Indian Evidence Act

(Semester VII)

UNIT 1: LAW OF EVIDENCE

1.1: History and Development

Background of the Indian Evidence Act

1. In the ancient period, there has been elaborate discussion of the rules of evidence in Sanskrit books. However, not much information is available in the Muslim period in respect of the Law of Evidence.
2. In 1726, the rules of evidence prevailing in England under Common law and statute law were introduced in India.
3. During 1835-1855 at least 11 enactments in this area of law were dealt with. In 1868, a draft prepared by Sir Henry Sommer Maine which was found unsuitable for the country.
4. Sir James Stephen in 1872 prepared the Bill for the Act as in present day, who was entrusted with the same work in 1871.
5. Most States had already adopted this Act before even the Constitution came into force. The Law of Evidence which came into force in 1872 continues to be applicable to this day with least changes being made in the past.

1.2 Object and Scope of Study AND 1.4 Appreciation of Evidence

Relevance and Function of the Law of Evidence

1. In the process of delivering justice, Courts not only have to go into the facts of the case but also ascertain the truthfulness of such assertions made by the parties. To ascertain these facts, the Law of Evidence plays an important role, being the procedural law in this aspect
2. It is this procedural law that provides in itself how fats are to be proved and when the same will be regarded as relevant by the Court in the administration of justice.
3. It helps judges in deciding the rights and liabilities of the parties arising out of the facts presented to him for further application of the relevant laws.
4. Thus, the law of evidence lays down the principles and rules according to which the facts of a case may be proved or disproved in the Court of Law.
5. It helps the Courts in preventing the wastage of time upon irrelevant issues.
6. In the case of Ram Jas v. Surendra Nath, it was held that, the law of evidence does not affect the substantive rights of the parties but facilitates the course of justice. It lays down rules of guidance for the Courts. It is procedural in nature, proving how a fact can be proved

Preamble, Short Title and Commencement

1. This Act comes into force on September 1, 1872.
2. Section 1 of the Act states that this Act is applicable to the whole of India except J&K.

3. It applies to all judicial proceedings in or before any Court, including Courts Martial other than Courts Martial convened under the Army Act, the Naval Discipline Act, the Indian Navy (Discipline) Act or the Air Force Act.
4. A judicial proceeding is one wherein the object of it is to determine a jural relation between one person and another or a group of persons or a person and the community in general. A judge without such object in mind does not act judicially. Further, Section 2 (i) of the CrPC, a state that a judicial proceeding is one in which evidence is or may be taken legally on oath. EX: an execution proceeding, a proceeding under Chapter IX of the CrPC etc.
5. A non-judicial proceeding is an enquiry about the matters of facts where there is no discretion to be exercised and no judgment to be formed, but something to be done in a certain event, a duty. It is said to be administrative in nature. EX: an enquiry by a Collector under the Land Acquisition Act, a contempt proceeding, a departmental enquiry held for police officers, etc.
6. This act applies only to native Courts martial and proceedings before the Indian marine Act.
7. Further this Act does not apply to affidavits presented to any Court or Officer, nor to judicial proceeding before an arbitrator.
8. The Act does not apply to affidavits; however affidavits are used as a mode of proof. The courts may take into consideration all facts alleged in the affidavit if not controverted in the counter-affidavit. Provisions for affidavits are in both the CPC and CrPC.
9. An arbitrator is not bound by the strict rules of evidence as the object behind an arbitrational proceeding is to avoid the elaborate procedure of a regular trial. Further, not acting in accordance with the rules of evidence cannot be brought as a cause of action against the arbitral award as given by him. An arbitrator is expected to follow the rules of natural justice only.
10. Lex Fori: this phrase means the place of the action. It was held by the House of Lords, “the law of evidence is lex fori which governs the courts; whether a witness is competent or not, whether a certain evidence proves a fact or not, is to be determined by the law where the cause of action arises, where the remedy is enforced and where the court sits to enforce it.” Thus, when evidence is taken in one country for a suit or action in another country, the law applicable to the recording of evidence would be the law prevailing in the country where the proceeding is going on.

<u>Scope of the Evidence Act</u>

1. The Act is a complete code in itself repealing all those rules of evidence except those as explicitly mentioned in the proviso to Section 2. There are many statues which supplement the Evidence Act. Some of them are as follows:
   i. Bankers Book Evidence Act

ii. CPC
iii. CrPC
iv. TOPA
v. Divorce Act
vi. Stamp Act
vii. Succession Act
viii. Commercial Documents Evidence Act, etc

2. The Act, deals particularly with the subject of evidence and its admissibility. It is a special law. Hence, no rule as stated in the Act is affected by any other statute unless otherwise specifically mentioned.
3. Evidence excluded by the Act is inadmissible and should not be admitted merely because it may be essential in the ascertainment of truth.
4. Parties cannot contract themselves out of the provisions of the Act.
5. If evidence is tendered, Courts are to check whether such evidence is admissible under the Act.

1.3: Evidence and Proof

S. No.	Basis of Distinction	Evidence	Proof
1.	Meaning	All the legal means exclusive of the mere arguments which tend to prove or disprove a fact.	Anything which serves to convince the mind of the court regarding any truths or propositions to come to a certain conclusion.
2.	Nature	It is the medium of proof.	It is the effect or result.
3.	Relationship	It is the foundation of proof.	It is what is constructed on basis of evidence.
4.	Necessity	Without the foundation of various facts or evidence, there cannot be proof.	Without evidence there cannot be proof. It is only the basis of proof can a case is decided by a Court.
5.	Kinds	There are various kinds of evidence. HORN SSC: Hearsay, Oral, Real, Non-Judicial, Secondary, Substative, Conclusive	There is only one collective proof and there are no various kinds of proof.
6.	Mathematical Analogy	$E_{1+} E_2 + \ldots E_4 + E_5 =$Proof	
7.	Examples	In case of murder, the knife, weapons, clothes, finger prints etc.	Collection of all these evidences becomes proof when such evidence leads

			us to the murderer.
8.	Scope	It is the material over which the foundation of truth is based	Proof is the establishment of facts in issue by proper legal means to the satisfaction of the Court.
9.	Conclusion	Once the evidence comes before the Court and stands the test of legal scrutiny, then it becomes proof.	

UNIT 2: TYPES AND FORMS OF EVIDENCE

1. Evidence may be defined as:
   i. Facts which are legally admissible and legal means are used to prove such facts. – Nokes
   ii. The testimony, whether oral, documentary or real, which may be legally received in order to prove or disprove some fact in issue.- Phipson
   iii. The evidence received by Courts of justice in proof or disproof of the facts, the question of its existence comes before the court. – Best
   iv. Section 3 of the Act- given later.
2. As per the changing circumstances and requirements in every case certain type of evidence may be proved or disproved in order to establish a fact. The court may or may not accept such kind of evidence.
3. There are various kinds of evidence. (11 pairs)

Direct Evidence and Indirect or Circumstantial Evidence

1. Direct Evidence or Positive Evidence is the testimony of any evidence of a fact actually proved by the witness by his own opinion or senses about the existence or non existence about a fact in issue or relevant fact. It is the evidence about the real point in controversy. Examples: A kills B with a knife. C deposes that he saw A with the murder weapon and stabbing B.
2. It must be noted that small discrepancies or irrelevant details if left out in the witnesses' statement shall not corrode the credibility of the witness and will not in any way rejection of the witness statement by the Court.
3. Circumstantial Evidence is that which tends to establish the fact in issue by proving another fact. In proving other relevant facts, the cause and effect of the fact in issue may be proved that may lead to a conclusion. It is direct evidence indirectly applied. Thus, the facts from which the existence of facts in issue must be proved should be done by way of direct evidence. For example, if it is alleged that A killed B with a knife and C deposes that he saw A walk out of the room where C was killed with the knife, or with a splatter of blood on his clothes, the same would be circumstantial evidence.
4. Such kind of evidence is to be resorted to only in case no direct evidence is available.
5. In the case of Sharad B. Sharda v. MH, the SC held that circumstances must lead to guilt of the accused and exclude the innocence of the accused. Further, the cumulative effect of the circumstances must be such that it should establish that the accused and only the accused must have committed the crime.
6. The Supreme Court in the case of Birdichand Sarda v. State of Maharashtra, laid down the 5 Golden Principles of Circumstantial Evidence:

i. The circumstances from which the conclusion of guilt is to be drawn should be fully established.
ii. The facts so established must be consistent only with the hypothesis of the guilt of the accused i.e. it should only explain the hypothesis of the guilt of the accused.
iii. The circumstances should be of a conclusive nature.
iv. They should exclude every possibility of any other hypothesis than the one to be proved.
v. There must be a claim of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all possibility that the act must have been done by the accused.

7. In the case of Caestanco Fernandez v. Union Territory of Goa, a test was laid down for the acceptance of circumstantial evidence which is as follows: if 2 inferences are possible at the same time, one about the innocence and the other the guilt of the accused, the evidence indicating towards the innocence of the accused shall be used.
8. When a case squarely rests on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused.
9. It is a well settled principle now that if at all a case rests primarily or wholly on circumstantial evidence, the links in the chain of events must be proved completely.

Real Evidence/ Material Evidence and Personal Evidence

1. Real Evidence is that which is brought to the knowledge of the Court by inspection of an object and not by way of a witness or a document produced.
2. Personal Evidence is that which is afforded by a human agent by voluntary signs.

Original Evidence and Hearsay or Unoriginal Evidence

1. Original Evidence is that which a witness reports himself to have heard or seen by way of his own senses.
2. Unoriginal or Hearsay Evidence is that which a witness is merely reporting what he himself saw or heard but through the medium of a third person. Such kind of evidence is not admissible at all.

Primary and Secondary Evidence

1. Primary evidence is when a document is produced before the court for inspection or proof of an admission of the contents by the parties.
2. Secondary evidence is inferior which itself indicates that the existence of a fact is taken from the original source.

Oral and Documentary Evidence

1. Oral Evidence is that which is brought to the knowledge of the Court by verbal statements of the witness, qualified to speak on point under enquiry. [S. 59 & S. 60]
2. Documentary evidence is that evidence of a fact brought to the knowledge of the Court by inspection of any document produced. A documents means any matter expressed or described upon any substance by means of letters or figures intended to be used. [S. 61- S. 90]

Judicial Evidence and Non- Judicial Evidence

1. Judicial Evidence is that which is received by the Court of justice in proof or disproof of facts. Therefore, it is natural evidence modified by certain rules.
2. Non Judicial Evidence is that which is given in proceedings before an officer not in a judicial capacity but in an administrative capacity [S. 164]

Positive and Negative Evidence

Positive Evidence is that which tends to prove the existence of a fact whereas, by negative evidence the non-existence of a fact is proved. Therefore the latter is not good evidence.

Substantive and Non- Substantive Evidence

Substantive evidence is that evidence on which reliance can be placed. It relates to the rights and duties of the parties. Non substantive evidence on the other hand corroborates to increase the credibility of or contradicts in order to discredit the substantive piece of evidence.

Pre-appointed and Casual Evidence

1. Pre-appointed evidence is also called Pre-Constituted evidence which is procured in anticipation of its use. Hence it may be voluntary or prescribed by law.
2. Casual evidence is the evidence which is not pre-constituted and depends on the circumstances of the case.

Prima Facie Evidence and Conclusive Evidence

1. Prima facie evidence is accepted as reliable as it establishes or proves a fact in the absence of any contradictory evidence.
2. Conclusive evidence is the use of facts involving the application of the rule of law. (S. 41) Decree of a competent court is conclusive evidence.

Scientific Evidence and Digital Evidence

Scientific evidence the use of scientific basis from the point of view of cogency, weight or effect of the evidence. It is based on the fact that science confirms the facts stated.

Digital evidence is the rule of modern concepts or electronic concepts in establishing or proving a part of facts in issue which is relied on by the Courts depending on the facts and circumstances of the case.

UNIT 3: INDIAN EVIDENCE ACT

3.1 Schematic Arrangement

3.1.1: Interpretation Clause

1. COURT: includes all Judges and magistrates and all persons legally authorised to take evidence other than arbitrators.
2. Court has been defined for the purpose of this Act only and cannot be extended beyond its limited scope. The definition is thus not exhaustive but explicitly excludes arbitrators. Therefore, by virtue of this definition, in a jury trial, both the jury and the Judge will be regarded as Court.
3. It was held in the case of State of MP v. Anshuman Shukla that the authorities constituted under the M.P Madhyastham Adhikaran Adhiniyam, though named as Arbitral Tribunals were courts as they were empowered to take evidence and examine witnesses.
4. FACT: As defined means and includes anything that can be perceived by ones senses and any mental condition of which any person is conscious.
5. A fact need not be a tangible or visible object; it may be statements, feelings, opinions or a state of mind. EX: A man heard or saw something; a man said certain words, a man having a certain reputation, having a certain intention, etc. are all facts.
6. Facts may be divided into the following kind: (1) External and Internal Facts; and (2) Positive and Negative Facts.

1.	External Fact	Internal Fact
	It is considered to have its seat in some animate or inanimate being, not by virtue of it being considered as animate but what it has in common with the inanimate being. EX: horse, man etc. It is a perception of the five senses	It is considered to have its seat in an animate being and by virtue of the same quality being considered animate. EX: a certain opinion, an intention. It is a subject of consciousness, good faith etc.
2.	Positive Fact	Negative Fact
	The existence of certain things is a positive fact	The non existence of certain things is a negative fact.

7. Matter of Fact and Matter in law: Matter of fact is anything which is the subject of testimony which can be proved by way of evidence; matter of law is the general law of land of which the court will take judicial notice. It does not have to be proved by evidence.

