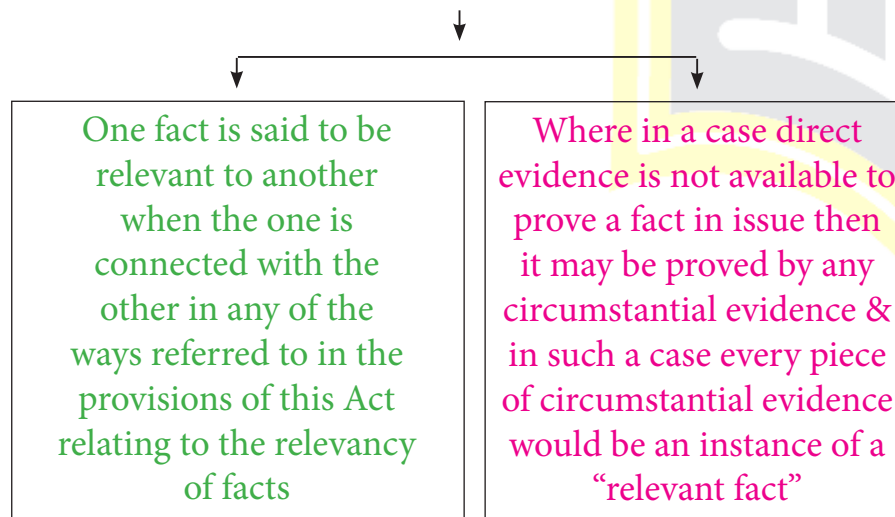
That A at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature



**Facts in issue & issues of Fact**



**Relevant Facts**



- It is also called “factum probandum”
- **Illustration** - A is accused of the murder of B by beating him whatever was said or done by A or B or by standers. At the beating or so shortly before / after as to form a part of transactions is relevant fact.

- **Logical relevancy & legal relevancy**  
Under Indian Evidence Act, 1872, legal Relevancy is to be considered as against a logical Relevancy
- A fact is said to be logically relevant to another when it bears such casual relation with the other as to render probably the existence / non-existence of the latter.
- All facts logically relevant are not, however, legally relevant.
- Relevancy under the Act is not a question of pure logic but of law, as no fact, however logically relevant, is receivable in evidence unless it is declared by the Act to be relevant.
- Of course every fact legally relevant will be found to be logically relevant,

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but every fact logically relevant is not necessarily relevant under the Act as common sense or logical relevancy is wider than legal relevancy.

- A judge might in ordinary transaction, take one fact as evidence of another and act upon it himself, when in Court, he may rule that it was legally irrelevant.
- And he may exclude facts, although logically relevant, if they appear to him too remote to be really material to the issue

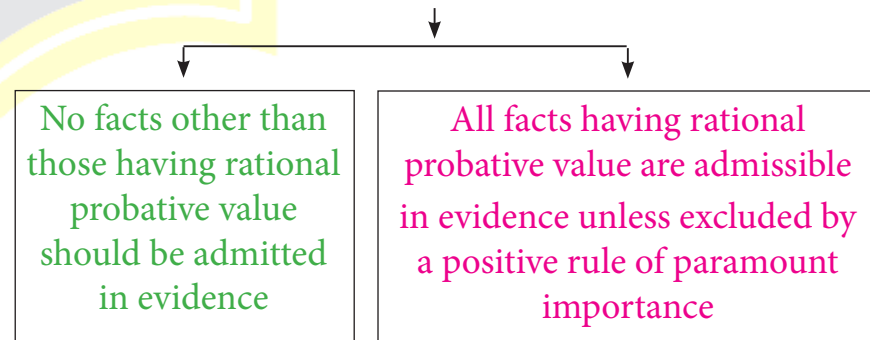
### → Legal Relevancy and Admissibility

- Relevancy and admissibility are not co-extensive or interchangeable terms.
- A fact may be legally relevant, yet its reception in evidence may be prohibited on the grounds of public policy, or on some other grounds.
- Similarly every admissible fact is not necessarily relevant.

### → Classification of relevant facts

- Principles of Sections relating to relevancy of facts are mere rules of logic.
- Relevant facts may be classified in the following form.
  - (a) facts connected with the facts to be proved.
  - (b) Statement about the facts to be proved
  - (c) Statements by persons who cannot be called witnesses
  - (d) Statements made under special circumstances
  - (e) How much of a statement is to be proved
  - (f) Judgements of Courts of justice, when relevant
  - (g) Opinions of third persons, when relevant
  - (h) Character of parties in Civil cases and of the accused in criminal cases

### → Fundamental rules of law of evidence





## Relevancy of Facts Connected with The Fact to be Proved

- (1) Res gestae or facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction. [Section-6]



- Acts or declarations accompanying the transaction or the facts in issue are treated as part of the res gestae and admitted as evidence
- The ground for admission of such evidence is the spontaneity & immediacy of the act or declaration in question
- Res gestae is an exception to the rule against the hear-say evidence.
- It is based on belief that certain statements are made naturally, spontaneously and without deliberation during the course of an event. They leave little room for misunderstanding or misinterpretation upon hearing by someone else. [ie. by the witness who will later repeat the statement to the court] & thus the court belief that such statement carry a high degree of credibility.

