

## **SUMMARY OF LAW OF EVIDENCE**

1. "Fact" may be physical, psychological, positive and negative. Anything capable of being perceived by sense is fact. Section 3
2. Connection of events as cause and effect is relevancy.
3. A fact which has a certain degree of "probative force" is known as "Relevant fact".
4. "Falsus in uno falsus in omnibus" is no application in India.
5. Circumstantial evidence must be in conclusive in nature.
6. Three presumptions. first is rebuttable, second is irrebuttable, third is Mixed presumption. However, Indian evidence made presumption of fact and of law. Mixed presumption is confined to English law.
7. Evidence may be given of 1. facts in issue and 2. relevant facts. (Section 5 relevant facts)
8. In drawing up the evidence Act, the principle of exclusion has been followed.
9. The doctrine that all facts in issue are relevant to the issue, and no others may be proved, is the unexplained principle which forms the centre of and gives unity to all these express negative rules (Stephen Dig Introduction).
10. Law of evidence of negative rules declaring what is not evidence.
11. The particular ways of connection which the law regards as "relevancy" have been describe in Sections 6 – 55 of the Indian Evidence Act.
12. Relevant facts forming part of the same transaction. (Section 6)
13. Section 7 makes connected relevant by embracing a large area of facts.
14. There is hardly any action without a motive. (Section 8)
15. Sections 7 and 8 are based upon the theory of causation as a test of relevancy.

13. All explanation or introductory facts are relevant. (Section 9)
14. The principle of admissibility is that the "thing" done, written, or spoken was something done in carry out the common intention. (Section 10)
15. There should be "reasonable grounds to believe" in criminal cases to make a person responsible for the acts.
16. The principles on which Section 10 is based is that of 'agency'.
17. All the conspirators need not be convicted or acquitted.
18. All evidence must be logically relevant. (Section 11)
19. To claim Alibi his presence should be elsewhere.
20. Alibi should be established by cogent evidence.
21. Burden of proof of Alibi is on accused.
22. Any fact which enables the Court of law to determine amount of damage is relevant in civil case. (Section 12)
23. The facts that are relevant which any "right or custom" is in question. (Section 13)
24. Relevancy of facts should the existence of a person's state of mind, or of body or bodily feeling, facts it has been seen, are either physical or psychological. (Section 14)
25. A single similar act is admissible to prove knowledge or intent, or to rebut the suggestion of accident, but a single similar act is not necessarily admissible without further evidence. (Section 15)
26. To determine where there is sufficient and reasonable connection between the factum probans (fact to be proved) offered and the factum probandum (evidentiary fact) or whether they are too remote from each other for the factum probans to be received.

27. A general course of business or office, according to which it naturally would have been done, is a relevant fact and proof; or it is admissible. (Section 16)

28. Admissions are either formal or informal "proof of admissions shifts the onus". (Section 17)

29. Admission of several persons jointly interested. Where the reality of that interest is the point in controversy. (Section 18)

30. Generally statements by strangers are inadmissible. (Section 19)

31. Section 20 deals with another class of admission of persons other than the parties. [AIR 1985 SC 998 : AIR 1992 SC 1356]

32. Admissions not generally evidence for the maker. (Section 21)

33. Where there has been a document, nobody can be allowed to prove oral admission about the contents of such document. (Section 22)

34. Section 23 : Generally admissions made with conditions are inadmissible.

35. In civil cases if an admission of liability is made by a party upon an express condition that evidence of such admission should not be given. (Section 23)

36. Confession must be perfectly voluntary, in criminal cases. Prosecution to show voluntariness of confession. (Section 24) [AIR 1969 SC 422 : AIR 1991 SC 37 : AIR 1982 SC 1595 : AIR 1978 SC 1183 : AIR 1996 (4) SC 259 : AIR 1994 SC 214 : AIR 1985 SC 1678]

