

B.A.LL.B. IX SEMESTER
SUBJECT – LAW OF EVIDENCE & LIMITATION ACT
CODE – BL-901

Relevancy of Fact (Section 5 to 17)

The word 'relevant' is defined in section 3 of the Act as "one fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of the act relating to the relevancy of facts." Relevancy can be logical as well as legal. A fact is said to be logically relevant to another -when it bears such casual relation with the other as to render probable the existence or non-existence of the latter. All facts logically relevant are not, however, legally relevant. The Act exhaustively enumerates the kinds of casual connections which make a fact legally relevant to another. Hence 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. Whatever is legally relevant is logically relevant but not vice-versa, e.g.,¹ the statement of the accused : "I have kept in the field the knife with which I killed A' is logically relevant to prove the guilt of the accused, but section 27 of the Act provides that only so much part of the information as relates distinctly to the fact thereby discovered may be proved, i.e., is relevant and hence the latter portion of accused's statement, viz., "with which I killed A" though logically relevant is not legally relevant.²

The second chapter in the law of evidence, 'relevancy of facts' can be considered as a tool to identify facts, appropriate to the case, from a plethora of them. These facts are called 'Facts in Issue' and help in steering the case towards a justifiable judgment.

Section -5 Evidence may be given of facts in issue and relevant facts

Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.

Explanation -This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to civil procedure.³

Illustrations

¹ Sodhganga.infilibnet.ac.in

² Pulukuri Kotayya v. Emoeror. A.I.R. 1947 P.C. 47.

³ See now the Code of Civil Procedure, 1908 (5 of 1908)

This serves as a section to exclude the irrelevant facts. For example A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:-

- A's beating B with the club;
- A's causing B's death by such beating.
- A's intention to cause B's death

Section -6 Relevancy of the facts forming part of the same transaction⁴

Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations

- A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.
- A is accused of waging war against the [Government of India] by taking part in an armed insurrection in which property is destroyed, troops are attacked and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, thought. A may not have been present at all of them.
- A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained, are relevant facts, though they do not contain the libel itself.
- The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Doctrine of Res gestae or part of same transaction

The principle of the section is that whenever a transaction such as a contract or a crime, is a fact in issue, evidence can be given of every fact which forms part of the same transaction. The facts which surround the happening of an event are its res gestae. The section is quite apparently based upon the English doctrine or res gestae. Though this word has been scrupulously avoided by the section the reason why this word has been avoided is that the doctrine has been productive of confusion⁵

⁴ Section 6 of the Indian Evidence act, 1872

⁵ See Phillips's Treatise on Evidence (4th ed. 1819); cited Woodroffe and Ameer Ali, Law of Evidence, p. 304 (13th ed 1973)

The phrase is Latin which literally means, 'things done.' And when translated into English means "things said and done in the course of a transaction" though the term is not used directly in Section 6 of the act, it is applied in Indian law. Hence, supporting facts are used to prove or give meaning to the facts in issue and these form the part of res gestae. Every such act, omission or statement as throws some light upon the nature of the transaction or reveals its true quality or character should be held as a part of the transaction and the evidence of it should be received. To state a fact and event in isolation without reference to its antecedents in time, place or surrounding circumstances may render the facts difficult or even impossible to comprehend. Other facts or circumstances may be so closely connected with the fact are described as forming part and parcel of the same transaction. Such ancillary facts are described as forming part of the res gestae of the fact in issue, and may be proved.⁶

*Ratten v. The Queen*⁷ A man was prosecuted for the murder of his wife. His defence was that the shot went off accidentally. There was evidence to the effect that the deceased telephoned to say: "**Get me the police please**". Before the operator could connect the police the caller who spoke in distress gave her address and the call suddenly ended. Thereafter the police came to the house and found the body of the dead woman. Her call and words she spoke were held to be relevant as a part of the same transaction which brought about the death. Her call in distress showed that the shooting in question was intentional and not accidental. For no victim of an accident could have thought of getting the police before the happening. This then is the utility of the doctrine of res gestae. It enables the court to take into account all the essential details of a transaction.