- (2) Facts constituting the occasion, or effect of, or opportunity or state of things for the occurrence of the fact to be proved whether it be a fact or another relevant fact. [Section-7]

- It provides that, though they are not part of the same transaction, are relevant if they are the occasions caused or effect of facts of an issue.

- (3) Motive, preparation and previous or subsequent conduct. [Section-8]

- Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

Motive : It means which moves a person to act in a particular way.

- It is different from intention.
- This is the first step in every investigation.
- It is psychological fact & the accused's motive, will have to be proved by circumstantial evidence.
- When the question is as to whether a person did a particular act, the fact that he made preparations to do it, would certainly be relevant for the purpose of showing that he did it

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Conduct : It means behaviour

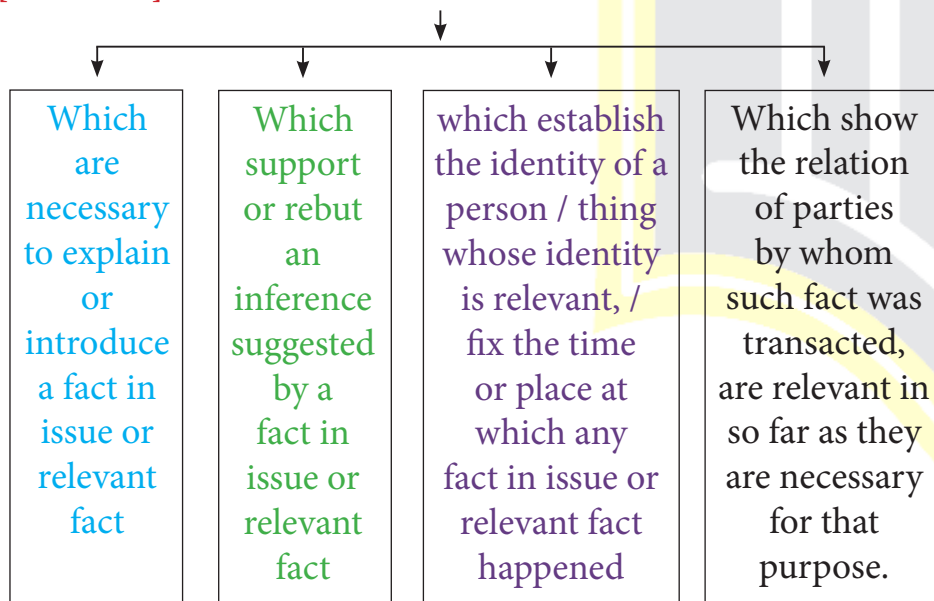
The conduct of the parties is relevant.

The conduct to be relevant must be closely connected with the suit, proceeding, a fact in issue or a relevant fact

- It must influence the decision.
- If these conditions are satisfied it is immaterial whether the conduct was previous to or subsequent to the happening of the fact in issue.

(4) Facts necessary to explain or introduce relevant facts.

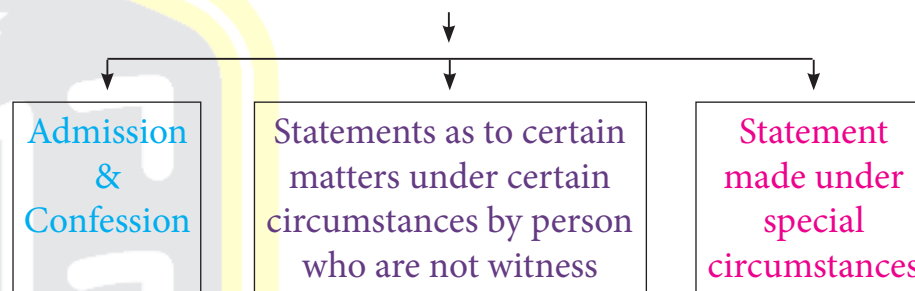
[Section-9]



- Facts which establish the identity of an accused person are relevant u/s-9.

## Statements About The Facts To Be Proved

- The general rule known as the hearsay rule is that what is stated about the fact in question is irrelevant. To this general rule there are three exceptions which are :



### 1(a) Admissions : [Section-17]

- It is a statement, which can be - oral  
documentary  
Electronic form
- Which suggests any inference as to any fact in issue or relevant fact,
- Which is made by any of the persons, & under the circumstances mentioned
- Admission may be verbal or contained in documents maps, bills, receipts, letters, books etc.





- An admission may be made by - party, agent, predecessor in interest of a party, by a person having joint propriety of pecuniary interest in the subject matter
- An admission is the best evidence against the party making the same unless it is untrue
- An admission by the Government is merely relevant and non conclusive - unless the party whom they are made has acted upon & thus altered his detriment.
- Admission must be clear, precise, not vague or ambiguous.