8. Relevant: one fact is said to be relevant to another when one is connected with the other in any way as referred to in sections 5 to 55. It must be connected to the facts in issue or other relevant facts. A fact not connected as in the sections mentioned, is not relevant. All relevant facts are admissible.
9. Relevant has 2 meanings, in one sense it means connected and in another it refers to admissibility.
10. According to Stephen, relevancy means connection of events as in a cause and effect relationship. A relevant fact is a fact that has a certain degree of probative force.
11. Facts in Issue: it means and includes any fact from which, either by itself or in connection with other facts, the existence or non-existence, nature or extent of rights, liability or disability, asserted or denied in any suit or proceeding.
12. Facts in issue are those facts which are alleged by one party and denied by another in the pleading in a civil case (i.e. the issues framed under CPC) ; or alleged by the prosecution and denied by the accused in a criminal case (i.e. the Charges under Chapter XVII of the CrPC).
13. When a case is before the Court, two types of facts play an important role in determining whether or not the alleged offence has been committed, they are facts in issue and relevant facts.

Facts in issue + Relevant Facts = Proof

14. The evidence in a particular case is confined to the facts of the case before any court. The Court must ascertain the area of controversy between the parties and the facts which are in dispute are the facts in issue. It is on basis of the evidence that is brought before the court on the facts of a case that fact in issue is decided giving some right or liability to a party.
15. Facts in issue may be proved either by direct evidence or circumstantial evidence. For example, in a road accident or rape cases, the courts have to depend on circumstantial evidence where direct evidence is unavailable.
16. Relevant facts are facts which themselves are not in issue but may help in proving facts in issue. They act as foundations from which inferences are drawn in respect of the facts in issue. For example, if witnesses depose they saw or an incident or heard the gun in a killing, the facts would be treated as relevant and therefore admissible.
17. Thus, facts in issue and relevant facts go hand in hand and on this basis a Court shall pass its judgment.

DISTINCTION BETWEEN FACTS IN ISSUE AND RELEVANT FACTS

Sl. No.	Basis of Distinction	Facts in Issue	Relevant Facts
1.	Nature of Fact	It is the relevant fact arising out of issues/charges framed by the Court in a suit or proceeding. It is also called 'Factum Probandom'.	It is the evidentiary fact and is also known as the 'Factum Probandi'
2.	Relation with Substantive Law	In a case, a fact in issue is a question of law which will be determined by the substantive or procedural law regulating the pleadings	It is a fact so connected with the facts to prove or disprove facts in issue.
3.	Judicial Value	They are facts out of which some legal rights, liability/ disability can arise and upon which the court formulates its opinion	It is not necessary ingredient of a right or a liability. It merely renders probability to the existence or non-existence of the right or liability.
4.	Essentiality	These are facts which are matters which are in dispute affirmed by one party and denied by the other party.	These facts are not in issue themselves but are very essential in deciding the dispute.
5.	Examples	A is accused of murdering B on S.B. Road, the facts in issue will be: i. Whether A caused B's death; and ii. Whether A intended to cause B's death	As regards this allegation, A sets a plea of an alibi that at the time of the occurrence of the crime he was in Pashaan. It will depend on other facts such as whether he was at another place and if he was at such place at the time of commission of the crime.
6.	Cases Babri-Masjid/Ayodhya Case	In this case, a fact in issue was whether or not it was the land where Lord Ram was born or where the Mosque was erected?	The relevant facts would be whether such mosque had been constructed at all, whether the architectural evidence showed the same and what stands at such site in the present day.

18. Document: In general parlance, a document is any matter written upon a paper in some language. However, as per Section 3, it means any matter expressed or described upon any substance, paper, stone or anything by means of letter or marks. It includes ‘milkman’s score’; ‘exchequer’s tallies’ a ring or banner with an inscription, a musical composition, a savage tattooed with words intelligible to himself. It also includes letters or marks imprinted on trees. With technological advancement a video recording, a tape recording, electronic mails are all considered to be documents.

19. Evidence: The word evidence is derived from the Latin word evedei meaning evident, clear, apparent or straight. Thus under S. 3 of the Act, Evidence includes all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence. It also includes all kinds of documents (i.e. electronic records also) produced for inspection before the Court.

20. The following cannot be construed as evidence before the Court:
    i. Statement before the police
    ii. Comments before the court under S. 313 of the CrPC as not under the oath.
    iii. Any statement made in the presence of a police officer under section 25 shall not be recorded as evidence as not under oath.
    iv. Statements made by the accused cannot be considered as evidence as the section clearly provides that only the statement of witnesses shall be regarded as evidence. For an accused to be allowed to give evidence before the court, he needs to make an application to the Court and be under an oath. However, this is rarely done as the accused will have to face a cross-examination if he wishes to testify.

21. Instruments of Evidence:
    i. Oral evidence as stated by the witnesses
    ii. Documents
    iii. Real Evidence or A Topic Evidence: where the Judge himself perceives in the course of the trial on the basis of demeanour of the witnesses, visiting the site at which the offence was committed, in respect of the injuries etc.
    iv. Video recordings, etc.

22. In the case of N. Jayarman v. State of TN & Harischandra v. State of Delhi it was held that the maxim ‘*falsus in uno falsus in omnibus’* which means that if a thing is false in respect of one, it must be taken as false in respect of all, shall not occupy the status of law in India and it is the duty of the Court to make a difference between each element of fact produced before it. It is however considered to be a rule of caution. (Kulwinder Singh v. State of Punjab).

DIFFERENCE BETWEEN PROVED, DISPROVED AND NOT PROVED

S. No.	Basis of Distinction	Proved	Disproved	Not Proved
1.	Nature	It is a positive term which the court takes into consideration to come to a certain conclusion to its satisfaction	It is a negative term and is the converse of proved i.e. it is not to the satisfaction of the Court. It is akin to being false.	It is in between proved and disproved depending on the facts and circumstances of the case.
2.	Judgment by Court	When a fact is proved, the Court gives the judgment in favour of the person who proves the facts on basis of some oral or documentary evidence.	When a certain fact is disproved no further question arises about its further proof.	Chances of providing further evidence to prove such a fact is possible.
3.	Illustration: A is accused of murdering B on F.C. Road. A states that at the time of the commission of the offence he was taking a medical test at Ratna Hospital and provided medical reports.	The Court believes this circumstantial evidence and acquits A.	The Court checks the same with the hospital, which has no records of such patient. The alibi is disproved	A takes the plea of taking a medical test but does not produce any evidence to substantiate the same. Thus, the statement of the accused is still not proved but may be proved in due course.

3.1.2: Probability Test: Presumptions

1. The law of evidence provides that a court can take into consideration facts even without calling for proof i.e. they may presume some facts.
2. In the law of evidence presumption means an inference, affirmative or negative, of the existence of some fact, drawn by judicial tribunal, by a

process of possible reasoning from some matter of fact which is judicially noticed or admitted or established by legal evidence to the satisfaction of the court.

3. The inferences or presumptions drawn are based on the wide experience or the existence of some nexus between the facts.
4. Presumptions may be drawn from the course of nature, the course of human affairs, from the usage in society and transaction in business. For example, from the fact that a letter has been posted, a presumption may be made that it reached the addressee OR A owns a watch which is stolen and B has possession of the same watch. It may be presumed that either B stole it or received it from a thief knowing it to be stolen.
5. Presumption is of 3 kinds: (1) Presumption of fact or natural presumption; (2) presumption of law (Irrebuttable or rebuttable); (3) Mixed presumptions or presumptions of fact and law.

6. Presumptions of fact are inferences which are drawn naturally from the observation of the course of nature and the constitution of the human mind. EX: Certified copies of foreign documents or maps; books, maps or documents of public usage when published the court shall presume that the person who published did the same.

7. Presumptions of law are of 2 kinds: (1) Irrebuttable or Conclusive; and (2) Rebuttable.
    i. Irrebuttable Presumptions: They are those legal rules which are not overcome by any evidence that the fact is otherwise. This kind of presumption of law is conclusive. EX: In a criminal case, a child below the age of 7 years shall be presumed to be innocent. No evidence to prove he was guilty shall be allowed before the court.
    ii. Rebuttable Presumptions: They are certain legal rules which require a certain amount of evidence to support the allegation. Such presumptions may be rebutted by evidence of facts to the contrary. Such presumptions are conclusive in absence of such evidence. EX: a man is presumed to be innocent until he is proven guilty; a child when born in legal wedlock shall be presumed to be legitimate.

8. Mixed Presumptions: of law and fact are chiefly confined to English law of real property and the same is not provided for in Indian law.

9. May Presume: Whenever the court may presume a fact, the Court may take notice of the fact without taking proof or may call upon a party to prove the fact. The Court has discretion to presume a fact or not to presume it. EX: A document which is 30 years old is produced from proper custody, the court may presume that the document was signed and written by the person who purported the document.
10. Shall Presume: The court cannot exercise its discretion when the words of a provision have the words “shall presume”. The Court in such a case will be compelled to take a fact as proved. The Court will be at a

liberty to allow the party to adduce evidence to disprove the fact so presumed if the party is successful in doing so.

11. Conclusive Proof: When a fact is a conclusive proof of another fact, the court has no discretion at all. It cannot call upon the party to prove nor call the opposing party to disprove the fact. EX: when the court in one case concludes that A is the wife of B and in another case it is questioned as to whether A and C are married. It shall be considered to be conclusive proof from the earlier case that A is married to B.

DISTINCTION BETWEEN PRESUMPTION OF FACT AND PRESUMPTION OF LAW

S. No.	Presumption of Fact	Presumption of Law
1.	It is based on logic, human experience and laws of nature	It is based on provisions of law
2.	It is always rebuttable and goes away when explained or rebutted with positive proof.	It is conclusive unless rebutted as provided under the rule giving rise to presumption.
3.	Its position is uncertain and transitory	It is uniform and certain.
4.	The court can ignore such presumption however strong it might be.	Courts cannot ignore such presumption.
5.	It is derived from the laws of nature, prevalent customs and human experience	It is derived from established judicial norms and has become a part of legal rules.
6.	The Court can exercise its discretion while drawing such presumption.	The court is bound to draw such presumption and it is mandatory.
7.	Examples: when a person is missing for 7 yearshe is presumed to be dead, a child below the age of 7 years is presumed to be innocent and cannot be proven to be guilty.	Example: whatever has been told to the telegraph office is told to the receiver; certified copies of foreign documents are presumed to be right.

3.2: Sections 5-16

1. Section 5

i. It declares that in a suit or proceeding evidence may be given of the existence or non-existence of (1) facts in issue, and (2) of such other facts as are declared to be relevant in S. 6- 55 and of no others.

ii. Thus, it explicitly excludes all that which is not mentioned in Ss. 6 to 55. A party trying to adduce evidence has to show that such evidence adduced is relevant under any of the sections as mentioned. All evidence excluded by the Act shall be inadmissible even if it helps in the ascertainment of truth.

iii. The Court must thus come to a conclusion by confining and considering itself strictly to the provisions of the Act and come to the conclusion of

the relevancy of a fact on basis of the Act and not by way of common sense or otherwise.

iv. A court cannot on the basis of public policy exclude evidence relevant under the Act.

v. Relevancy is a question of law to be decided by the Judge and shall be decided when raised and not when the judgment is being given. If there is a doubt with regard to the relevancy, the Court must declare in favour of the relevancy rather than irrelevancy.

vi. Evidence that is partly relevant and partly irrelevant, if inseparable shall be declared as wholly inadmissible. If separable on the other hand, the relevant evidence can be separated from the irrelevant evidence, then only the relevant evidence shall be admissible.

vii. If the evidence is irrelevant and admitted it can be objected to at any stage even in the highest appellate court. However, if the evidence is relevant and the proof is improper and the evidence is admitted, no objection can be raised.

viii. The question of relevancy being a question of law may be raised at any stage, however the question of proof being a question of procedure can be waived.

ix. In case of a document, if it is admitted as an exhibit, no objection can be raised. Any objection shall be raised before the marking of a document as an exhibit. Thus a document cannot be de-exhibited at a later stage on the ground that it is not legally proved.

x. In the explanation to S. 5 it is clearly stated that a person has the right to present evidence in a Court of law if that evidence is relevant under S. 6- S. 55; however, if some provision of the CPC disentitles a person to give evidence with respect to a particular fact, he will not be entitled as of right to adduce evidence in that court. For example, a document which has not been submitted to the Court at the time of filing of the suit cannot be brought before the Court at any later stage.

DISTINCTION BETWEEN ADMISSIBILITY AND RELEVANCY

S. NO.	ADMISSIBILITY	RELEVANCY
1.	It is not based on logic but strict rules of law	It is based on logic and probability
2.	The rules of admissibility are described after S. 56 of the Act	The rules for relevancy are described in Ss. 6 to 55.
3.	The rules of admissibility are to declare whether certain type of relevant evidence is to be admissible or not.	The rules of relevancy declares what is relevant.
4.	Admissibility is means and of modes for admissibility of relevant evidence.	Rules of relevancy are where evidence is admissible.
5.	The facts which are admissible are necessarily relevant.	The facts which are relevant are not necessarily admissible.