*R. v. Foster*⁸ the witness had only seen a speeding vehicle, but not the accident. The injured person explained him the nature of the accident. He was allowed giving evidence of what the deceased said although it was only a derived knowledge, it being a part of the res gestae thus the doctrine of res gestae constitutes an exception to the principle of hearsay. It is an exception to hearsay evidence (Hearsay evidence is what one has heard and not seen).

Relevant facts could include both acts and omissions, and they could be isolated or contiguous but they should form a part of the transaction in question. In *Milne v Leisler*⁹ the fact that the contractor wrote a letter to his broker to make enquiries was held to be a part of res gestae; in deciding whether a contract was made as an agent or in a personal capacity.

The Transaction is a group of facts so connected together as to be referred to by a single name, as a crime, a contract, a wrong or any other subject of inquiry which may be in issue.¹⁰

Roughly a transaction may be described as any physical act, or series of connected physical acts, together with the words accompanying such act or acts.¹¹

⁶ Peter Murphy, A Practical Approach to Evidence, 10 (4th Edn., 1992)

⁷ (1971) 3 W.L.R. 930

⁸ (1834) 6 C.&C. p. 325; 172 E.R. 1261

⁹ 7 H.&N.796; 126 RR 704

¹⁰ Stephen, Digest of Evidence, Art.3

Section -7 Facts which are the occasion, cause or effect of facts in issue¹²

Facts which are the occasion, cause, or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations

- The question is, whether A robbed B.
The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.
- The question is, whether A murdered B.
Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.
- The question is, whether A poisoned B.
The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are the relevant facts.

Everything surrounding the question can also be relevant to the case. These aspects, as defined under Section 7, include:

Occasion – In *R v Richardson*¹³ the deceased girl was alone in her cottage and it was considered to be an occasion for murder.

Cause – In *Indian Airlines v Madhuri Chowdhry*¹⁴ the report by an Enquiry Commission relating to an air crash was held to be relevant as the cause of the accident.

Effects – This may include footprints or fingerprints on the crime scene or other such evidence which is left or stays after the concerned incident. (See- *R v Richardson*)

Opportunity – In *R v Donellan*¹⁵ (the accused knew that the deceased take a certain medicine, which is administered by his mother, at certain intervals. The accused used this as an opportunity and replaced the bottle of medicine with that of a poison

State of things –. Uncertainty regarding instant statements and a false narrative of a detached prior event was cleared in the case of *Ratten v Reginam*¹⁶ where Lord Wilberforce said that it should be up to the Judge to satisfy himself that whether the statement was made in spontaneity and instantly or is a constructed narrative and hence, shall be excluded.

¹¹ Phipson, 51-79 cited Cockel's Cases and Statute on Evidence, P.65 (18th Edn., 1952)

¹² Section 7 of evidence Act, 1872

¹³ (Wills pp 225-29),

¹⁴ (AIR 1965 Cal. 252),

¹⁵ (1955 1 QB 388),

¹⁶ All ER 801

Section -8 Motive, preparation and previous or subsequent conduct¹⁷

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to a fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1-The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.-When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Motive

Facts which show a motive for any facts in issue or relevant facts are relevant. The only condition is that the motive considered should be of the man who commits the crime. In *R v Palmer*¹⁸ the accused borrowed large sums of money from his deceased friend to pay his dues. The deceased died because of poisoning in a hotel, after coming back from a race they both attended. Since the accused had a strong motive to kill him, he was held liable. If a certain motive can be assigned, its adequacy is not questioned, only its existence is enough to prove concerned facts. In *Murarilal Sharma v State of Maharashtra*¹⁹ it was held that where a fact can strongly link accused to the fact in issue, motive plays a secondary role. And while, when considering circumstantial evidence, evidence of motive plays the fundamental role.

Preparation

Preparation in itself is no crime, but when accompanied with an offence committed thereof, it becomes relevant. Illustration (c) to section 8 provides:

“A is tried for the murder of B by poison. The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.” Here, procuring of poison is no crime but when the poison is administered to murder B, it becomes relevant.