Ref : Basant Singh v/s Janky Singh

1. Admission cannot be regarded as conclusive & it is open to the party to show that it is not true.
2. All the statements made in the plaint are admissible as evidence. The Court is however not bound to accept all the statements as correct.  
  
The Court may accept some of the statements & reject the rest.

Admission : It means conceding something against the person making the admission.

General rule : Admissions must be self-harming [because a person is unlikely to make a statement which is self-harming unless it is true evidence of such admissions as received in Court

Note : Oral admissions as to the contents of electronic records are not relevant unless the genuineness of the record produced is in question.

### 1(b) Confessions :

- Confessions are special form of admissions.
- Every confession must be an admission but every admission may not amount to a confession
- Important provision relating to confession :

	Section	Heading	Details
1	Section 24	Confession caused by inducement, threat or promise	A confession made by an accused person is irrelevant in the criminal proceedings if the making of the confession appears to the court

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			to have been caused by any inducement, threat or promise				
2	Section 25	Confession to police officer	No Confession made to a police officer shall be proved as against a person accused of any offence.	5	Section 28	Confession made after removal of impression caused by inducement, threat or promise.	If a confession is made after removal of impression caused by inducement, threat or promise. - It is relevant
3	Section 26	Confession by accused while in custody of police	No confession made by any person while he is in the custody of police officer, unless it is made in the immediate presence of the magistrates.	6	Section 29	confession otherwise relevant not to become irrelevant because of promise of secrecy	If a confession is otherwise relevant, it does not become irrelevant merely because it was made under, <ul style="list-style-type: none"> <li>- A promise of secrecy</li> <li>- Deception practiced on the accused person for the purpose of obtaining it</li> <li>- When he was drunk</li> <li>- Because it was made in an answer to question which he need not have answered</li> <li>- Because he was not warned that he was not bound to make such confession, &amp; that evidence of it might be given against him.</li> </ul>
4	Section 27	How much of information received from an accused may be proved	When any fact is depost to a discovered in consequences of information received from a person accused from an offence, in a custody of a police officer, so much of such information, whether if amount to confession or not, as relates the distinctly to a fact there by discovered may be provided.	7	Section 30	Consideration of proved confession affecting person	when more than one person has tried jointly for the same offence & confess is made by one of such person affecting himself

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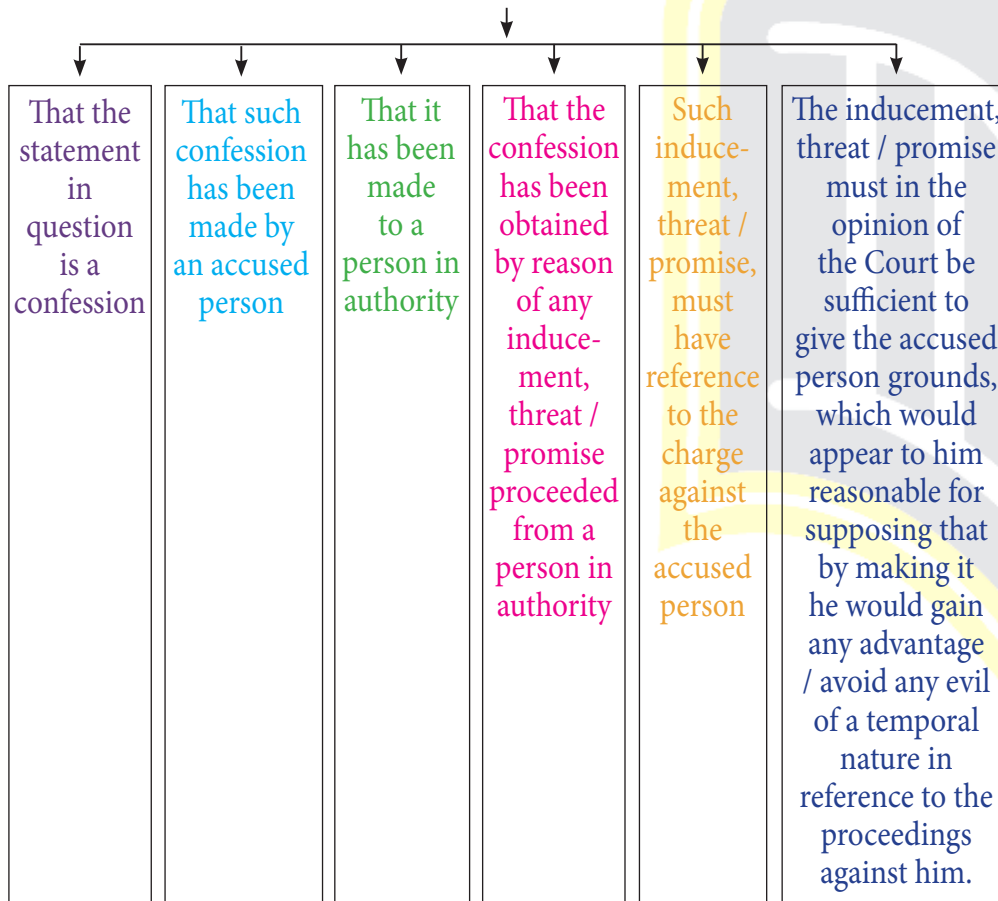
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	making it & other jointly under trial for same offence	& some other is proved, the court may take into consideration such confession against both.
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- According to Section-24, confession caused by inducement, threat or promise is irrelevant. To attract the prohibition contained in Section-24 of Evidence Act the following six facts must be established.