37. Admissions or statements not amounting to confession.

38. Confession of accused before police officer is inadmissible. (Section 25) [AIR 1994 SC 610 : (1996) 2 SCC 409]

39. All confessions are admissions but all admissions are not confessions.

40. Confession caused by threat, inducement, or promise is inadmissible. (Section 27)

41. Admissions may operate as estoppels.

42. Admission to be taken as whole. (Section 31)

43. If the word " Shall" is used in a statute, prima facie, it is mandatory; If the word "May" is used in a statute, ordinarily, it is used in a permissive sense. Yet, sometimes, " May" is equivalent to the word "Shall". (However, the intention of Legislature is to be ascertained to understand meanings of "May" and "Shall"). [AIR 1961 SC 751 : AIR 1959 J&K 110]

44. Evidence an be given only of those facts which are declared relevant.

45. Evidence has to be produced to prove or disprove fact in issue or relevant fact.

46. Only best evidence is to be produced.

47. Sections 17 to 21 deal with " admissions". Admissions are applicable civil and criminal cases.

48. Hearsay evidence is no evidence (Section 60). Yet, there are some exceptions to this rule. For example Section 6.

49. In civil cases, a person can be compelled to be a witness. Yet, in criminal cases, accused can not be compelled to be a witness.

50. In civil cases, admissions alone relevant but not confessions. But, in criminal cases, admissions as well as confessions are relevant

51. Benefit of doubt is available to accused in criminal cases.

52. In criminal cases, accused is always presumed to be innocent.

53. Two kind of presumptions: one is rebuttable and another is irrebutable presumption. Rebuttable presumption can be overthrown by evidence to the contrary. But, irrebuttable presumption is conclusive presumption of law. (Sections 41, 112, 113 deal with conclusive presumption).

54. May presume: 1) Court has discretion to raise or not to raise presumption of fact. 2) court may call for proof of it.

55. Shall presume: 1) court has no discretion as to "shall presume". 2) court is bound to raise presumption, unless and until it is disproved.

56. Hearsay evidence is no evidence.

57. Res gestae is an exception to the rule of "Hearsay evidence is no evidence". Section 6

58. Generally, no person can be made liable for the acts of another. Yet persons who take part in "conspiracy" are deemed to be conspirators. Section 10

59. In civil cases, party succeeds on his own strength.

60. Character of party, in civil cases, is irrelevant.

61. There should be clear proof corpus delict (commission of offence)

62. The prosecution must show the guilt of accused, in criminal cases, "beyond all reasonable doubt". But, only reasonable doubt goes to accused.

63. The prosecution cannot take advantage of the weakness of the defence.

64. The prosecution must stand on its own legs basing on the evidence that has been let in.

65. Burden of proving that any transaction has been effected by fraud, misrepresentation, intimidation, coercion or undue influence, etc, lies upon the person alleging that. [Narsingh Murthi's case, AIR 1941 Madras 690]

66. In criminal cases suspicion however strong can never take the place of proof. [Sarwan Singh's case, AIR 1957 SC 637]

67. The proof should be in the nature of "preponderance of probabilities" in civil cases.

68. Proof should be placed by the party on whom the burden of proof rests, unless he is estopped.

69. If evidence is given by witness, he should testify, subject to rules relating to examination.
70. Admission must be certain, and clear.
71. Admission must be taken as a whole. Partial admission cannot be accepted.
72. Admission is substantive piece of evidence.
73. A statement of admission made by any partner should be binding against other partners in a partnership.
74. Admission may be either in oral form, or documentary form, or signs or gestures form, or informal.
75. Self harming statement in civil case can be called as "admission".
76. Self harming statement in criminal case can be called as "confession".
77. Admission is not conclusive proof yet it may operate as estoppel.
78. All Confessions are admissions.
79. All admissions are not confessions.
80. Admissions can be proved by hearsay evidence.
81. Confession must be clear, cogent, whole.
82. Involuntary confession is inadmissible in evidence.
83. Confessions is made in presence of Magistrate is admissible.
84. A person who is about to die would not lie.
85. Trust sits on the lips of a person who is about to die.

86. "Leterm Mortem" means "Words said before Death".