Conduct

Guilty mind begets guilty conduct. Conduct is taken as evidence because it is always guided, before or after, by what one has done. The conduct should be such which is affected by the facts or affects the facts. It doesn't include statements until these statements are associated with

¹⁷ Section 8 of the Indian Evidence Act, 1872

¹⁸ (1856, Cockel's cases and statutes on evidence, p. 59)

¹⁹ (AIR 1997 SC 1593)

conduct. Considering the leading case of *Queen-Empress v Abdullah*²⁰ the facts of which are: Abdullah had murdered a prostitute, aged between 15 and 20 years. He had slit her throat with a razor but the girl helped identify him by her conduct which was her hand gestures agreeing to questions asked. The defendant pleaded that this amounted to a statement, but the learned judge held it to be subsequent conduct and prosecuted Abdullah for her murder.

Illustrations

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money.

B denies the making of the bond..

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is, whether a certain document is the will of A.

The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate, that he consulted vakils in reference to making the will, and that he caused drafts or other wills to be prepared of which he did not approve, are relevant.

(e) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence-"the police are coming to look for the man who robbed B", and that immediately afterwards A ran away, are relevant.

(f) The question is, whether A owes B Rupees 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing--"I advise you not to trust A, for he owes B 10,000 Rupees", and that A went away without making any answer, are relevant facts.

(h) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal and the contents of the letter, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

Section -9 Facts necessary to explain or introduce relevant facts²¹

Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue

²⁰ (1885 7 All 385 FB),

²¹ Section 9 of the Indian evidence act, 1872

or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Facts will help in supporting, rebutting, explaining or introducing relevant facts are also relevant under this chapter, for example, if a person is absconding soon after being accused of a crime, it is relevant as conduct subsequent and affected by facts in issue. In *Sainudeen v State of Kerala*²² identification of the accused through his voice was relevant under this section. This section also covers test identification **parades (TI parades)**. Its utility was explained by the Supreme Court in *Ramanathan v State of TN*²³ stating that the common and old practice of lining-up suspects for identification by eyewitnesses or by the victim becomes essential where the identity of the perpetrator is unknown.

Illustrations

(a) The question is, whether a given document is the will of A.

The state of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant, under section 8 as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A.C., on leaving A's service, says to A--"I am leaving you because B has made me a better offer". This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it--"A says you are to hide this". The B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as an explanatory of the nature of the transaction.

²² (1992 Cr LJ 1644 Kerala),

²³ (AIR 1978 SC 1201)

Section -10 Things said or done by a conspirator in reference to common design²⁴

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustration

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against the [Government of India].

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Calcutta for a like object, D persuaded persons to join the conspiracy in Bombay, E published writings advocating the object in view at Agra, and F transmitted from Delhi to G at Kabul the money which C had collected at Calcutta, and the contents of a letter written by H giving an account of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were stranger to him, and although they may have taken place before he joined the conspiracy or after he left it.

Section -11 when facts not otherwise relevant become relevant²⁵

Facts not otherwise relevant are relevant-

- (1) If they are inconsistent with any fact in issue or relevant fact;
- (2) If by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

It gives relevancy to those facts which are irrelevant as such, but become relevant because they are inconsistent with relevant facts and their existence in themselves or in connection with other facts make some fact in issue or a relevant fact highly probable or improbable.

Illustrations

(a) The question is whether A committed a crime at Calcutta on a certain day.

The fact that, on that day, A was at Lahore is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant. (**Plea of Alibi**)

(b) The question is, whether A committed a crime.

²⁴ Section 10 of the Indian evidence Act, 1872

²⁵ Section, 11 of the Indian Evidence Act, 1872

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by none else and that it was not committed by either B, C or D is relevant.

Section 11 of the Evidence Act recognized a defence of **Plea of Alibi** the term Alibi is a Latin term which implies elsewhere or somewhere else. Alibi is used as a defence in criminal proceedings by the accused against the commission of the alleged offence. The accused makes this plea in the court so that he or she can prove his or her innocence that at the commission of the offence, he or she was in some other place. In general, plea of alibi implies that the accused was not physically present during the commission of the offence; he was elsewhere or somewhere else.