→ **Confessions v/s Admissions**

	Confessions		Admissions
1	A Confession is a statement made by an accused person admitting that he has committed an offence	1	An admission is an statment which suggest any inference as to any fact in issue or relevant fact
2	Confession to be relevant ↓ must be voluntary	2	An admission to be relevant ↓ need not to be voluntary
3	Confession to be relevant - Must be made by accused himself	3	Admission can be relevant - Even it it is made by an agent or even a stranger
4	Every confession is an admission	4	Every Admission may not amount to an confession

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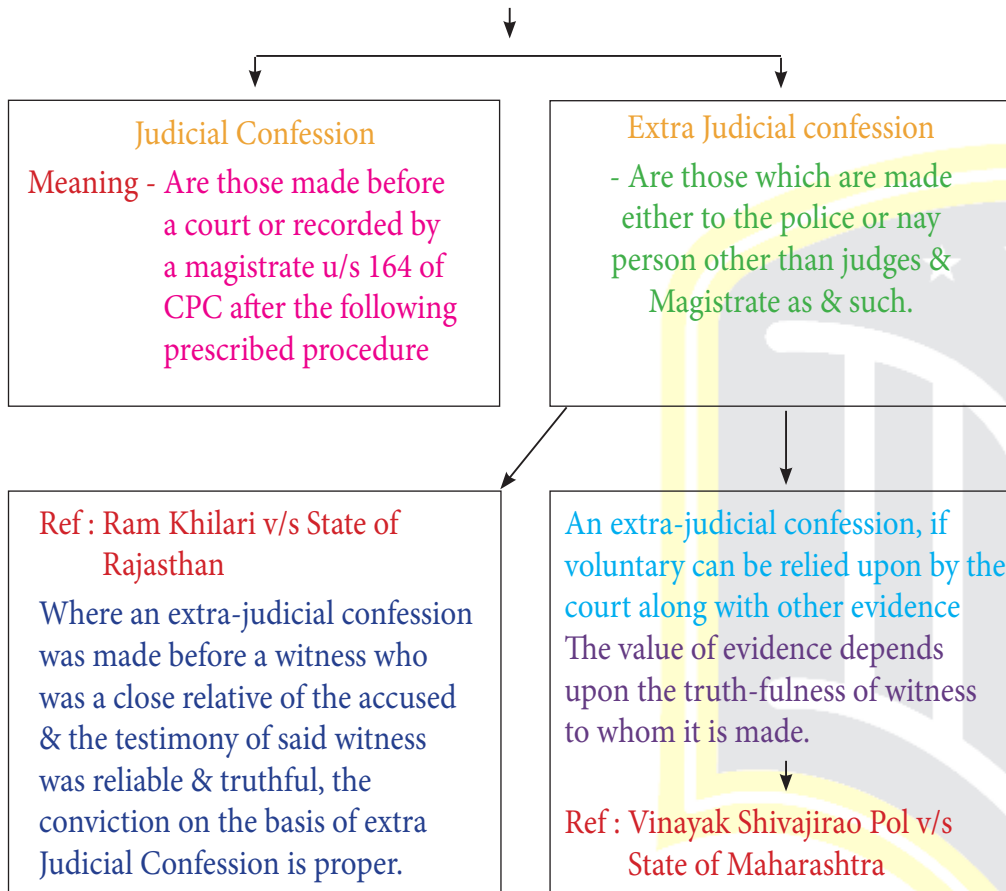
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Note :

Confession are classified as :



- Where the Court finds that the confession made by the accused to his friend was unambiguous & unmistakably conveyed
  - The testimony of the truthful, reliable and trustworthy.

Thus, A conviction based on such extra-judicial confession is proper & no corroboration is necessary

- The law does not require that the evidence of an extra-judicial confession should be corroborated in all cases.