87. Dying declaration should be complete in nature.

88. The person who is making dying declaration need not be under expectation of death.

89. There is no particular form for dying declaration.

90. Previous good character is relevant in criminal cases but evidence of bad character is irrelevant.

91. Character evidence is relevant in civil case if such evidence itself is fact in issue.

92. Fact admitted need not be proved.

93. Oral evidence must be direct.

94. Evidence which carries on its face no indication that the better remains behind, is primary.

95. In a case of malicious prosecution even though as generally understood absence of reasonable and probable cause is a negative assertion, still the burden of proving it lies on the plaintiff. [Vija Nath's case, AIR 1971 ALL 109 : Buddu singh case, 1971 AWR 445]

96. The contents of a document may be proved either by primary or secondary evidence. Section 64

97. Document must be proved by primary evidence except in exceptional case provided for in that. Section 65

98. Mere filing of document is not enough to make the document a part of record.

99. The person who makes an allegation should prove it. Section 67

100. Execution consists in signing a document written out, read over and understood the contents of document. Section 68

101. If witness dies the provision of Section 69 comes into play.

102. Mere admission of signature or thumb impression on blank sheet of paper does not mean an admission of execution.

103. Handwriting and signature of a person can be proved by an expert. Section 45

104. Court may compare the disputed document. Section 73

105. A judgment, a decree or order, order sheet of Court are public documents. [AIR 1934 PC 157 : 1978 ALJ 1141 : AIR 1931 All 364]

106. When the contents of a public document are to be proved before Court, the original need not be produced. Section 77

107. All acts are presumed to be rightly done. (See maxim " Omnia praesumuntur rite esse acta"). Section 79]

108. Presumption under Section 90 is rebuttable.

109. It is after the document has been produced to its terms under Section 91, that the provisions of Section 92 come into operation, for purpose of excluding evidence of any oral argument or statement, for the purpose of contradicting, varying, adding, subtracting from its terms.

110. When terms of a document have been proved by producing the document, oral agreement cannot be proved to contradict the same. (Section 92 and Section 100 as to know some exceptions to this rule)

111. Section 93 to 98 lay down rules regarding interpretation of documents with the aid of extrinsic evidence.

112. If a language of a document is plain, yet it turns out that there are more than one person or thing to which the description applies, oral evidence can be given to facts which show to which person or thing it is intended to apply. Section 96

113. Experts may be called to explain the meaning of terms of a document. Section 98

114. The person who is not a party to document can lead evidence of any facts tending to show contemporaneous agreement varying the terms of the document. Section 99

115. Documents unmeaning in reference to existing fact evidence may be given to explain it. Section 95

116. When the language of a document may apply to only one of many facts evidence may be given as to which it applies. Section 96

117. When the language applies partly to one existing fact and partly to another, evidence may be given as to which it applies. Section 97

118. Evidence may be given to show the meaning of illegible or not commonly intelligible character. Section 98

119. Evidence may not be given to remove the ambiguity of the language. Section 93

120. Generally, he who asserts or claims, he must prove it. Section 101

121. Burden of proof rests on the person who who substantially asserts the affirmative of the issue not upon the person who denies it. Section 104

122. The burden that arises from the pleadings depends upon the facts asserted or denied and is determined by the rules of substantive and statutory law or by presumption of law and fact.

123. Onus of proof in its primary means the duty of establishing a case. In its secondary sense the onus means no more than the duty of adducing evidence. [Ganga Din v. Bahoran lal, AIR 1937 Nag. 230]

124. It is the duty of accused to prove the plea of alibi. [Jagannath Giri v. State of Bihar, 1992 Cr.L J 648]

125. Accused is under no obligation to substantiate his defence version.

126. Generally, there is no presumption of advancement.

127. The burden of mala fides lies on the person who alleges it.

128. The burden of collusion lies on the person who alleges it.

129. In suit for specific performance of contract, burden lies on the defendant to prove that he is bona fide purchaser for value. [AIR 1963 SC 1150]

130. When the facts prima facie prove negligence, the burden lies on the defendant to prove that he was negligent. (Res ipsa loquitur) [G & N.I.T Co.'s case, AIR 1955 MB 214; Indian Airlines's case, AIR 1965 Cal 252]

131. In suit for damages the burden lies on the plaintiff. [L.J. Leach & Co Ltd case, AIR 1957 SC 357]

132. When the defendant pleads that suit of plaintiff is time-barred, the burden lies on the plaintiff to prove the facts which would bring the suit within time. Bansori Lal's case, AIR 1943 Cal. 131