Essentials of Plea of Alibi

In general, some of the factors to be adhered are as follows:

- There must be an alleged offence punishable by law.
- The person making the plea of alibi must be an accused in that offence.
- It is a plea of defence where the accused states that he or she was somewhere else at the commission of the offence.
- The plea must prove beyond reasonable doubt that it was impossible for the accused to be physically present at the time of the commission of the offence.
- Making the plea of alibi must be an accused in that offence.

However the plea of alibi is not maintainable in all cases. Some of them are as under:

This plea of alibi is not maintainable in tort such as defamation, contributory negligence cases.

A plea of alibi is not applicable in matrimonial cases such as divorce, maintenance etc.

A plea of alibi operates as an exception to the Right of Silence.

As a general rule, it is the accused of the alleged offence who can take the plea of alibi. It must be pleaded by the accused that he or she was not physically present at the time of the commission of the alleged offence.

It is always wise to raise the plea of alibi as early as possible in the initial stage of a case. This initial stage could be the stage of framing of charge. But in some jurisdictions, it may be required by the accused to disclose the defence prior to the trial.

In *Dudh Nath Pandey v State of UP*²⁶ the Supreme Court said that the plea of alibi must be proved with absolute certainty, so as to make the presence of the accused at the crime scene, impossible. In *Baij Lal v Ram Pratap*²⁷ a seller divided his land in two and sold it in two different transactions to two different persons. The court held that the first sale deed will be

²⁶ (1981 2 SCC 166),

²⁷ (AIR 1982 Delhi 149),

considered and it was highly probable that the that the rest of the land was intended to be sold to the second buyer.

Binay Kumar Singh v. The State of Bihar²⁸

We must bear in mind that alibi, not an exception (special or general) envisaged in the Indian Penal Code or any other law. It is only a rule of evidence recognized in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. The defence witness stated that the accused was present at his brick kiln and signed certain challan papers, not showing the time of their issue, held alibi had not established

Section -12 in suits for damages,²⁹ facts tending to enable the Court to determine amounts are relevant. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is relevant.

Section 12 of the Evidence Act provides for the determination of damages when suits for the damages are claimed by the party. Under this section, the court can determine the amount of damages in an action based on contract or tort. In a suit for damages, the amount of damages must be a fact in issue. Thus the section lays down that evidence tending to determine, i.e., to increase or diminish damages is admissible. Section 55 of this Act lays down the conditions under which evidence of character may be given in civil cases to affect the amount of damages. Similarly, Section 73 of the Indian Contract Act also lays down the rule governing damages in actions in contract. In a suit for damages for a breach of contract of marriage, the evidence as to the status of the defendant may be given for the determination of the amount of damages. Section 73 is based on principles laid down in *Hadley v Baxendala*.³⁰

Section -13 Facts relevant when right or custom is in question³¹

Where the question is as to the existence of any right or custom, the following facts are relevant:-

- (a) Any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted, or denied, or which was inconsistent with its existence;
- (b) Particular instances in which the right or custom was claimed, recognized, or exercised or in which its exercise was disputed, asserted or departed from.

Illustration

The question is, whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours are the relevant facts.

²⁸ (1997) 1 SCC 283

²⁹ Section 12 of the Indian evidence act, 1872

³⁰ [1854] 9 Exch 341

³¹ Section 13 of the Indian Evidence Act, 1872

Section -14 Facts showing the existence of a state of mind, or of body or bodily feeling³²

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, or showing the existence of any state of the body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling, is in issue or relevant.

Explanation 1.-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.

Explanation 2.-But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession, to be stolen.

2(b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.]

(c) A sues B for damage done by a dog of B's which B knew to be ferocious.

The facts that the dog had previously bitten X, Y, and Z, and that they had made complaints to B, are relevant..

(d) A is accused of defaming B by publishing an imputation intended to harm the reputation of B. The fact of previous publications by A respecting B, showing ill-will on the part of A towards B, is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(e) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith make over to C the management of the work in question, so that C was in a position to contract

³² Section, 14 of the Indian Evidence Act, 1872

with B on C's own account, and not as agent for A.