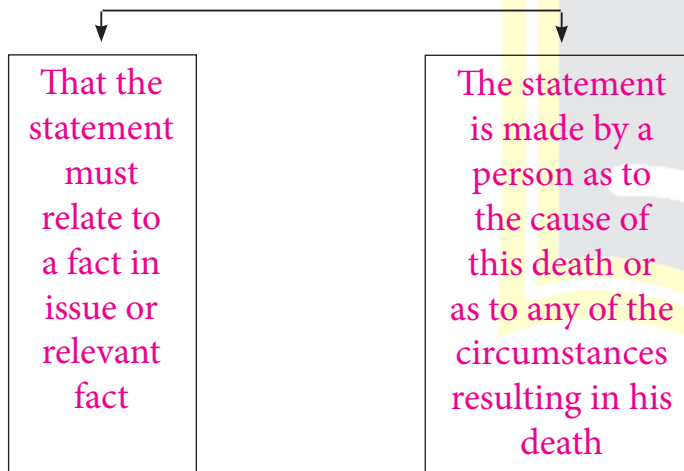
- When such confession was proved by an independent witness who was responsible officer & one who bore no animus against the accused, there is hardly any justification to disbelieve it.



(2) Statements by persons who cannot be called as witnesses / Statements as to certain matters under certain circumstance by the person who are not witness.

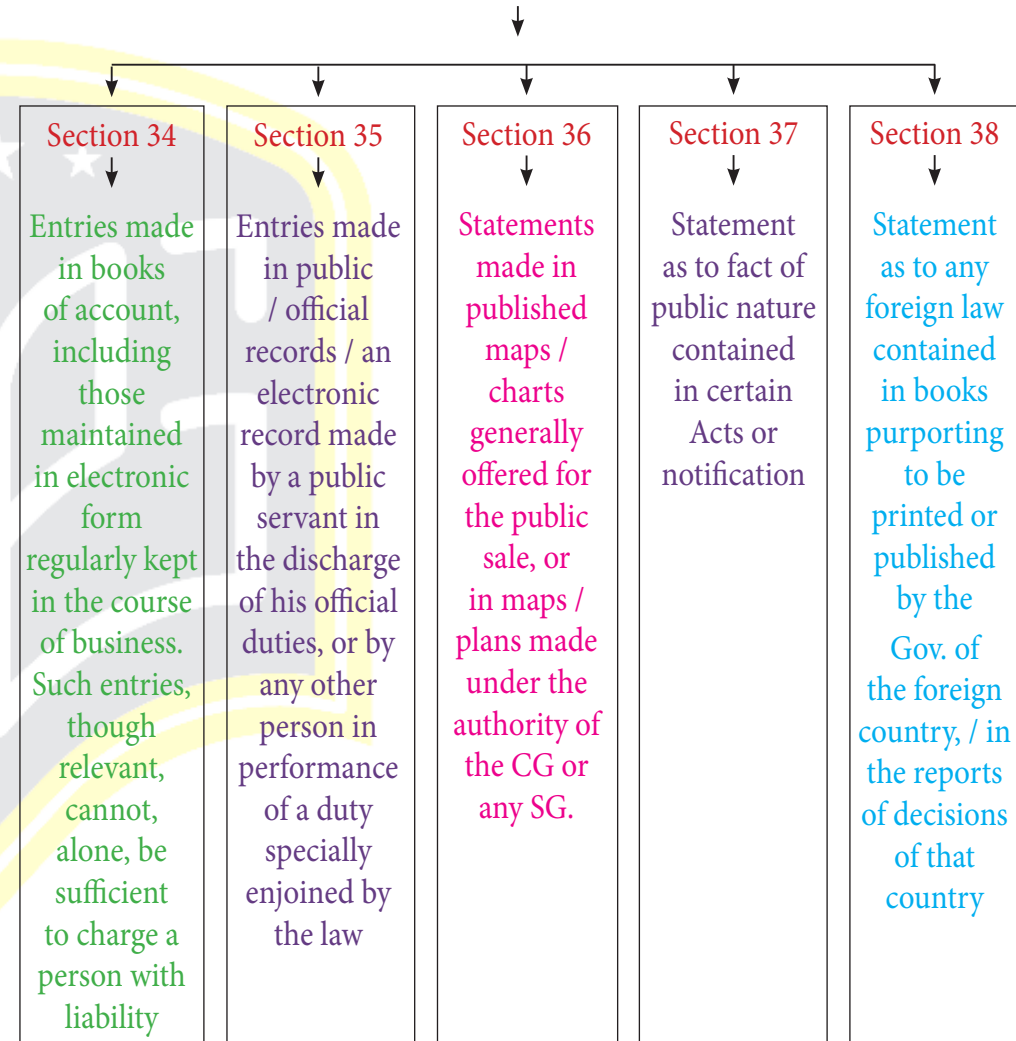
Certain statements made by persons who are dead, or cannot be found or produced without unreasonable delay or expense. - is the second Exception to the General Rule

Conditions :