2. Section 6: Principle of Res Gestae
   i. It states that the facts which are so connected with the facts in issue that they form a part of the same transaction are relevant facts. Ss. 6-9 lay down the various ways by which the facts are connected to principal facts thereby making them relevant. Hearsay evidence under this section shall be relevant if it forms a part of the same transaction. Thus res gestae is an exception to the rule of hearsay evidence not being admissible. (Gentala Rao v. State of AP)
   ii. Same transaction has not been defined anywhere in the act but Stephens states that a transaction is a group of facts, connected together to be referred to by a single legal name whose subject of enquiry is an issue.
   iii. The test to determine whether a fact forms a part of the same transaction depends on whether they are related to each other in point of purpose, cause and effect, as probable or subsidiary acts to constitute one continuous action.
   iv. To ascertain whether a series of acts are parts of the same transaction, it is essential to see whether they are linked together in such a way to form a continuous whole.
   v. This section is based on the principle of res gestae.
   vi. The latin word ‘res’ means thing and ‘res gestae’ means things done, transaction or essential circumstance surrounding the subject.
   vii. This has been used in 2 senses. In the restricted sense it means world’s happenings out of which the right or liability in question arises. Thus it should be so connected to the transaction to form a part of such transaction. In the wider sense, it covers all the probative facts by which res gestae are reproduced where the direct evidence or perception by the Court is unattainable.
   viii. Example: A is accused for the murder of B by hitting him with a club. Therefore whatever was done or said by A or B or by a by-stander during the beating or shortly before or after such act will form a part of the same transaction and is therefore a relevant fact.
   ix. Thus, it is to be noted that all action on part of the wrong doer after his actions have ceased and some time has elapsed do not form a part of res gestae.
   x. On the other hand, whatever may be said from the inception of the offence to the consummation and whatever said in continuance of the transaction by the accused form a part of the principle transaction and may be given as evidence as part of res gestae.
   xi. Therefore it is necessary that the evidence must be of immediate casual relation to the acts done and should not be broken by any voluntary evidence that a witness manufactures himself.
   xii. When the transaction consists of a series of physical acts, in order that the chain must constitute the same transaction, they must be connected by proximity of time, proximity of place, continuity of action etc.

xiii. No uniformity exists in the length of time over which the transaction. The act or transaction may be completed within a moment of time or over days, weeks or even months depending from case to case. For example, in a oral contract, the transaction may cover only a few minutes or may take weeks or months in case of negotiations on the terms of the contract.

xiv. No limitation can be set on the boundaries within which the transaction can take place. Sudden shooting or stabbing may occur in one room, however, rebellion may cover the entire breadth of the country.

xv. Words spoken by the person doing the act, the person to whom they were done or the by standers plays an important role in forming a part of the same transaction. They are admitted on the basis of them being closely connected to the principle act, not being fabricated and not being a mere narration of the incident.

xvi. If a statement is made in answer to a question after a lapse of time, it shall not amount to res gestae.

xvii. When a girl was raped and made a statement to her mother after the rape and when the culprit had gone away and the girl comes home from the scene of occurrence, it shall not be treated as admissible under section 6.

xviii. FIR shall be treated as res gestae if the person witnesses the crime, he makes a cry of such crime being committed to the people in vicinity and then goes to the police to file an FIR. The fact that some time has elapsed from the occurrence of the crime is immaterial.

xix. Case: Mahendra Pal v. State
The place of murder was occupied by a number of people other than the deceased and the eye-witness. These other people were informed by the eye witness of the crime. The statements of such people were held to be admissible.

xx. A assaults B, C and D shout that ‘A is assaulting B’. The fact that C and D were shouting the same is admissible.

3. <u>Section 7</u>
   i. Facts which are connected to the facts in issue or relevant facts in the following modes shall be relevant under this section :
      a) The facts as being the occasion or cause of the facts in issue or relevant facts.
      b) The facts as being its effects, immediate or otherwise
      c) Facts as giving opportunity for its occurrence
      d) Facts as constituting the state of things under which the act has occurred
   ii. Section 7 is wider in scope than Section 6 as section 6 deals with relevant facts whereas Section 7 provides for various classes of facts which become relevant. However, both these sections go hand in hand.

iii. Cause or occasion of facts: when the evidence relates to a set of circumstances which constitute the cause or occasion or happening of certain facts is shall be considered relevant. For example, A was killed by B. A refused to have sex with B on his offer. A was alone at home at the time of her murder (being the occasion) and her refusal on B's offer being the cause.

iv. Effect: An effect is the ultimate result of an act being done. It not only keeps the records of the acts being done but also provides records for the nature of acts so done. For example, tape recorded evidence may be provided to prove a bribe.

v. Cause and Effect: These two elements go hand in hand. For example, A was killed by B. A refused to have sex with B on his offer. A was alone at home at the time of her murder (being the occasion) and her refusal on B's offer being the cause. The effect being A was killed.

vi. Opportunity: The chance given to someone to commit an offence or carry out an act or omission. For examples, a woman was alone in her house when she was raped is admissible to show that it afforded opportunity to the person committing rape.

vii. State of things under which the incident took place: the surrounding circumstances under which a certain act took place, for instance the health of the deceased, the relationship of the parties, etc. For example, A killed his wife B. Their relationship was not cordial and they constantly fought. Moreover, she was having an extra-marital affair. These are the state of things which constitute relevant facts under this section.

viii. <u>Tape Recorded Events</u>

a. By the amendment of 2000, a tape recorded statement can also be regarded as a document and may be used as evidence.
b. Tape recorded evidence is considered to be res gestae under Ss 6 & 7 of the Act.
c. In the cases of: *Pratap Singh v. State of Punjab,* the plaintiff was the Chief Minister and had accepted a bribe. The same was proved by way of tape recorded evidence and was accepted by the courts.
d. *R.M. Malkani v. State of Maharashtra and C.R. Mehta v. State of Maharashtra,* certain criteria were laid down for tape recordings to be accepted as evidence. They are:

- Identification of voices.
- The conversation must be relevant to matter in issue.
- Accuracy of the tape recording.
- Possibility of tampering with the tape recording should be ruled out. The tape should thus be sealed immediately and be opened only before the court.

e. This type of evidence may be used for contradiction, corroboration or acceptance.

f. This evidence is to be accepted with great caution and should be corroborated with other evidence.

4. Section 8

i. It deals with the relevancy of motive, preparation and conduct.

ii. It lays down that (a) a fact which constitutes or shows a motive for any fact in issue or relevant fact is relevant; (b) a fact which constitutes or shows preparation for any fact in issue or relevant fact is relevant; (c) previous or subsequent conduct of any party or of any agent to any party in a suit or proceeding, in reference to such suit or proceeding or in reference to any facts in issue or relevant facts, are relevant provided such conduct influences or influences the fact in issue or relevant facts; (d) previous or subsequent conduct of any person an offence against whom is the subject of suit or proceeding, is relevant provided such conduct influences or influences the fact in issue or relevant facts; (e) statements accompanying and explaining facts- explanation 1; (f) statements made in the presence and hearing of any person whose conduct is relevant provided the statement affects such conduct- explanation 2.

iii. Motive: A motive is an emotion or desire which is the stimulus which causes or leads to such acts. If such motive is brought before the Court, and there is no direct evidence of the same, it has to be inferred by the court. Further, if such motive is proved, its adequacy shall be decided upon by the Court (there is no standard rule for adequacy). Absence of proving motive completely by the prosecution will lead to the accused not being convicted. For example, in the case of State of MP v. D. Kumar, Munnibai was killed. Kumar was the tenant of the house of Munnibai's father-in-law who had an evil eye on her. Munnibai told her mother-in-law who told her husband. The father in law asked Kumar to vacate the house. This was taken as motive for the murder.

iv. Preparation: evidence tending to show that the accused made preparation to commit a crime is always admissible. Preparation only evidences a design or plan to commit an act. Preparation is a admissible as it proves that the person has an intention to commit the crime on the availability of an opportunity for its execution. Preparation along with attempt is regarded as a crime. For example, A and B were accused of killing C, a guest at their hotel. The night of the murder, the maids and the guard were sent away so that no one would witness the murder. The next day she was asked not to clean their room. This is relevant to show the preparation of the crime.

v. Conduct: Conduct is an important ingredient as regards the guilt of the state of mind which is reflected in one's conduct. Conduct becomes wrongful when the element of mens rea becomes very strong. Thus conduct is admissible when it directly influences the facts in issue or relevant facts or in relation to a suit or proceeding. For example, the conduct of an accused who is a conspirator but dead shall not be

admissible. Previous attempt to commit a crime shall be admissible. Absconding just after the occurrence of evidence against him shall be admissible.

vi. Statements of a party to a proceeding accompanying and explaining the acts shall be relevant only if explains the conduct of the parties. Further, such statement must amount to a complaint to be considered as admissible or relevant. Such a complaint must be voluntary and not an answer to a question.

vii. Statements affecting the conduct of a party to a proceeding shall be relevant. These statements should be put before a court in the presence of the party.
For example, A kills B. C shouts stating that the police is coming to arrest the murderer. A absconds. This would make C's statement relevant.

5. Section 9

i. Section 9 provides the facts necessary to explain or introduce the relevant facts. Accordingly, the following facts are relevant (SIR TIRE):
   a. Facts which support an inference suggested by a fact in issue or relevant fact.
   b. Facts which are necessary to introduce the fact in issue or relevant fact
   c. Facts which rebut an inference suggested by fact in issue or relevant fact.
   d. Facts which fix the time or place at which the fact in issue or relevant fact happened
   e. Facts which establish identity of anything or person whose identity is relevant
   f. Facts which show the relation of parties by whom any such fact in issue or relevant fact was transacted
   g. Facts which are very necessary to explain fact in issue or relevant fact.

ii. Facts supporting inference: these are the facts which are neither relevant as fact in issue nor relevant fact as they only support an inference. For example, after murdering B, A was seen running away from the village. Absconding supports the inference that A might have committed the murder.

iii. Introductory Facts: The facts which are introductory of a fact in issue or relevant fact are of great importance in understanding the real nature of the transaction. For example, C sues D for a libel imputing disgraceful conduct to C. D affirms that the alleged matter is libellous but true. Thus, the relation between the parties when the libel was published is a relevant introductory fact.

iv. Rebutting Facts: When some facts contradict the fact in issue or relevant fact they become relevant. For example, A is alleged of murdering B. A is seen to be driving away from the scene of the crime.

However, at the time of commission of the crime he was in a business meeting with some clients (alibi). Thus, the alibi's statement will be a relevant fact.

v. Time and place: Facts which fix the time and place of the occurrence are relevant. This becomes very important when the accused pleads alibi. For example, A is alleged of murdering B. A is seen to be driving away from the scene of the crime. However, at the time of commission of the crime he was in a business meeting with some clients (alibi). Thus, the time and place becomes a relevant fact.

vi. Relation Facts: Facts showing the relationship of the parties becomes relevant.

vii. Explanatory Facts: there are many pieces of evidence which have no meaning at all if considered separately but gain importance when so connected with other facts. Such facts provide an explanation for the fact in issue or relevant fact. For example, A is tried for a riot and is proved to have marched at the head of the mob. The cries of the mob are relevant as explanatory of the nature of the riot.

viii. Identity of Things: when an identity of a thing is in question, every fact which is helpful in identifying the same shall be relevant. For example, in a case where the was a murder and robbery, the house lady was called to identify the articles of the deceased and other belongings; Identification of the deceased was done by way of the clothes and shoes he was wearing (Har Dayal v. UP)

ix. <u>Identity of Persons: Test Identification Parade under Section 9:Principle</u>

a. Identification of a person in certain cases becomes very necessary to prove fact in issue or relevant fact. Thus the test identification parade (TIP) is important.
b. The Supreme Court in Ramanathan v. TN, stated that one of the methods of establishing the identity of the accused is TIP. Further, the test enables the investigating officer to ascertain whether the witness has really seen the accused at the time of commission of the crime and also the capacity of the witness in identifying the accused. Thus, TIP enables a witness to identify the culprit before the Magistrate.
c. Prior to 2005, there was no provision for TIP in law. It was by way of amendment that the same was included under Section 54A of the CrPC.
d. TIP helps the investigating authority and the accused.
e. Justice and fair play can be assured to both the accused and the prosecution.
f. Jarapala Deepala v. State of AP, the TIP does not constitute substantive evidence but only corroborate any statements in court. Further, an accused on bail cannot be excused from being subject to such test.

x. <u>Identity of Persons: Test Identification Parade under Section 9: Procedure</u>

a. The investigating authority should send a requisition to the concerned Magistrate for conducting TIP of the accused person who is in jail or has been granted bail.
b. TIP is conducted by Executive Magistrates or Sub Divisional Magistrates.
c. The magistrate then informs the jail authorities to make necessary arrangements regarding the date, time and day.
d. The Magistrate selects 2 persons who have no relation with the accused or the witness called “Punch Witnesses”
e. Magistrate then selects dummy persons having similar appearances to that of the accused. For every accused there should be 5 dummy persons.
f. The Magistrate then ensures that the accused and the witnesses sit in separate rooms and also makes sure that the witnesses cannot meet the accused before conducting the test.
g. The magistrate must also see to that the no third person or police officer is in the room.
h. The magistrate also takes the precaution to ask the accused questions to give him an opportunity.
i. If there is a distinguishing mark on any one of the persons, a bandage or some other means should be used to cover it and the same should be done for all.
j. As soon as the witness identifies the accused, he must be asked as to why he identified the said accused.
k. The entire process should be recorded by the Magistrate in the IP memorandum along with time spent etc.
l. Objections, if any, by the accused are to be recorded.
m. After completion of the process, the Magistrate has to obtain the signature of the Punch Witnesses on the memorandum along with his own signature, the day, date and time.
n. The magistrate hands over the memorandum to the investigating authority to carry on further investigation.

xi. <u>Identity of Persons: Test Identification Parade under Section 9: Challenges</u>
   a. Police are present through the process.
   b. Witnesses are shown the accused before the TIP
   c. TIP is carried out by unauthorised persons
   d. Mental conditions of the witnesses at the time of commission of the crime was not proper,
   e. Light conditions were bad
   f. There was a delay on part of the authority in conducting the test. This would result in doubt in the minds of the witnesses.

xii. A single testimony along with delay in conducting TIP will not be sufficient ground to convict an accused.

xiii. If there is considerable delay in conducting the TIP and furthermore, the test was not conducted properly, the accused shall be given the benefit of doubt. (Govinda v. State of Maharashtra)

xiv. The purpose of TIP is to check the memory of the witnesses and also to benefit the prosecution in deciding who shall be considered as an eye witness. (Heera and anr. V. State of Rajasthan)

xv. Photo Identification: There is no stable provision for identification of a person by way of a photograph by the witness. However, the same is done by the investigating officer at times. Photograph of the suspect is not shown by the investigating officer to the witnesses before the actual identification process. The same is required to be recorded when the suspect is available for a video recording. The photograph is not to be considered as accepted evidence. Further, identification of an accused after considerable amount of time has elapsed will not be permissible.