(f) A is accused of the dishonest misappropriation of property which he had found, and the question is whether when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing the fact that A knew of the notice did not disprove A's good faith.

(g) A is charged with shooting at B with intent to kill him. In order to show A's intent, the fact of A's having previously shot at B may be proved.

(h) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved as showing intention of the letters..

(i) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(j) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage, is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

Section -15 Facts bearing on the question whether act was accidental or intentional³³

When there is a question whether an act was accidental or intentional, [or done with a particular knowledge or intention,] the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

³³ Section 15 of Indian evidence Act, 1872

(c) A is accused of fraudulently delivering to B a counterfeit rupee.

The question is, whether the delivery of the rupee was accidental.

The facts that, soon before or soon after the delivery to B, A delivered counterfeit rupees to C, D and E are relevant, as showing that the delivery to B, was not accidental.

Section -16 Existences of course of business when relevant³⁴

when there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Illustrations

(a) The question is, whether a particular letter was dispatched.

The fact that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place, are relevant.

Section -17 Admission defined³⁵

Admission plays a very important part in judicial proceedings. If one party to a suit or any other proceeding proves that the other party has admitted his case, the work of the court becomes easier. An Admission may be proved by or on behalf of the person making it under certain exceptional circumstances.

According to 17 of Indian Evidence Act, "An admission is a statement, oral or documentary or contained in electronic form³⁶ which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned."

There are three parts of the definition:

- It defines term "admission"
- It says that an admission will be relevant only if it is made by any of the person specified in the Act.
- "Admission" is Relevant only in the circumstances mentioned in the Act.

Essentials to constitute admission

To constitute admission, the following essentials are to be present as per definition stated above.

1. It may be oral or documentary
2. It is a statement to suggest any inference to any fact in issue or relevant fact.
3. It must be made under the circumstance prescribed under the Act.

³⁴ Section 16 of the Indian Evidence Act, 1872

³⁵ Section 17 of the Indian Evidence Act, 1872

³⁶ (Amendment w.e.f. 17/10/2000)]

4. It must be made by any person prescribed under the Act; and

Reasons for admissibility of admission

The admission must be clear and unambiguous. The admission is admissible because of the following reasons:

- a) Admissions as waiver of proof;
- b) Admissions as statement against interest;
- c) Admissions as evidence of contradictory statements;
- d) Admissions as evidence of truth.

Form of admission and to whom an admission may be made- It is generally immaterial as to whom an admission is made. It may occur in reference to the proceedings or outside the court.

Admission is the best substantive evidence that an opposite party can rely upon

Effects of Admission

An Admission does not constitute a conclusive proof of the fact admitted. It is only prima facie proof and proving the contrary is allowed. An admission being not conclusive proof of the fact admitted, evidence can be given to disprove it. But until evidence to the contrary is given and admission can safely be presumed to be proved.

Section 31 says that admissions are not conclusive proof of the matters admitted, but they may operate as an Estoppel, the party admitting the fact will not allow going against the fact admitting under section 115 of This Act. The provision is further supplemented by Section 58 under which it is provided, "Facts admitted need not to be proved." It says that no facts need to be proved in any proceeding which the parties hereto or their agent agreed to admit at the hearing or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading enforce at the time they are deemed to have admitted by their pleading.

Bishwanath Prasad v. Dwarka Prasad; The Statement made by a person in his pleading or in some other case have also been held by the supreme court to be admissions and, therefore, relevant.³⁷

Section 58 provides for the effect of waiver are known as judicial admissions. Judicial admissions are formal admissions made by a party during the proceeding of the case. Judicial admissions are binding on the party that makes them. They constitute a waiver of proof. waiver of proof: Judicial Admission operates as a waiver of proof which means it is proof of fact admitted and further proof is not necessary, though the court in its discretion may require further proof. Admissions dealt with in the Indian Evidence Act in Section 17 to 23 and 31 or different from Judicial Admissions. Admission in the Evidence Act is nothing but a piece of evidence.

³⁷ (1974) 1 S.C.C.78.

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