(3) Statements made under special circumstances

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

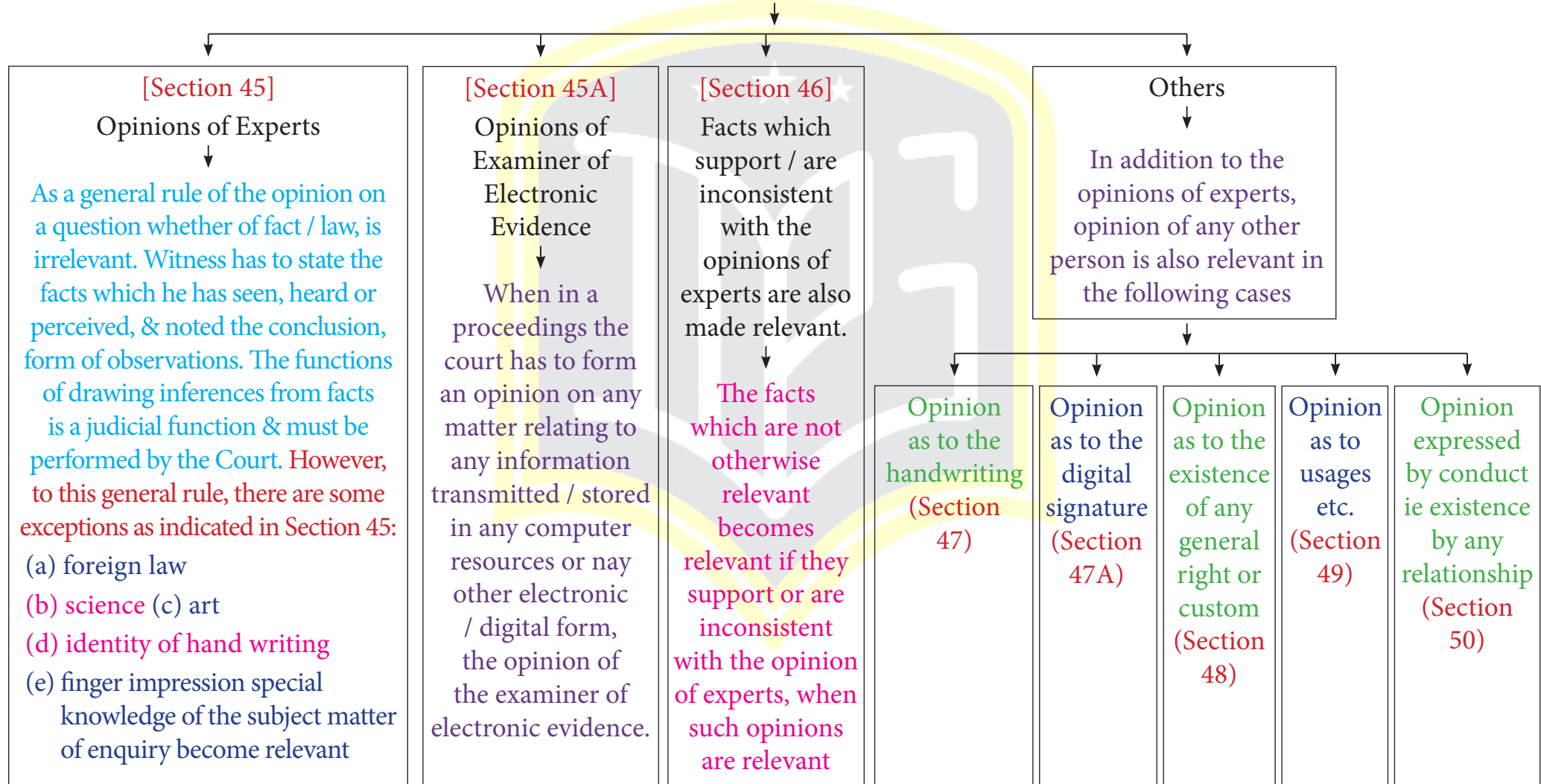




## OPINION OF 3<sup>rd</sup> PERSONS WHEN RELEVANT

**General Rule :** The opinion of a witness on a question whether of fact or law, is irrelevant.

There Are Some Exceptions To This General Rule



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## Facts Of Which Evidence Cannot Be Given

### [Privileged Communications]

- There are some facts of which evidence cannot be given though they are relevant

Where evidence is prohibited under those Sections. They are also referred to as 'privileged communications'

	Section	Heading	Details
1	Section 121	Evidence of a Judge or Magistrate in regard to certain matters	No Judge / Magistrate shall, except upon the special order of some court to which he is subordinate, be compelled to answering any question as to his non conduct in court as Judge / Magistrate or as to anything which came to his knowledge incourt as such Judge / Magistrate. He may be examined as to other matter which occurred in his presence whilst he was so acting
2	Section 122	Communication during marriage	Communication between the husband & the wife during marriage is privileged & its disclosure cannot be enforced. This provisions is based on the principle of domestic peace and confidence between the married couple.

			<p>This section section contain 2 parts</p> <div style="text-align: center;"> </div>
3	Section 123	Affairs of State	<p>Applies only to evidence derived from unpublished official record relating to affairs of State.</p> <p style="text-align: center;">↓</p> <p>No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give / withhold such permission as he thinks fit.</p>
4	Section 124	Official Communications	
5	Section 125		Source of information of a Magistrate or police officer or Revenue officer as to commission of an offences or Crime.