133. He who claims any exceptions, he has to prove the same. Section 105

134. If it is proved that a person has not been heard of for 7 (seven) years or more by those who would naturally have heard of him if he had been alive, law presumes that he is dead. Section 108

135. Doctrine of 'Estoppel' applies only to Civil cases.

136. Rule of Estoppel does not apply to "Minor".

137. Rule of Estoppel is which stops a person from taking up different positions from what he stated earlier.

138. On issue of a fact or law which has been determined in previous proceedings cannot be raised in subsequent proceedings.

139. Every person is competent to give evidence unless the Court considers that he is unable to understand the question put to him and is unable to give rational answer. Section 118

140. Dumb witness may give evidence by writing, or by signs or by gestures. Section 119

141. Law protects all information between wife and husband and hence no person can compel them to reveal what the other spouse communicated. Section 122

142. Lawyers cannot be compelled to disclose the contents of any document with which they came to know in the course of their job.

143. Judge has no power to excuse a witness from answering if the question is relevant to the matter in issue. Section 132

144. Accomplice is competent witness against accused. Section 133

145. Evidence has to be weighed and not counted'. Section 134

146. The testimony of a single witness is sufficient, if it is reliable, to prove a fact. Section 134

147. Order in which are to be produced shall be regulated by law and practice for the time being relating to C.P.C and Cr. P.C. Section 135 [Order 18 of Code of Civil Procedure, 1908 and Chapters XVIII, XIX, XXI, XXIII, & XXIV of Code of Criminal Procedure, 1973]

148. Judge has to decide as to admissibility of evidence. Section 136

149. No leading questions can be asked in Examination-in-Chief. Section 137; However, with permission of court, leading question may be asked in examination-in-Chief. Section 142

150. Leading questions can be asked in cross-examination

151. The questions in cross-examination must be related to relevant facts and facts in issue.

152. Object of re-examination is to remove any doubt arose in cross examination and to enable the witness to clarify any contradiction.

153. New matter should not be introduced in re-cross examination.

154. In re examination the questions should be confined only to the matters arisen out of cross examination; leading questions cannot be asked in re-examination.

155. If any witness gives inconsistent or contradictory statement, he should not be declared as hostile.

156. No particular number of witnesses is needed to prove any fact. Section 134

157. Court empowers to compel a witness to answer to a relevant question. Section 147

158. Court to decide if the witness has to answer a question. Section 148

159. Question not to be asked in cross examination without reasonable grounds. Section 149

160. If Court opines that question is put by a counsel without reasonable ground, the court may make a report as to the matter to High Court. Section 150

161. Court shall forbid any question or inquiry which it regards as indecent or scandalous. Section 151

162. Court shall forbid any question which appears to be intended to insult or annoy a witness. Section 152

163. If a witness has answered at his credit, no evidence shall be given to contradict him. Yet if he answers falsely, he may afterwards be charged with giving false evidence. Section 153

164. Evidence of hostile witness cannot be rejected wholesale.

165. Credit of a witness may be impeached in any way as provided under Section 155.

166. Witnesses may refresh their memory, while examination. Section 159

167. When witness is summoned to produce any document, he shall produce the document before court; if any objection is raised as to its production, it should be decided by the court. Section 162

168. Section 163 of Act is applicable to criminal cases as well as civil cases. [Govt of Bengal v. Shanti Ram Mandal, AIR 1930 Cal 370]

169. The party calling for document is bound to give it as evidence, if required to do so. Section 163

170. Section 164 does not apply to criminal proceedings. [Shyam Das Kapoor's case, AIR 1933 Cal 33]

171. Judge can ask any question he pleases to witness, at any time, whether it is relevant or irrelevant.  
[Section 165]

172. Though the section uses the word "Judge" but it must be construed to include even a Magistrate or any court authorised to take evidence. Section 165 [Alana Umar's case, AIR 1965 ALL 131]

173. Any question put by Judge must be so as not to frighten,coerce, confuse, intimidate the witness.  
Section 165 [Ramachandra's case, AIR 1981 SC 1036]