6. Section 10

i. Section 10 deals with the admissibility of evidence in a conspiracy case and is based on the theory of implied agency i.e. every conspirator is an agent of this association in carrying out the objects of the conspiracy.

ii. Conspiracy as defined under Section 120 A of the IPC states that, "When 2 or more persons agree to do or cause to be done, an illegal act or an act which is not illegal but illegal by its means, is said to be a conspiracy. Provided that no agreement other than an agreement to commit an offence shall amount to criminal conspiracy.

iii. Section 10 states that if there is reason to believe that 2 or more persons conspired together to commit an offence, then anything (a) said, (b) done or (c) written by any of these persons in pursuance of their common intention, is to be considered as a relevant fact against each other to prove the purpose of conspiracy.

iv. It was held in the case of Joginder Saraswati v. State of TN, that the first condition to apply S. 10 is establishing the fact that a conspiracy existed.

v. To establish a conspiracy the following need to be established:
   a. There must be an agreement between 2 or more persons who are alleged to conspire;
   b. The agreement should be to do or cause an illegal act or an act which is not illegal but pursued by illegal means.

vi. If the said condition is fulfilled, then anything said, done or written by any of these persons in pursuance of their common intention, is to be considered as a relevant fact against each other to prove the purpose of conspiracy.

vii. If anything said, done or written by any of these persons after the intention was formed by any of them

viii. It would also be relevant against another if anything was said, done or written if it was after he left the conspiracy

ix. Further, such evidence can only be used against a conspirator and not in his favour.

x. Therefore anything said, done or written before the common intention was established or after the conspiracy was over is irrelevant under this section. For example, the Lamington Roads Case, one of the persons attached to the crime was interrogated and he admitted to how the crime was committed. However, this was not treated as a conspiracy as the conspiracy had already taken place.

xi. Conspiracy under English Law and Indian Law:
   a. English law prohibits common object, Indian law prohibits common intention.
   b. In English law, if the person leaves the conspiracy, he will not be held liable whereas it is not the case in Indian law.

xii. CASE: Bhadri rai Case.
Facts: Bhadri was caught by the police for the possession of stolen ornaments in his house. While being arrested he offered a bribe to the inspector. The inspector took him to the police station. His friend Rajni also offered money to the inspector on reaching the station to stop further proceedings.
Held: the Court held that when both the accused had approached the inspector to bribe him, they conspired to bribe the police. The statement of their bribe showed a common intention and hence was relevant against both.

7. Section 11:
   i. This section deals with facts which are otherwise irrelevant becoming relevant if:
      a. They are inconsistent with the facts in issue and relevant facts
      b. They make the facts in issue and relevant facts highly probable or improbable.
   ii. For example, the question as to whether A committed a murder at Cal on a certain day is a fact in issue; the fact that he was in Lahore on the same day (relevant fact and the fact that around the time when the crime was committed he was a distant place would render it highly improbable to commit the murder.
   iii. Under section 32 of the act, a statement made by a dead man is inadmissible, however, it what he says is immaterial but it is material that he said it, may be admissible under Section 11 of the Act.
   iv. Under i (a) the proof of the existence of some fact becomes relevant as it disproves the fact in issue. There are 5 classes of cases that are considered: plea of alibi, non access of husband to show legitimacy of issue; survival of the deceased; commission of the crime by a third person and lastly self-infliction of harm.
   v. The plea of alibi: The plea of alibi is when a person is charged with an offence at a certain place; however he pleads that he was not at the location of the crime. It thus becomes relevant for him to prove that he was not at the place of the commission of the crime as is connected with the fact in issue which is the commission of the crime. However, at the same time it is necessary for the prosecution to continue proving the case at hand. For example A is alleged to have murdered B at Pune. A was at Bombay at the same time. A being at Bombay becomes relevant.
   vi. Non access of a husband to show legitimacy of an issue: if for example A has a baby C 6 months after her marriage, B her husband believes that the child is illegitimate. It would be relevant for him to prove that he had no access to his wife before the wedding.
   vii. Survival of the deceased: If A is accused of murdering B on 10 October 2010, and A deposes that he saw B on the 31st of October. Such information would be relevant.

viii. Commission of a crime by a third person: A is charged with the murder of B. However A can prove that C murdered B, because the fact that C murdered B is brought forth now becomes relevant.

ix. Self infliction of harm: A is charged with the murder of B. A can prove that B committed suicide which resulted in his death. Evidence of the same can be brought by way of S. 11

x. Under i (b) facts are relevant only because only if they are proved either they become highly probable or improbable regarding the existence or non-existence of the fact in issue or other relevant facts. For example, A is charged with forgery. It is tried to prove that he was in possession of other forged documents. Such evidence will be admissible.

xi. This sub clause deals with both the affirmation and negation of the fact in issue or relevant facts.

xii. If the facts are of little importance they will not be admissible under this section. For example, mala fide intention in commission of a previous crime cannot be used to prove mala fide intention in the present conviction. Furthermore, they should be of a probability more than the standard probability.

8. Section 12

i. This section deals with the determination of damages when a suit for damages is claimed by the party to suit. In such a suit, facts which are evidence tending to determine i.e. increase or decrease, the damages is admissible.

ii. The court can determine the amount of damages in an action based on the tort committed or the contract entered into.

iii. Section 55 of this Act lays down certain conditions under which evidence of character may be given in civil cases to affect the amount of damages.

iv. Section 73 of the Indian Contract Act, states the rules governing damages in respect of a contract.

v. For example, in a suit for libel the defamatory statements made before or after the commencement of the suit can affect the amount of damages.

vi. Damages are of 2 types: General Damages (which are a result of the wrong complained of) and Special damages.

vii. Other kinds of damages are:

a. Nominal damages: which are given in order to recognise the rights vested in a person.
b. Contemptuous damages: damages given when even the plaintiff is wrong.
c. Aggravated or Exemplary damages: damages given on the degree of the damage caused to the person.
d. Prospective damages: the trouble that would be faced in the future will be taken into consideration which accounting for damages.

viii. Sheikh Gaffur v. State of Maharashtra: in this case, the plaintiff had a field of crops which were damaged. Compensation was awarded taking into consideration the loss of profits in case of good crops (prospective damages)

ix. A photographer in a marriage was absent. Exemplary damages were awarded taking into consideration the feelings of the bride and bridegroom

x. Factors to be taken into consideration while awarding damages:
   a. Attendance expenses
   b. Interest thereon
   c. Earning capacity of the person aggrieved
   d. Loss of consortium

xi. JUSTICE DIPLOX FORMULA: A low interest rate is used due to the conversion of future earnings to the present value. This formula was used in the case of GM of RTC, Trivandrum v. Meenakshi Thomas.

9. Section 13
   i. When there is a question with regard 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, recognised, asserted or denied or which was inconsistent with its existence may be proved.
      b. The particular instances in which the right or custom was claimed, recognised, exercised or in which the existence was disputed, asserted or departed from, may be proved.
   ii. A custom is a particular rule which has existed from time immemorial and has obtained the force of law in a particular locality.
   iii. For a custom to be valid in India it must have 4 essential attributes: (1) it must be immemorial; (2) it must be reasonable; (3) it must have continued without interruption from its inception; (4) it must be certain in respect of its nature.
   iv. Further, it must be both compulsory and optional, it must be certain and constant; it must not be forbidden by law and lastly it must not be against the morality or public opinion.
   v. Kinds of Customs:
      a. Private Custom: is that custom which governs a particular family such as the custom of an estate
      b. General Custom: those customs which are common to any considerable class of persons (Section 48). They are: Local Customs (deshachar i.e. Persons in the region of Bhuj, Kutch, Gujarat etc. are originally Mohammedan but they follow the Hindu religion in waqf property); Caste or Class Custom (it governs persons belonging to a particular caste or class for example, Gujarati's condemn eating non-vegetarian); and Trade customs.

c. Public Customs: there is no exact definition of such kind of custom and there is no difference between general custom and such type of custom.

vi. Usages are habitual in nature and this may not be practiced from time immemorial.

vii. Right as defined by the Courts is said to include all types of rights: rights of ownership, easementary rights; public rights, private rights and corporeal and incorporeal rights.

viii. A custom is a mixed question of law and fact. First certain facts need to be proved to further prove the existence of certain customs which may be inferred from the facts proved.

ix. A custom may be proved in the following ways:
   a. By opinion of person who are likely to know of their existence and having special knowledge thereof.
   b. By statements of persons who are dead or whose attendance cannot be procured without unreasonable delay or expenses, provided they were made prior to any controversy taking place and were made by persons who would have been likely to have been aware of the existence of such a custom
   c. By any transaction by which the custom in question was claimed, created, modified, asserted, denied or which was inconsistent with its existence
   d. By particular instances by which a custom was claimed, recognised, exercised or knowledge of its existence was disputed, asserted or departed from.

x. Judgments, orders and decrees are relevant to prove a custom but they cannot be considered to be conclusive proof of the same. But when a custom has been brought to the notice of the court and is judicially recognised, the same will obtain the force of law over time.

10. Section 14:

i. Facts which show the state of mind, such as, the intention, knowledge, negligence, ill-will, good faith, rashness or bodily feelings are relevant when such state of mind or bodily feeling is in issue or relevant.

ii. The state of mind of a person or accused can be proven in the following way:
   a. It may be proved by way of a statement by the person whose mental condition is in dispute (which is unreliable in most cases).
   b. The mental and physical conditions of the person may be proved by the evidence of other person who is well aware of the mental conditions or bodily feelings by conduct or correspondence. (physical and psychological facts)
   c. By way of evidence of all simultaneous manifestations of the given condition, by conduct, conversation or correspondence as part of the res gestae.

d. By way of any collateral evidence to prove the state of mind of the person in question.
e. By way of similar acts done in the past the state of mind may be proved which is admissible however the similar acts to prove the facts in issue or relevant fact is inadmissible.
f. Both previous and subsequent events are admissible to prove the state of mind. However, previous events are of importance as they show the influences on the state of mind in the investigation at present.
g. Mens rea required to be proved in certain circumstances as stipulated by the IPC may be proved by way of circumstantial evidence.
h. Any fact that proves guilty knowledge may be proved and will be relevant.
i. Statement by an accomplice may be admissible only if it is used to corroborate direct or indirect evidence connecting the accused with the crime.

iii. Examples: receiving stolen goods knowing them to be stolen; fraudulently delivering them to another person; dishonest misappropriation of property; shooting a person with intent to kill him.
iv. A is charged with sending threatening letters to B. The letters sent by A may be proved as showing the intention in the letters.
v. Explanation 1: the relevant state of mind should be shown not to exist generally but with respect to the fact in issue and relevant facts.
vi. Explanation 2: in the trial of the accused where the previous commission of an offence is relevant, the previous convictions of the accused person shall also be relevant.
vii. For example, A is tried for the murder for intentionally shooting B. In this case intention would be material. If A shot B accidently, some minor offence would be said to have been committed. The fact that on other occasions as well, A tried shooting at B and kill him thereby would prove murder. If A was in a habit of shooting people will not prove his intention to kill B. He must have shot others intentionally, however shooting B may have been accidental.

11. Section 15:

i. It lays down the rule of admissibility of evidence in cases where the question is whether a particular act was done accidentally, intentionally or with knowledge.
ii. It is necessary that all the acts form a part of a series of similar occurrences because if the act was not accidental, it must have been done intentionally or with knowledge.
iii. Section 15 states that of the question is whether an act was done intentionally or accidentally and there is a series of similar

occurrences or events and the same person is involved it shall be relevant.

iv. For example, A is accused of burning down in house in order to obtain the money for which it is insured. The fact that A lived in several houses successively, each of which caught fire thereby resulting in A receiving the insured sum is relevant because it shows that the fires were not accidental and was done intentionally.

v. Similar facts under this section are admissible only if it is shown that (1) it is shown that the acts are of the same specific kind; and (2) they formed a part of a series of occurrences in each of which the person committing the act was concerned.

vi. One single instance cannot constitute a series of similar occurrences and so will not be admissible.

vii. The acts tendered as evidence should have been done proximately to the time of the act in question.

12. Section 16:

i. Section 16 lays down that whenever there is an act in question, whether the particular act was done when the existence of any course of business is natural to produce a certain result, the mere proof of the existence of such course of business will give a presumption that the result was produced.

ii. For example, a question as to whether a letter reached B is posed. The fact that it was posted in due course of the business and was not returned by the Dead Letter Office is relevant.

iii. This section does not compel a court to presume and does not declare the same as inevitable but permits the court to make an assumption if necessary.

iv. Course of business means any professional or mercantile transaction of a business. It is done by a private person or by public officials. Therefore it is generally presumed that the conduct of people in official and commercial matters is uniform.

v. Thus the natural course of business in a certain transaction is relevant and may be admissible under section 16.

3.3: Admissions:

1. Ss. 17 to 31 deal with admissions and confessions. Confession is a kind of admission.
2. Section 17 defines admissions as , “An admission is a statement which:
   i. Suggests an inference to a fact in issue or relevant fact
   ii. Is oral or documentary or contained in electronic form
   iii. Is made by any person under certain circumstances.”
3. Principles of Admissions:
   i. A person by way of admission, admits his liability because the statement results in the inference of such liability

ii. It is the last piece of evidence against the person making it. It is however, open to the person making the admission to show why the admission should not be acted upon.
iii. If the person voluntarily admits something before the judicial or quasi-judicial authority and such statement is not retracted before being acted upon by the other party, then it acts as an estoppels on the person making it.
iv. Admissions are grouped under 2 heads: (1) Civil Cases [ss. 17- 23 & S. 31]; and (2) Criminal Cases (recorded as confessions) [ss. 24- 30]

4. Thus in civil and criminal matters where admissions are recorded, they are in the form of judicial and extra-judicial admissions.
5. In judicial admissions, the formal admission is addressed to the court and is a part of the proceeding. It is made on record in file of the court.
6. Evidentiary Value of Admissions:
   i. The SC observed in the case of Banarai Das v. Kashi Ram, that admissions are a very weak kind of evidence and the court may reject them if they are untrue.
   ii. Further in the case Rakesh Wadhwar v. J.I. corporation, the SC held that admissions are not conclusive proof of the matter admitted unless they operate as estoppels. Therefore the value of evidence depends on the circumstances under which they are made and also by whom it is made.
   iii. If one party in a suit proves that the other party has admitted his case then the work of the court becomes easier. But in a certain case, admissions may be used in discrediting the parties' statements. Thus the evidentiary value of admissions is based on the circumstances in which they are made.
7. Sections 18, 19 and 20 list the classes of people who may be allowed to make admissions in the course of the proceedings. Proceedings under these sections can be both civil and criminal in nature.
8. These sections list the following people whose statements as admissions shall be relevant when given:
   i. Parties to the proceedings (s. 18)
   ii. Agents authorised by the parties (s. 18)
   iii. Persons occupying representative character (s. 18)
   iv. Persons having pecuniary interest(s. 18 (1)
   v. Persons from whom parties derived interest(s. 18 (2))
   vi. Persons whose position is in issue or relevant to the issue (s. 19)
   vii. Persons expressly referred to by the parties in a particular suit (s. 20)
9. Admission by parties to proceedings: Parties include not only those who appear on record but also the persons who are interested in the subject matter of the suit. Hence they are considered as real parties.
10. Depending upon the circumstances, the statements made by the parties interested and persons from whom they derive interest are admissible if they are made during the continuance of the interest of the person making the statements.