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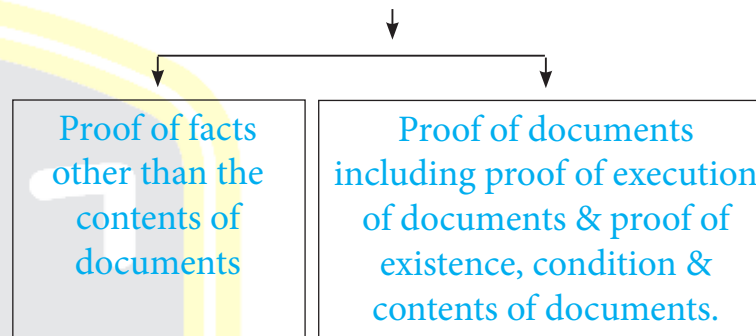
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<p><b>Section 126 &amp; 129</b></p>	<p><b>Professional Communication</b> between a client &amp; his barrister attorney or other professor legal advisor. This is not absolute &amp; may waived by the clients</p>	<p>A deal with the professional communications between a legal adviser and a client, which are protected from disclosure. A client cannot be compelled &amp; a legal adviser cannot be allowed without the express consent of his client to disclose oral or documentary communications passing between them in professional confidence. The rule is founded on the impossibility of conducting legal business without professional assistance &amp; securing full &amp; unreserved communication between the two.</p> <p>It neither a legal adviser i.e. a barrister, attorney, pleader / vakil (Section 126) nor his interpreter, clerk / servant (Section 128) can be permitted to disclose any communication made to him in the course &amp; for the purpose of professional employment of such legal adviser or to state the contents / condition of any document with which any such person has become acquainted in the course &amp; for the purpose of employment.</p>
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## ORAL, DOCUMENTARY AND CIRCUMSTANTIAL EVIDENCE

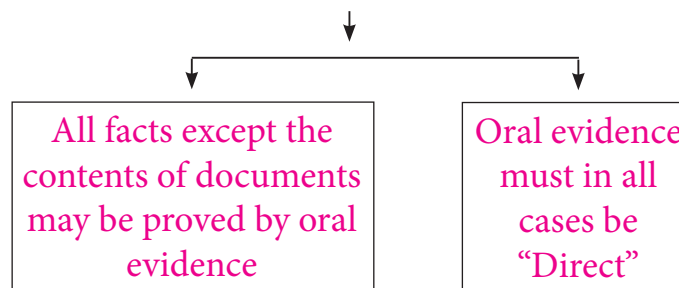
- The Act divides the subject of proof into two parts



- All facts except contents of documents or electronic records may be proved by oral evidence which must in all cases be **“DIRECT”**

It means the evidence of the person who perceived the fact to which he deposes

- The two broad rules regarding oral evidence.





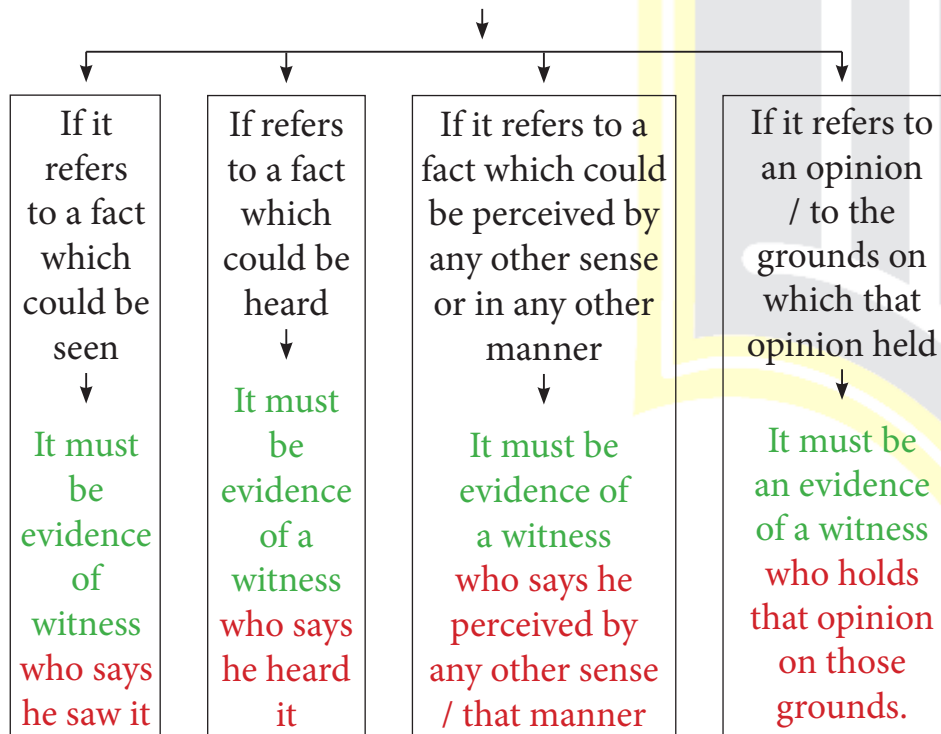


→ **Oral evidence** : It means statements which the Court permits [Section-119] / requires to be made before it by witnesses in relation to matters of fact under inquiry.