11. It is also observed that statements made agents are admissible against the principal according to the law of agency because the agent has express or implied authority to make certain statements. In short, the agency must be proved before the admissions of the agent (Kedar Nath v. State of WB)
12. When a party sues or is sued in a representative capacity, for example, as a trustee, executor or the like, the representative is different from the ordinary capacity and only admissions made in the former capacity shall be admissible. Further, such statements are not admissible in a suit against him in his latter capacity.
13. Section 18 (1) speaks about the admissions made by the persons who are jointly interested in the suit. Such joint interest needs to be proved independently from the admissions made. Such joint interest may be of proprietary or pecuniary nature. Only when such case of joint interest which is prima facie is proved will the statement of admissions be relevant. For example, certain good were consigned for carriage, thus both the consignor and consignee have an interest in the goods and therefore a joint interest.
14. Section 18 (2) speaks about the admissions for the person from whom the interest is derived but the statements made should be made to be in continuance of the same transaction.
15. Thus, section 18 considers only 2 important things, namely, the admissions by the agent and the admissions by the persons interested.
16. Section 19 takes into consideration the statements made by persons whose position or liability is necessary to prove as against any party to the suit as admission. For example, A undertakes to collect rents for B. B sues A for not collecting rent from C. Under these circumstances, a statement by C stating that he owed B rent is an admission and may be relevant fact that can be used against A.
17. Section 20 is another exception to the general rule. When a party refers to a third person for some information to have some opinion on the matter in dispute, the statements by such 3rd person are receivable as admissions against the person referring. Thus depending upon the facts and circumstances, the person referred in the suit and admissions recorded are relevant under this section. For example, C's statement in the previous example.
18. Section 21 states that admissions are relevant and may be proved as against the person or his representatives, but they cannot be proved on behalf of the person making it or his representative interest except in the following cases:
    i. When the statement is of such a nature as to be relevant as a dying declaration u/s 32.
    ii. When it consists of a statement of the existence of a bodily feeling or state of mind u/s 14 of the Act and is also recorded as an admission.
    iii. If the statement is relevant otherwise than as an admission

19. The admissions of law are not contemplated under this chapter, only the admissions of fact may be questioned.
20. Section 22 of the Act states that oral admissions as to the contents of a document are not relevant. The contents of the document are proved by itself and not by means of oral evidence. There are 2 exceptions to this rule:
    i. When a person is entitled to give secondary evidence of the contents of some documents he will be entitled to rely on oral admissions; and
    ii. U/s 65 secondary evidence of the contents of a document can be given when the original is lost or destroyed or when it is in the possession of the opposite party and so on.
21. Oral evidence of admission may also be given in respect of a document when the genuineness of the document is disputed.
22. Section 23 deals with admissions in civil cases. For the purpose of compromise, negotiations may take place out of the court between the parties. During the process of negotiation, parties make many statements. If such statements are allowed to be proved in the court, then it will be impossible for parties to negotiate and reach a compromise. Further, these statements will not be admissible as evidence.
23. Essential conditions for protection under S. 23 to be made applicable are:
    i. There must be a civil dispute in question
    ii. Negotiations should have taken place between the parties
    iii. Negotiation should have taken place out of the court
    iv. There must be an express condition from which the court can infer that the parties had entered into negotiations.
24. An admission should be used as a whole and not in part. An admission made by a person cannot be split up and part of it may not be used against him. If there is some other evidence which disproves a part of the admission, the other part must be relied upon.
25. Under the explanation under S. 23, the legal advisor of the party will not be prevented from giving evidence of any communication made in furtherance of any illegal purpose or any fact showing that crime or fraud has been committed since his employment.

<u>Confession</u> (If question comes in the paper mention all sections)

Sections 24 to 27 deal with Confessions. There are 2 broad heads under which confessions may be studied. They are as follows:

Theory:

1. Generally speaking, an admission by an accused in a criminal case, admitting his guilt is known as a confession. (Sahu v. UP)
2. Stephen in his Digest of Law of Evidence, defined evidence as “an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime.”
3. Thus according to Section 24 for a statement to amount to a confession, the following conditions need to be fulfilled:
    i. The statement made is a confession
    ii. Such confession is made by the accused
    iii. He states that he committed the crime that he has been charged with
    iv. He makes a statement which he does not clearly admit his guilt, yet an inference may be drawn that he may have committed the crime.
4. Section 24 states that a confession in a criminal proceeding is considered irrelevant if it appears to the Court that such statement has been caused by: inducement, promise or threat from a person in authority by supposing that he would gain an advantage or avoid any evil in reference to the proceedings against him.
5. Confessions play an important role in criminal proceedings; however the confessions should be made voluntarily and free from any pressure to be accepted by the Court. (Francis Stanley v. Narcotics Bureau)
6. It is under the following conditions that a statement will be considered not to be voluntary:
    i. If the confessions are a result of a threat, promise or inducement
    ii. If the same have been proceeded from a person in authority.
    iii. Confessions relates to the charge in question.
7. For example, the accused sustains an injury. He was examined by a doctor before whom he stated the cause of the injuries. It was held not to be a confession and thus not hit by the provisions of the act.
8. A confessional statement not retracted by the accused even at the later stage of the trial in his examination u/s 313 of the CrPC (Power to examine the accused) can be fully relied upon.
9. The murmuring of the accused all alone to himself that he committed the crime for which he has been tried was held to be a confession in the case of Sahu v State of UP.
10. The principle underlying this section is that no one will voluntarily make any statement which is against his interest unless it is true.
11. The inducement, threat or promise may be express or implied or depending on the circumstances of the case. Further it need not be made by the person in authority directly. Such kind of confession which is induced, in threat or out of promise shall not be considered as evidence.
12. If the confession is made by the accused before a person in authority on oath such confession shall be considered as non-voluntary. Giving an oath would be considered as a concealed threat.
13. Such involuntary nature does not need positive proof, as long as this is apparent to the court. The Judge may conduct an inquiry into such confession made if it is challenged by the defence as being of involuntary

nature. Sometimes the involuntary nature of confessions may be seen by the Judge on the face of it without any direct proof.

14. The accused has a right and the court has a duty to exclude confessions made by way of inducement, etc. suo moto. However, there is not burden of proof on the prosecution to prove that such statement of confession was done voluntarily.
15. The inducement etc. should be in respect of the charge against the accused and done in order to help him escape such charge, avoid some evil or gain some advantage.
16. In the case of Ram Din v. Emperor, it was held that restricting the definition of person in authority under section 24 to police officers or the magistrate would be restrictive and hence will include one who by virtue of his position wields some kind of influence over the accused. For example, master of the accused, zamindar of the accused, etc.
17. Section 24 applies even when the person makes a confession is not an accused at the time, but after such confession being made becomes an accused.
18. The confession made is a very valuable piece of evidence and hence should not be made under some influence. Thus it is very necessary that such confession is made voluntarily, it is consistent and true. If such confession is wrong with respect to its material particulars, the confession may be considered to be false.
19. If such confession is true, voluntary and genuine without reasonable doubt, it shall be legal and have sufficient proof of guilt under ordinary circumstances.
20. The statement of confession shall be taken as a whole and not be considered in part. However, there are 2 exceptions to this rule:
    i. One part of such confession is inculpatory if there is evidence to prove its correctness, and
    ii. The part that is exculpatory is inherently impossible and thus rejected; the inculpatory part shall be admitted.
21. Kinds of Confession: Judicial and Extra-Judicial Confession
22. Judicial Confessions:
    i. Confessions which can be made to the court itself or to a Magistrate in the due course of judicial proceedings under section 164 of the CrPC
    ii. It can be recorded during investigation i.e. before the commencement of preliminary enquiry of the trial.
    iii. For example, A is accused to have killed B. He may before the trial begins confess guilt before some Magistrate who may record in accordance with the procedure OR A confesses his guilt at the trial before a Sessions Judge will be said to be judicial confessions.

iv. Value of Judicial Confessions:
   a. There is no hesitation to base conviction on judicial confessions.
   b. However, in the absence of corpus delicti (body of crime) a confession alone cannot suffice to justify conviction. (State v. Balchand)
   c. Conviction can be solely based on confessions if it is proved that such confession was voluntary and true. General corroboration to such confession may be needed at times.

23. Extra-Judicial Confessions

i. They are confessions made elsewhere other than before a magistrate or judge. It can be made to any person or body of persons and need not be to a definite individual. It could even be in the form of a prayer.
ii. Confessions to a private person will be extra-judicial.
iii. Further it should be made freely and without any guilt.
iv. It is not necessary for the witness to speak the exact same words, but there cannot be a vital or material difference.
v. Communication of an extra-judicial confession is not a requisite. Therefore if someone overheard one muttering to himself it would amount to a confession.
vi. Such confession must be accepted as a whole or not at all
vii. For example, if a person writes to a relative expressing his sorrow over a matter may amount to extra-judicial confession; if one apologises for his acts to the person against whom such crime is committed shall be an extra-judicial confession.
viii. Value of extra-judicial confession:
   a. It is a weak piece of evidence and thus can be relied upon only when it is clear, cogent, convincing and consistent. It must be received with great care and caution.
   b. It is for the court to decide whether the person before whom the confession is made is a trustworthy witness as there being no record or sanction behind such confession, it is a possibility that such witness is deposed to state that the accused is guilty by the prosecution.
   c. The prosecution thus is required to prove three things: the confession was made; evidence to prove such confession was voluntary and that it is true
   d. It must further be proved by some independent or satisfactory evidence. (Gayaprasad v. State)
   e. Actual words of the accused must be stated however, the substance being present shall be considered by courts.
   f. It must be established as to why the accused reposed confidence in the witness while stating such confession.

24. DIFFERENCE BETWEEN JUDICIAL AND EXTRA-JUDICIAL CONFESSION

Basis of Distinction	Judicial Confessions	Extra-Judicial Confessions
1. Meaning	They are those which are made to a Judicial Magistrate or a court during committal proceedings or trial	They are those which are made to any person other than those authorised by law to take confession. It made be made to any person or the police during investigation
2. Proof	U/s 80 of the Act, such confession recorded shall be considered to be genuine and it would be adequate if filed before the court.	Such confession may be written or oral, the witness may be called upon or the document may be produced before the court.
3. To Prove	To prove such confession, the person to whom confession is made need not be called as a witness but there may be some exceptions	The person or witness to whom such confessions are made is called before the court.
4. Evidentiary value	It may be relied on as proof of guilt of the accused if it appears to the court to be voluntary and true.	It cannot be relied upon by itself and needs to be corroborated by some corroboratory or supporting evidence.
5. Evidentiary result	A conviction may be made on basis of such confession.	It is unsafe to base a conviction on such confession.

25. Retracted Confession:

i. It is a statement made by the accused before the trial begins by which he admits to have committed the offence but he repudiates it during trial.

ii. During the investigation by the police officer, the accused is willing to admit his guilt; the accused may be to a magistrate for the recoding of such confession. If the magistrate is satisfied that the accused is guilty by way of his confession, which may be proved at the trial stage.

iii. During the trial, the accused on being asked may deny to have made such statements to the magistrate.

iv. If this happens, the confession made by the accused to the magistrate before the commencement of the trial is called retracted confession.

v. Retracted confession, even though made before the magistrate requires corroboration to be relied on.
vi. There are no rules laid down with respect to retracted evidence, however practice and prudence states that such kind of confession should be corroborated by satisfactory evidence. However, each and every word of the confession need not be corroborated and neither does such corroboratory evidence come from the confession statements already made. (MH v. Pathak)
vii. If the rule required that each and every part of the statement be corroborated separately, then each of those evidences together would form satisfactory evidence to prove the guilt of the accused.
viii. For example, A committed a felony-murder of B. The accused is said to have committed the murder of B and stolen jewellery as well. A confession statement was made by A, however was retracted. It was later on proved that blood stains of the victim on the clothes of the accused were found and jewellery was recovered from the accused persons possession would be evidence enough to corroborate that the accused had something to do with the crime. (Balbir Singh v. State)

26. Section 25 deals with confession of a police officer not to be proved cannot be proved against one who is accused of a crime.
i. The accused while in the custody of a police officer is founded on the ground that such confessions made may be untrustworthy. Further, such confessions made should not be proved as it may result in admitting a false confession.
ii. The police officer may create terror in the mind of the accused by way of severe torture leading the alleged accused being made to confess the commission of an offence, thereby extorting false and involuntary confession.
iii. For example, A is accused of murdering B and is arrested for the same. A confesses to the police officer who arrested him of the commission of the crime. This statement made cannot be used to prove the prosecution’s case.
iv. To exclude a confession under s. 25, the question to be asked is to whom the confession was made? If the answer to this is a police officer, the same cannot be used as evidence because the person to whom such confession was made cannot be relied upon and moreover, there may have been coercion by the police person to obtain such confession.
v. A confession made to a police officer who is vested with the powers of a Magistrate will continue to be inadmissible.
vi. If such confession is made before or after the investigation there will be no distinction. Such confession will still be inadmissible as evidence.
vii. A statement made by one accused is inadmissible against the others accused.

viii. Further, such confession shall be inadmissible on the ground that at the time of investigation, the person charged with the crime is allegedly accused of the same and not the accused.

ix. All statements made to police officers are not excluded under section 25, only those which are in the form of confessions shall be excluded. Thus, the same can be brought on record and proved against the accused. (Jailal v. Emperor)

x. A confession made in an FIR cannot be used for any purpose in favour of the prosecution and against the accused. However, statements made in favour of the accused may be taken into account.

xi. A police officer under this section is one who is vested with the power of conducting investigation of the crime committed and initiating criminal proceedings against the accused. For example, a person under the Narcotic Drugs and Psychotropic Substances Act, is not given the power to investigate and neither does he have the power to initiate criminal proceeding and therefore would not fall within the ambit of S. 25 of the Act.

xii. For a person to fall under the category of police officer in this Section under any other Special Act, he must be conferred with the powers as that vested in the police officer by virtue of Section 173 of the CrPC.

xiii. An officer acting in the capacity of the Reserve Police would not come within the meaning of police officer under this Section.

xiv. In civil cases, an admission made before a police officer can be proved as an admission.

27. Sections 26 of the Act deals with confessions of the accused while in the custody of the police are not be proved.

i. The value of confession depends on the voluntary nature if the confession. Thus, no confession which is made by any accused while in police custody can be proved against him unless it was made in the immediate presence of the magistrate.

ii. The object of such section is to prevent the police officer from abusing his powers and coercing the accused to admit the commission of the crime.

iii. Kishore Chand v. HP, also states that a confession made whilst in the custody of the police officer shall be excluded unless it was made in the immediate presence of the magistrate.

iv. The word custody here means control and it includes any sort of restriction or restraint imposed on the accused by the police officer either directly or indirectly. For example, house arrest, preventing an accused from leaving the city, handcuffing, etc. a police officer may not even touch a person but may keep him in control so that he may not go away as he likes.

v. For the purposes of this section it does not necessarily mean physical custody.

vi. There are 2 things required to be proved to show ‘custody’:

a. There must be some control imposed on the movement of the confessioner.
b. Such control must be imposed by some police officer either directly or indirectly.

vii. If the confession is recorded by a II Class Magistrate the same will not be admissible.

28. Ss. 25 and 26 operate in different fields and are not applicable to disciplinary or departmental hearings. (Kuldip Singh v. State)

29. Section 27 of the Act deals with how much information received from the accused may be proved.

i. This section thus states that during the period of investigation or during police custody, any information given by the accused to the police officer that leads to the discovery of any fact, whether such information amounts to confession or not, may be proved.

ii. This section comes into operation only:
a. if and when certain facts are deposed to as discovered in consequence of information received from an accused person in police custody
b. If the information relates directly to the fact discovered.

iii. The conditions necessary for the application of Section 27 are as follows:
a. Facts should have been discovered in consequence of the information received from the accused.
b. The person giving such information must be the accused
c. He must be in the custody of a police officer
d. Only that information which relates to the fact discovered may be proved
e. The fact discovered must be a relevant fact and should relate to the commission of the crime in question.

iv. Such facts should only be known to the accused, if such fact was known to any other person, it cannot be said that such fact was discovered.

v. The statement of the accused is inadmissible in case the object with respect to which the fact was discovered could be found at a public place.

vi. If the article or the fact is not concealed and in the normal course of investigation it is bound to be found, it cannot be said that such information was recovered from the accused.

vii. Inculpatory statements which are made to the police officer shall be considered as evidence under this section.

viii. There is varying view as to whether section 27 is hit by A. 20 (3) of the constitution of India. The majority view has held that section 27 is hit by the fundamental right of the accused having the right to self incrimination.

ix. Further, it has been question several times as to whether section 27 draws a distinction between ‘persons in custody’ and ‘persons out of custody’. It has been stated that these two classes of people

stand on a different footing and hence would not be hit by Article 14 i.e. the right to equality amongst equals.

x. Section 27 is often considered to be a proviso to sections 24, 25 and 26.

30. A confession which is inadmissible under section 24, 25 and 26 would be made admissible under section 27 if the conditions as laid out in the section are fully satisfied. For example, a confession had been made by A who was in police custody for the murder of B with a dagger. He also stated that such dagger was hidden in the field near his house. The police recovered the dagger and thus the information which was given to the police would be considered as relevant under section 27.

31. Confession made after the removal of inducement is relevant under S. 28

i. If such threat, promise or inducement is seen by the court which had existed previously has been completely removed, such confession will be admissible.

ii. There must be strong and cogent evidence that the influence of inducement has really ceased.

iii. Such inducement is considered to be continued until the contrary has been proven.

iv. For example, s maid was suspected of stealing. The mistress said that she would forgive her if she told the truth. The next day no evidence was brought before the Magistrate and she was let off. The next day she was arrestd. The police told her that she was not bound to say anything, and whatever be said by her would be heard by her mistress. She admitted to the theft, however this was held to be inadmissible as she was under the influence that the mistress would forgive her for telling the truth.

v. Such inducement, promise, threat is said to have been removed if it is shown that:
   a. There has been a lapse of time;
   b. By giving some word of caution by the superior authority to the person holding out the inducement.

32. Section 29 further states that a confession otherwise relevant is not to become irrelevant because

- Of a promise of secrecy or by deceiving him or
- when he was or drunk; or
- it was made clear in an answer to a question which he need not have answered or
- no warning was given to him that he was not bound to say anything and that whatever he said would be used against him.

i. A confession obtained from the promise of secrecy is relevant under this section

ii. For example, A is accused of murdering B. C is a friend of A’s. While sitting by all alone, C asked A is he murdered B. C swore he would not tell anybody. A confessed the commission of the crime to C. This

statement although obtained by a promise of secrecy would still be relevant and may be proved under this section.

iii. When a confession is made by an accused while he is intoxicated, it will be admissible if he had not become quite senseless and was not obtained by any threat or inducement while in the custody of or to a police officer.

33. Section 30 of the Evidence Act states that when more than one person is being tried jointly for the same offence, the confession made by one such accused affecting himself and the others is proved, the court shall consider such confession against that person and the others.

i. For the purpose of this section offence includes the abetment of or the attempt to commit the offence.

ii. For example, A and B killed C. B confesses that "A and I jointly killed C. The court may consider the confession against A also.

iii. The principle underlying this section is that if a confession is made by one of the persons amongst those who jointly committed the crime, it cannot be proved only against him and should have an equal effect on all those involved in the commission of the crime.

iv. It must be shown, in order to attract this provision that:
   a. The person confessing the crime and the others are being tried jointly.
   b. They are being tried for the same offence
   c. The confession which will be taken into consideration shall affect the confessioner and the others.

v. For example, if A, B and C committed a crime. A is arrested and B and C abscond. A confesses the crime, and he is proved to be guilty. Later on B and C are found, A's confession cannot be used against B and C as they are being tried separately.

vi. For example, A and B are being tried for causing grievous hurt to C and D by and B respectively. A confesses to have caused grievous hurt to C. It cannot be used against B as the offence was not the same. But if A and B were both charged for grievous hurt caused to C, then A's confession would be used against both A and B.

vii. The confession by one person should implicate himself as well as the others.

viii. If a confession is retracted by the accused, there is no law in the Evidence act stating whether such evidence may be used against the co-accused. However, such evidence may not be retracted at all.

34. Section 31 states that admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provision of the Act.

i. Chk example in bareact

ii. If any facts show that the admission was wrong, then it would fail to have any effect. It is only prima facie evidence against the party making the statement and the burden of proof shifts.

35. Evidentiary value of an admission

i. It constitutes a substantive piece of evidence and can be relied upon to prove the truth of the facts in such admission
ii. It is only prima facie evidence against the party making the statement and the burden of proof shifts. In the absence of a satisfactory explanation, it is presumed to be true
iii. To have the effect as above, an admission should be clear, definite and certain not ambiguous or confused.
iv. Admissions under this section and judicial confessions must be taken as a whole.

DISTINCTION BETWEEN CONFESSION AND ADMISSION

No.	Basis of Distinction	Confessions	Admissions
1.	Meaning	It is a statement of the accused which is a direct acknowledgement of his guilt which is applicable in criminal law.	It is a statement of the person against whom there is a case, in a civil matter
2.	Nature	It is a species of admission	It is the broader aspect of admittance of statements
3.	Inclusion	All confessions are admissions	All admissions are not confessions
4.	Relevant Section	S.24 to S. 30	S. 17 to S. 31
5.	Conclusive Proof	There is deliberate and voluntary admission of the accused of the commission of the crime and should be conclusively proved	It is not conclusive proof of the matter admitted however, it may operate on estoppels
6.	Usefulness	A confession may be used against a person making it	An admission cannot be used against the person making it
7.	Role of co-accused	The confession of co-accused when jointly tried is relevant under S. 30 and is not substantive evidence	Admission by one or more of the defendants in a suit is no evidence against the other defendants
8.	Acid Test	Where a conviction be based on the statement alone, it is a confession	When some supplementary evidence is needed to authorise the conviction it is an admission.

3.4: Statements by persons who cannot be called witnesses

1. A fact to be proved by oral evidence must be stated before the court by a person who has firsthand knowledge on the facts to be proved.
2. Second-hand evidence is loosely termed as hearsay evidence.
3. When a witness appears before a court to give evidence of his firsthand knowledge, he takes an oath. Further, the opposing party has the right to cross examine him. At the same time, he must give a testimony, which may expose him to all the penalties in case of falsehood of such evidence.
4. Hearsay evidence is generally excluded on the following grounds:
    i. He does not produce such evidence on oath
    ii. The opposing party has no opportunity to cross examine him or the original source of such information.
    iii. He is immune from all penalties of falsehood in such evidence.
5. The purpose and reason of the hearsay rule are based on 2 considerations:
    i. The necessity for evidence
    ii. A circumstantial guarantee of trustworthiness
6. However, there are certain circumstances under which there is an exception to hearsay evidence which are as follows:
    i. Necessity
    ii. Special circumstances under which such evidence will be regarded as trustworthy more than in general circumstances.
7. Sometimes it may be impossible to procure the attendance of a witness or result in unreasonable expense who could have given direct evidence; the witness also could give evidence either written or oral which may reasonably be presumed to be true and thereby reliance can be placed on hearsay evidence.
8. There is an exception to the general rule that hearsay evidence would not apply which are stated in section 32 and section 33 of the act. (Biro v. Atma Ram)

Section 32

1. This section states that statements, written or oral, of relevant facts made by a person
    a. Who is dead
    b. Who cannot be found
    c. Who has become incapable of giving evidence
    d. Whose attendance cannot be procured without unreasonable delay or expenses according to the court

    Shall be considered to be relevant in the following circumstances:

    i. When it relates to the cause of death; or
    ii. When is made in the course of business; or
    iii. When it is made against the interest of the maker; or
    iv. When it involves giving an opinion as to a public right or custom or matters of general interest; or
    v. When it relates to the existence of a relationship; or

vi. When it made in the will or deed relating to family affairs; or
vii. When the document relates to a transaction mentioned in S. 13
viii. When it made by several persons and expresses feelings relevant to the matter in question.

2. For such statements to be considered admissible under this section, it is important to first and foremost prove that the maker of such statements is either dead or for any other reason is not available to be a witness.
3. A dying declaration is thus an exception to hearsay evidence when such evidence relates to the cause of death or any circumstance of the transaction which results in the cause of death and will be admissible as evidence.
4. A dying declaration would not lose its value on the ground that the person died long after making such a declaration.
5. A dying declaration is an exception to the rule of hearsay evidence but is indeed substantive evidence and thus requires no corroboration to determine the weight of such evidence. The same shall be decided on by the facts and circumstances of each case.
6. It is necessary that one of the conditions in group 1 (a) to (d) and one of the conditions in group 1 (i) to (viii) be fulfilled to attract Section 32.
7. Explanation to 1 (a) to (d)

i. 1 (a): Who is dead
   a) Death of the person whose statement is to be proved must be strictly proved. Death is considered to be sufficient to satisfy the necessity of the principle.
   b) The statements of the dead are relevant as it is laid down that the a better evidence of the same cannot be brought forth.
   c) If a person making a dying declaration, survives, the same will not be admissible. It may be admitted under any other section.

ii. 1 (b): Who cannot be found
   a) If a person makes a statement and then disappears, he cannot be compelled to be a witness later on. If such disappearance can be proved, then the statement made by him, if relevant can be proved.
   b) It must be proved that the person seeking to adduce such statement has made an honest effort to examine the witness.
   c) The only objection to such kind of evidence is that there may be a collusion of parties and witnesses.

iii. 1 (c) Incapable to give evidence
Sometimes it so happens that a person who has given a statement earlier cannot due to some physical inability becomes unfit to depose. Such a statement made earlier shall if satisfies any of the provisions in 1 (i) to (viii) may be proved.

iv. 1 (d) Delay or Expenses
   a) Procuring a witness may sometimes result in unreasonable delay or expenses who could have given direct evidence; which may reasonably be presumed to be true and thereby reliance can be placed on hearsay evidence.

b) For example in the case of Prithi Chand v. State, a doctor who had earlier given a statement had left on a long holiday. The Judge stated that since her presence could not be secured and would cause unreasonable delay, a certificate from another doctor would suffice.