↓  
But, if a witness is unable to speak he may give his evidence in any manner in which he can make it intelligible as by writing or by signs.

→ **Direct Evidence** :

- According to Section-60 oral evidence must in all cases whatever be direct; ie. to say.



As per Section-60, direct evidence is an Act impliedly enacts what is called the rule against hearsay.

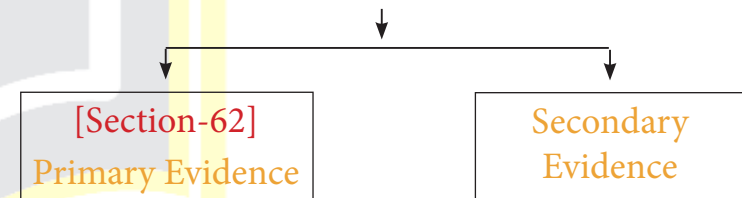
→ **Documentary Evidence**

document - It means any matter expressed or described upon any substance by means of letters, figures or marks OR  
- by more than one of those means, intended to be used OR

- which may be used for the purpose of recording that matter.

- Documents produced for the inspection of the Court is called Documentary Evidence.

- Section-61 provides that the contents of a document must be proved either by :



Means, The document itself produced for the inspection of court.

↓  
**General Rule** : Primary evidence of producing documents is commonly said to be based on the best evidence principle & to be supported by the so called presumption that if inferior evidence is produced where better might be given, the latter would tell against the withholder.

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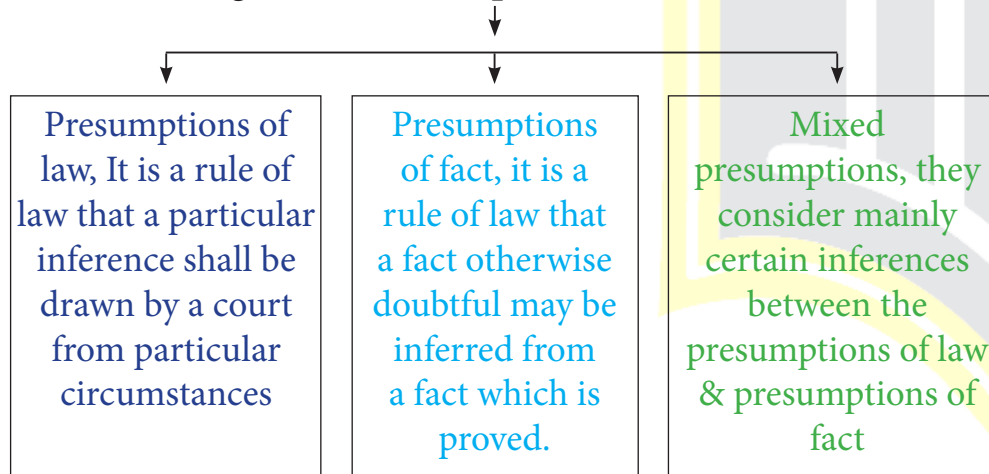




## PRESUMPTIONS

- Rules of presumption are deduced from enlightened human knowledge and experience & are drawn from the connection, relation & coincidence of facts & circumstances.
- A presumption is not in itself an evidence but only makes a prima facie case for the party in whose favour it exists.
- A presumption is a rule of law that courts or juries shall / may draw a particular inference from a particular fact / from particular evidence unless & until the truth of such inference is disproved.

### → Three categories of Presumptions



**Illustration :** When we see a man knocked down by a speeding car and a few yards away, there is a car going, there is a presumption of fact that the car has knocked down the man.

## ESTOPPEL

**General Rule :** When one person has by his declaration, act or omission, intentionally caused or permitted another to believe a thing to be true & to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself & such person or his representative to deny the truth of that thing.

- There is no estoppel against the Statute.
- Where the Statute prescribes a particular way of doing something, it has to be done in that manner only.

### → Principle of Estoppel

- It based on the maxim “allegans contraria non est audiendus”



It means ie. a person alleging contrary facts should not be heard.

- It says that ‘man cannot approbate & reprobate’

OR

‘That man cannot blow hot and cold’

OR

‘That a man shall not say one thing at one time & later on say a different thing’

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- It is based on principle, that it would be most inequitable & unjust that if one person, by a representation made



has induced another to act as he would not otherwise have done the person who made the representation should not be allowed to deny or repudiate the effect of his former statement to the loss & injury of the person who acted on it.

Ref : Biju Patnaik University of Tech. Orissa v/s Sairam College

## → Different kinds of Estoppel



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