8. Explanation for 1(i) to 1(viii)

i. Dying Declaration

a) A dying declaration is thus an exception to hearsay evidence when such evidence relates to the cause of death or any circumstance of the transaction which results in the cause of death either oral or written and will be admissible as evidence. The same shall be relevant irrespective of the fact as to whether the person expected or was not expecting his death.
b) In the case of Sharad Sarda v. State of MH, it does not matter whether the death was caused by homicide or suicide, as long as the statement relates to the cause of death.
c) In the same case it was held that a person who is dying has no reason to present any false statements before his death and thus there would be no need for him to be cross examined and thus such evidence would be admissible.
d) There is a need to have an intention to use a statement as a dying declaration when so made.
e) When there is more than one dying declaration, whichever fulfils all the criteria for such declaration will be considered relevant.
f) The person making such declaration should have a fit state of mind and should be certified by a doctor although this is only a rule of caution
g) The dying declaration has to be proved by the person who was present when such statement was made in the case of oral evidence and if recorded then the person before whom it was recorded should be available as a witness.
h) A dying declaration if incomplete will not admissible.
i) A dying declaration shall be open to impeachment in the same way as the testimony of other witnesses. Impeachment may be shown if the following circumstances prevail:
    - Bad testimonial character is permissible
    - Conduct showing revengeful or irrelevant state of mind
    - Subsequent or prior inconsistent statement
j) A dying declaration recorded before a police officer or as an FIR is relevant and admissible
k) A dying declaration will be regarded as tainted if there is any communication between the deceased and the interested party
l) The requirements of oath and cross examination with regard to a dying declaration are dispensed with.
m) There are two practical problems with respect to a dying declaration
    - Language in which it may have been made
    - The concerned person cannot speak

n) Difference between dying declaration under English Law and Indian Law

S. No.	Basis of Distinction	English Law	Indian Law
1.	Civil Cases	It is not admissible in civil cases	It is admissible in civil cases
2.	Criminal Cases	It is admissible in homicide cases	It is admissible irrespective of the cause of the death as long as there is some nexus between circumstances of the death and the victim.
3.	Actual danger of death	It is necessary that the declarant has been in an actual danger of death after receiving injuries but if such statement is incomplete it shall not be admissible	The declarant's death has to be established and it is immaterial if there was an actual danger of death or not. If the statement is incomplete, it will be inadmissible.

o) In the Kushal Rao case, certain principles were laid down which must be considered as a ratio:
    - It cannot be an absolute rule of law that a dying declaration is the sole basis of conviction unless it is corroborated.
    - Each case must be decided keeping in mind each of the facts and the circumstances in which the dying declaration was made
    - While being judged the surrounding circumstances need to be taken into consideration
    - The concerned court should always take into consideration that such dying declaration is made before a competent magistrate and is in the form of questions and answers. Further, as far as possible the declaration should be in the words of the speaker.

p) In the case of Ashok Lakshman v. State, the above principles have been incorporated. In this case, the deceased stated that the accused poured kerosene on her and lit a fire. It was recorded by the Magistrate after getting the consent of her doctor as to her state of mind. The doctor endorsed the declaration and the conviction of the accused was held to be proper.

ii. Statement made in the course of business
   a) Statements made by the person in the course of business by a person who is dead, cannot be found or his presence would cause unreasonable delay or expenses shall be admissible.
   b) The statement must relate to the course of business which may include: the declarant's signature on documents, entries made in the memorandum or books of the business, signature of the person on receiving goods, to verify the date of commencement of business by way of his signature, etc.
   c) It need not be with respect to a particular transaction but a business or profession that the deceased was generally engaged in.
   d) Such statement can be oral or written. However, extrinsic evidence of the same needs to be proved. When the statement is written, it is necessary that the handwriting of the deceased needs to be proved and that it was indeed made in the ordinary course of business.
   e) Thus the authorship of the statement needs to be proved before it is considered relevant.
   f) Entries in the books are sufficient law themselves.

iii. Statements made against the interest of the maker
   a) Statements made by the person who is dead, cannot be found or his presence would cause unreasonable delay or expenses shall be admissible if such statement is against his proprietary or pecuniary interest or affects his personal liberty or property and if true it would result in his exposure or even criminal prosecution against him
   b) The facts and circumstances in which such statement was made shall be considered to check whether such statement would affect his proprietary or pecuniary interest.
   c) Further, if such statement is relevant, the whole statement shall be made admissible and not part of the statement.

iv. Statements made to form an opinion on a public right or custom
   a) Where a person was likely to be aware about the existence of a public right or custom and being so aware , he makes a statement on the opinion on the same before any controversy with respect to such right arose, then his statement will be admissible under S. 32 of the Act.

v. Statement as to the existence of a relationship
   a) The deceased person who had special knowledge of the relationship between persons by some special means shall be taken into consideration in case any dispute arises at a later stage.
   b) It has to be proved that the deceased person has a special means of acquiring such knowledge and the burden of proof rests on the party making use of such statement.
   c) Such statement should be made before the dispute arises.

vi. Statements made in a will or deed relating to family affairs
   a) A statement by the deceased made in will or deed relating to family affairs –

- When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased,
- and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or
- in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and
- when such statement was made before the question in dispute was raised

vii. statements relating to a document or transaction under S 13
   a) a statement made in a will or deed relating to any transaction in which a custom was created, claimed, modified, recognised, asserted or denied or is inconsistent with its existence shall be relevant.

viii. Statements made by several persons expressing their feeling relevant to the matter in question
   a) Statements relating to feelings or impressions by several persons which are relevant to the question are admissible when such persons are dead or incapable of giving evidence and can be proved by the testimony of others.

Section 33

1. Relevance of certain evidence for proving in subsequent proceeding is provided under Section 33 of the act.
2.
   i. When the witness cannot be found or is dead or is incapable of giving evidence or is kept out of the way by an adverse party or if his presence cannot be obtained without an unreasonable amount of delay or expense,
   ii. any statement made before a person authorised by law by a witness in a judicial proceeding, is relevant for proving
   iii. the same in the same judicial proceeding at a later stage or subsequent judicial proceedings. Judicial proceeding here includes any proceeding in which the witness gives evidence is legally taken on oath.
3. Such statement may be admitted in evidence only when:
   i. The first proceeding was between the same parties as in the subsequent one or their representative in interest. Thus the plaintiff in the first proceeding must be the defendant in the next and vice-versa.
   ii. The adverse party in the first proceeding had the right an opportunity to cross examine
   iii. The questions in issue were substantially the same in the second proceeding as in the first proceeding even though different consequences may follow from such act.
4. In a civil case, if the previous statement is tried to be proved without proving the conditions above, an no objection is raised by the opposing party, the statement will be taken as evidence.
5. A deposition in a criminal case may be used in a civil case and vice-versa provided the conditions set out in S. 33 are satisfied.

3.5: Statements made under Special Circumstances

Section 34: entries made in the books of accounts including those maintained in an electronic form, when relevant

1. Entries made regularly in the course of business are sure to be accurate as the writer has full knowledge, no motive to falsehood and there is the strongest probability of untruth.
2. The entries however need to be kept regularly in the course of business and are admissible in evidence if they refer to the matter in dispute. However, the entries alone shall not be sufficient to charge a person with liability and needs to be corroborated with some other independent evidence.
3. If there is corroborative evidence to the entries made in the books during the course of business, the evidentiary value will be very good, however lack of the same will make such evidence have zero value.
4. In order to be an admissible entry, an entry should be: in the books of accounts; regularly kept; and in the course of business.
5. Books of Accounts: in the case of Iswar Das Jain v. Sohan Lal, it was held that extracts from the books of accounts do not fall within S. 34 of the Act and such sanctity can only be attached to the accounts books as a whole, if the books are indeed accounts books.
6. Thus the accounts consisting of loose sheets cannot have the same force as account-books. (Ganesh Prasad v. Narendranath Sen)
7. Regularly Kept: the words regularly kept are not synonymous with the words correctly kept. If such books are maintained in pursuance of some continuous and uniform practice in the current round of business of the person they belong to they shall be deemed to be regularly kept.
8. Entries made need not be made in the books of accounts at or about the same time the related transaction took place so as to enable it to pass the test of regularly kept.
9. In the course of Business: Stray entries shall not be relevant and note in a diary will not be admissible. It should be made in the books of accounts regularly kept.
10. A document may not carry any evidentiary value and the weight of its probative force may be nil. The books of accounts when not used to charge liability (civil or criminal) may have independent evidentiary value. However, when sought to charge a person with some liability it is required by law that such evidence be corroborated.

Section 35: Relevancy of entry in public record or electronic record made in performance of a duty.

1. Section 35 speaks of the relevancy of entries made in public records or official books by a public servant. An entry to be relevant under this section needs to satisfy the following conditions:
   i. Must be contained in a public or other official book
   ii. Must be made by a public servant

iii. Should be made by him in the discharge of official duty or by a person who is put under such duty specifically enjoined by the law
iv. Must state relevant facts or facts in issue

2. Contained in a Public book or other official book: section 74 of the act gives a list of public documents. Commonly speaking, a public document is one which is made for the purpose of public use. It may be used and referred to by the public at their liberty.
3. A statement made in a private book or register is not admissible under this section.
4. Made by a Public Servant: a public servant is defined in section 21 of the IPC and further reference may be made to Ss. 74 and 78 of the IEA.
5. An entry which is not made by a public officer or by a person who is not under a duty as enjoined by the law of the country shall not be admissible under this section. The duty as stated in the latter case, need not be by some enactment. If such duty is cast upon by the prescribed rules it shall be adequate. EX: records made by a public school in accordance with the Rules. However, entries made in the register of non-government schools are not admissible. Such entry in school registers is not adequate to prove the age of a person in absence of the material on which such age was initially entered by the school.
6. The entry must be made either by the person himself who is under a duty to make it or under his directions.
7. Such entry by itself becomes a relevant fact if so proved.
8. Examples of entries which are admissible: entries relating to the birth and death when registered; entries made on electoral rolls.
9. Pencil entries made and not verified by the person who is under a duty to make such entries shall not admissible
10. The entries in a death register or birth register will only prove the death or birth of someone. Other things such as age, cause of death etc. cannot be ascertained.

Section 36: relevancy of statements in maps, charts and plans

1. Section 36 deals with particular public documents such as maps, charts and plans.
2. Published maps which are generally offered for sale are in the nature of public documents and are admissible to show the relative positions of towns, cities and other geographical matters.
3. Maps prepared by private persons are not under the authority of the government and are not admissible unless it is proved that the same was generally offered to the public for sale. The accuracy of such documents shall not be presumed.

Section 37: Relevancy of statements as to fact of public nature contained in certain Acts or notifications

1. When the court has to form an opinion as to the existence of any facts of a public nature, any statement of it made in recital contained in any Act

of Parliament of the United Kingdom or in any Central Act, Provincial Act or a State Act or in a Government notification by the Crown Representative appearing in the Official Gazette or in any printed paper purporting to be the London Gazette or the Government Gazette of any dominion, colony or possession of His Majesty, is a relevant fact.

2. This section thus makes all government acts and notifications admissible.

Section 38: Relevancy of statements as to any law contained in law books

1. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

3.6: How much of a statement needs to be proved

1. What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers is stated in Section 39 of the Act.
2. Section 39 lays down that:
    i. When a statement, to be proved, is part of a longer statement or conversation or is contained in a book or is a part of a series of letters
    ii. The evidence shall be given of so much of the statement, conversation, document, book or series of letters
    iii. As the court considers necessary to the full understanding of the nature and effect of that statement and the circumstances in which it was made.
    iv. That part which does not help in understanding the meaning of the relevant statement need not be proved.
3. Only what the court finds necessary in order that the statement may be intelligible is necessary to be proved.
4. If some kind of evidence is debarred under the IEA, it cannot be brought on record under S. 39.

3.7: Judgments of Courts of Justice when Relevant

1. Ordinarily, a judgment in a previous case will not be admissible in a subsequent case because a court has to form its own opinion depending upon the facts and circumstances of that case, whether civil or criminal.
2. In the case of Prem Shankar v. Inspector of Police and others, it was held by the SC that a previous judgment which was final could be relied upon as provided under Ss. 40 to 43 of the IEA.
3. In civil cases the principles of res judicata may apply in cases between same parties. However, in criminal cases, once acquitted or convicted, he cannot be tried for the same offence again.
4. There are 2 kinds of judgments: Judgments in rem and Judgments in personam.
5. Judgments in rem: They are judgments affecting the legal status of some matter, person or thing. The form conclusive evidence against all persons whether parties to the suit or not.
6. Judgments in personam: They are all the ordinary judgments not affecting the status of matter, person or thing. The rights and liabilities of the parties to the suit are determined in such judgments. It is binding only on parties to the suit or their privies [three kinds: privies in interest(mortgagor, mortgagee, donor, done etc.), privies in law (testator or executor) and privies by blood (ancestor, heir, corparcener)]

Section 40: Previous judgments relevant to bar a second suit or trial

1. Section 40 states that once there has been a judgment about the fact; and the law states that when there has been such a judgment, no

subsequent proceeding would be stated; the previous judgment is relevant and can be proved.
2. Section 11 of the CPC bars a second suit between the parties for the same subject matter and renders the previous judgment as admissible.
3. For example, A sues B for the possession of a house, both of whom claim to be separate owners of the house. The suit is decided in favour of B, who is held to be the owner of it. After 5 years, A again files a suit against B alleging to be the owner of the house. B contends that a judgment has been given previously with regard to the same and pleads Section 11. The previous judgment will be admissible.
4. Thus, section 40 applies to a case where the court has jurisdiction to try a suit, but one party claims that it would not as the suit has already been decided earlier.
5. For the purposes of this section, the parties or representatives in interest must be the same.
6. A finding on certain facts by a civil court in an action in personam is not relevant before a criminal court when it is called upon to give its findings on the same facts.
7. In a civil suit, the findings of a criminal court is not res judicata.
8. When the previous acquittal did not operate to bar the second trial of the accused and where both trials were separate and the incidents were viewed as distinct transactions and the offences were different thus relating to different charges, neither evidence on record nor acquittal is relevant in the second case.

Section 41: Relevancy of certain judgments in probate etc. jurisdiction

1. A judgment in rem will always be admissible irrespective of whether such judgment was between the parties or not. A judgment not between the parties is inadmissible except to prove who the parties were and decree passed and properties of the subject matter of the suit.
2. Section 41 states that:
    i. A final judgment, order or decree of a competent court in the exercise of its probate, matrimonial, admiralty or insolvency jurisdiction,
    ii. which confers upon the parties or takes away from them any legal character or declares any person to be entitled to such character or any specific thing absolutely,
    iii. is relevant when the existence of such legal character or title is to such a person of such a thing is relevant.
3. There are 2 conditions necessary to be satisfied to make the judgment in rem be considered. They are:
    i. Those having reference of the contents of the judgment
    ii. Those to the nature of the proceeding in which the judgment is sought to be relied upon subsequently.
4. A judgment to be relevant under this section must therefore:
    i. Be of a competent court in exercise of its probate, matrimonial, admiralty or insolvency jurisdiction

   ii. It must confer upon or take away from any person any legal character or declare any person to be entitled to any such legal character or to be entitled to a specific thing, absolutely.
5. A judgment in rem is of conclusive proof to show that a person had such legal character; that legal character which subsisted has ceased to exist and that the judgement had conferred such legal character.

Section 42: Relevancy and effect of judgments, orders or decrees other than those mentioned in Section 41

1. Under section 42, judgments are relevant not as res judicata but as evidence although they may not be between the same parties provided they are related to matters of public nature relevant to the enquiries.
2. Judgments neither inter partes nor in rem are relevant under this section if they relate to matters of public nature and if that public nature is relevant to the enquiry. They d o not work as res judicata nor are conclusive as judgment in rem.
3. Judgments under this section are admitted as evidence, whereas under S. 40 and 41 they are admitted as conclusive proof.

Section 43: judgments, orders and decrees other than those mentioned in Ss. 40, 41 and 42 when relevant

1. S. 40: matters which are conclusive between parties
2. S. 41: judgments in rem which are conclusive against the world
3. S. 42: judgments which relate to matters of public nature are relevant as evidence and are not conclusive.
4. S. 43: all judgments that are not mentioned in Ss. 40 to 42 are irrelevant.
5. However, there are 2 exception under this section:
   i. When the existence of such order, judgment or decree is a fact in issue
   ii. When the order, judgment or decree is relevant under some other provision of the IEA.
6. Judgment a Fact in Issue: party must have to proved that whether or not a judgment was given earlier and such a suit between the 2 parties had taken place earlier is considered in a subsequent suit.
7. For example, A was prosecuted by B for cheating. He is acquitted. A later files for malicious prosecution by B. A will now have to prove that:
   i. A was prosecuted by B;
   ii. A was prosecuted without any reasonable cause
   iii. That he was acquitted; the judgment will be relevant with respect to the 1st and 3rd issue.
8. Relevant under some other provision of the Act: the existence of a judgment may sometimes be relevant under some other provision of the act and thus would be relevant. For example, a judgment is given on the scope of A. 21 of the Constitution. The same will be relevant later on under section 38 if printed in any law book.

Section 44: Fraud or Collusion in obtaining judgment or incompetency of the court may be proved.

1. Even if the judgment is in rem, the same cannot operate as res judicata if it was given by an incompetent court or was given in fraud or collusion.
2. A litigant is expected to bring to the court and make available to the parties all documents relevant to that trial. If the same is not done, then it can be said that the judgment was obtained by fraud or in collusion.
3. Such suit for fraud, collusion or incompetency may be brought in the same suit or in a different suit as per the choice of the party contending the same.

3.7: Opinion of third persons when relevant

1. What a person thinks in respect of the existence and non-existence of a fact is an opinion and whatever is presented to the senses of the witness and what he receives through direct knowledge without any process of thinking and reasoning is not an opinion but a fact.
2. As a general rule, opinion is not admissible. Witnesses are to place facts on the record before the court and it is for the court to form its opinion.
3. Further, witnesses are generally interested parties in litigation and if their opinion is admissible, grave injustice would be caused. The witnesses are thus only to bring raw material of fact and the court works its mind on these facts.
4. The opinion or belief of a third person is, as a general rule, irrelevant and therefore inadmissible as it is for the judge to form his own conclusion or opinion on the facts stated.
5. There are certain exceptions to this general rule when the court is unable to form a correct opinion due to the question before the court requiring special knowledge and thus expert opinion on the same is sought.
6. Science, art, trade, handwriting, fingerprints, foreign law etc. are some matters which require special study or special experience in the field.

Section 45: Opinion of experts

1. This section enables the opinion of persons especially skilled in some science, art, foreign law, identity of handwriting and finger impressions relevant.
2. An expert is one who has acquires special knowledge, skill or experience in any science, art, trade or profession: such knowledge may have been acquired by practice, observation or careful study. (Mahmood v. State)
3. The evidence of such expert is based on expertise and experience. Before someone is classified as an expert, according to S. 45 it is necessary that there be some material on record to show that he is skilled in that particular science and possesses special knowledge with respect to the same.
4. The evidence given by an expert is generally required to be given orally and a mere report or certificate by him is not evidence

5. Before an expert’s testimony can be admitted, 2 things need to be proved:
    i. The subject is such that expert testimony is necessary. Thus where the court can form an opinion on its own, then there shall be no need for an expert witness. But if there is a technical question that is raised, expert opinion must be sought.
    ii. The witness in question is really an expert and that he is a truthful witness. Thus it has to be shown that he has made special study of the subject in question or acquired a special experience therein.
6. Examples:
    i. Foreign law: when a domestic court needs to make a ruling with respect to foreign law, an expert’s opinion may be sought. The foreign law is to be proved as a fact.
    ii. Opinion of a surgeon or a physician may be admitted on certain facts like the nature of injuries, the disease, weapons causing the death etc.
    iii. Ballistic Experts opinion shall be lead as evidence when it alleged that the alleged offence was committed using a fire-arm.
7. Cogent reasons must be given by the expert when there are conflicting opinions by 2 experts.
8. Such evidence cannot be considered as substantial evidence unless corroborated by other evidence. Further, the opinion of an expert is not binding on the judge.
9. The evidence provided by him is purely advisory in nature and he shall be subject to cross-examination as well.
10. Difference between Expert Witness and Ordinary Witness

S. No.	Expert Witness	Ordinary Witness
1.	Gives evidence of his opinion	Gives evidence of those facts which are under enquiry as he is a witness of facts.
2.	Is supported by experiments which has been performed by him in absence of the opposite party	Is a witness of face and is available to the opposite party for veracity
3.	Gives rules and reasons to support his opinon	Gives evidence of what he has perceived by his senses.
4.	It is merely of advisory nature to assist the Court	It is a witness of fact and binding over expert opinion

Section 45A:

Any opinion on a matter relating to any information transmitted or stored in any computer resource or any other electronic or digital form, the opinion of the Examiner of Electronic Evidence u/s 79A of the IT Act, will be relevant.

Section 46:

1. RES INTER ALIOS ACTA, evidence. This is a technical phrase which signifies acts of others, or transactions between others.
2. Neither the declarations nor any other acts of those who are mere strangers, or, as it is usually termed, any res inter alios ada, are admissible in evidence against any one when the party against whom such acts are offered in evidence, was privy to the act, the objection ceases; it is no longer res inter alios. 1 Stark Ev. 52; 3 Id 1300
3. Facts not otherwise relevant, will be relevant if they support or are inconsistent with the opinion of experts, when such expert opinion is relevant.
4. For example, whether A was poisoned by a certain poison. The fact that other persons who were poisoned exhibited certain symptoms, either affirm or deny that they are incidents of such poison is relevant.

Section 47:

1.

Section 47A: when the court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying Authority which has issued the Certificate is a relevant fact.

Section 48

1. When the Court has to form an opinion as to existence of any general custom or right, the opinions as to the existence of such custom or rights, of persons who would be likely to know of its existence if it existed, are relevant.
2. Explanation - The expression "general custom or right" includes customs or rights common to any considerable class of persons.
3. For example, The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section
4. Only persons who are likely to know about such customs in question are competent to give an opinion on them. The expert must have personal knowledge on the facts to be proved.

Section 49

1. When the Court has to form an opinion as to -

i. the usage's and tenants of any body of men or family,
ii. the constitution and government of any religious or charitable foundation, or

iii. the meaning of words or terms used in particular districts or by particular classes of people,

iv. the opinions of persons having special means of knowledge thereon, are relevant facts.

2. The opinion of a person having special means to acquire such knowledge would be relevant.

Section 50

Section 51

Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant. What the expert notice and on what his opinion is based is of relevance.

Illustration

1. An expert may give an account of experiments performed by him for the purpose of forming his opinion.

3.8: Character, when relevant

Sections 52 to 55 deal with Character when relevant.

Section 52: In civil cases character to prove conduct is irrelevant.

1. In civil cases, the fact that the character of the person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except when it appears from facts which are otherwise relevant.
2. Character is a combination of quality distinguishing a person, the individuality of which is the product of nature, habits and environment.
3. Character is to be distinguished from reputation, yet reputation is more commonly considered as having reference to the dispositions or character of a person.
4. In civil cases the character of any party to suit has no relevance in respect of raising an inference as to his conduct
5. Such a rule is practically absolute in all civil cases.
6. For example, A files a suit against B for possession of his house alleging that he had taken forcible possession of it. In such a suit, A raised that it was in B's character to trespass. This was inadmissible.
7. There are certain cases however where character is the fact in issue or the relevant fact for example, in a suit for libel. Thus character may be led in such cases where character is the substance of the issue.
8. The character spoken of in section 52 is that of the parties to the suit and not the witnesses.
9. Another exception to the general rule states in Section 52 is when the character so appears from the facts which are otherwise relevant.
10. Even though no evidence is given by the Counsels in the matter, the Court may adduce the character of the parties to the suit on basis of some other relevant facts produced before the Court.

Section 53: In criminal cases, previous good character is relevant

1. In criminal proceedings, the fact that the person accused is of a good character is relevant.
2. Good character of the accused may be proved so as to afford presumption that he did not commit the crime. This arises from the improbability that a man of good character will depart from it and do an act which is inconsistent with it.
3. In deciding whether a man committed a crime or not, his character may become a material consideration and sometimes becomes conclusive.
4. Thus, evidence of good character is always admissible.
5. Good character becomes important in criminal proceedings to adjudge once innocence or criminality. (Habib Mohd. v. State)
6. In any case where the character evidence is very weak, it can outweigh the positive evidence in regard to the guilt of the person. It may be used in doubtful cases, to tilt the balance in favour of the accused.

Section 54: Previous bad character is not relevant except in reply

1. The fact that an accused in a criminal proceeding has bad character is irrelevant and cannot be proved.
2. However, the previous bad character of an accused may become relevant in the following cases:
    i. When the accused has adduced the evidence that he has been of good character, the prosecution can lead evidence to the effect that he has been of bad character.
    ii. When the bad character of the accused itself is a fact in issue, the evidence of the bad character of the accused will be admissible.
    iii. Where the previous conviction is relevant as evidence of bad character, evidence of bad character is relevant. (for example, if a person is said to have committed the same offence more than once, he shall receive a higher degree of punishment for the same)
3. The fact that an act committed by the accused was committed several times before, will be admissible in order to decide whether such act was accidental or intentional.
4. In the case of Mangal Singh v. State, it was seen that evidence which disclosed unpleasant things about the accused persons past was examined by the Court to ascertain the motive for murder and not to ascertain his good/bad character in respect of the facts in issue. This evidence was held to be admissible.

Section 55: Character as affecting damages

1. When the character of the person is relevant in deciding the damages he ought to receive, character evidence will be relevant.
2. Character under Ss. 52, 53, 54 and 55 includes reputation and disposition. However, section 54 deals with general reputation and general disposition.
3. Reputation means what is thought of a person by others and constituted by public opinion. It is the credit that a man has obtained in the public’s opinion. Evidence on the reputation of a man by those who know him is admissible and those who do not know him is inadmissible.
4. Disposition means the opinion of a person of another having good character giving his own personal experiences or his individual opinion from his own personal knowledge of the accused.
5. Evidence may be given only of general reputation which shall be receivable and not of personal experiences.
6. Section 55 is an exception to the general rule as laid out in S. 52.
7. Character is relevant in civil cases when it affects the amount of damages to be computed which is necessary for the court to take into consideration as while assessing the damages will largely depend on the character of the person.
8. It is to be made clear that character will be relevant in a suit for damages only when such character will affect the computation of the damages.

UNIT 4: ON PROOF

4.2: Facts which need not be proved

1. Section 56 states that no fact of which the Court will take judicial notice needs be proved.
2. Section 57 further lays down the facts of which Courts must take judicial notice
3. The Court shall take judicial notice of the following facts;
4. All laws in force in the territory of India;
5. All public Acts passed or hereafter to be passed by Parliament of United Kingdom, and all local and personal Acts directed by Parliament of the United Kingdom to be judicially noticed;
6. Articles of War for the Indian Army, Navy of Air force;
7. The course of proceeding of parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the Legislature established under any law for the time being in force in Province or in the States;
8. The accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Ireland;
9. All seals of which English Courts take judicial notice; the seals of all the Courts in India and of all Courts out of India established by the authority of the Central Government or the Crown representative; the seals off Court of Admiralty and Maritime jurisdiction and of Notaries Public and all seals which any person is authorized to use by the Constitution or an Act of Parliament of the United Kingdom or an Act or Regulation having the force of law in India;
10. The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any state, if the fact of their appointment to such office is notified in any official Gazette;
11. The existence, title and national flag of every State or Sovereign recognized by the Government of India;
12. The divisions of time, the geographical divisions of the world, and public festivals, facts and holidays notified in the Official Gazette;
13. The territories under the dominion of the Government of India;
14. The commencement, continuance and termination of hostilities between the Government of India and any other State or body of persons;
15. The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants and also of all officers acting in execution of its process, and of all advocates, attorneys, proctors, vakils, pleaders and other persons authorized by law to appear or act before it;
16. The rule of the road on lad or at sea.
17. In all these cases, and also on all matters of public history, literature, science or art, the Court may report for its aid to appropriate books or documents of reference.
18. If the Court is called upon by any person to take judicial notice of any fact it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do
19. Judicial notice of the facts not mentioned in section 57 cannot be taken.

4.1: Standard of proof in civil and criminal cases

1. Section 58 deals with facts that are admitted need not be proved.
2. It states that if parties to a proceeding or their agents agree to admit a fact at the hearing or they agree to admit by writing before the hearing or which is admitted in the pleadings, need not be proved by the other party.
3. According to Order VIII of the CPC, if an admission is made in the plaint, then no fact can be adduced as a fact in accordance with section 58.
4. In a civil case, an adversary may at any time relieve his adversary of the necessity of proof.
5. In criminal cases, the rules of evidence are subject to the general principles of jurisprudence that it is the duty of the prosecution to prove the case against the accused and that they should not rely upon admissions made by him in the course of the trial for convicting him.