CHAPTER 5 LAW RELATING TO EVIDENCE

Q: Discuss the meaning and scope of Law of Evidence.

The "Law of Evidence" may be defined as a system of **rules for ascertaining controverted questions of fact in judicial inquiries**. This system of ascertaining the facts, which are the essential elements of a right or liability and is the primary and perhaps the most difficult function of the Court, is regulated by a set of rules and principles known as "Law of Evidence". The Indian Evidence Act, 1872 is an Act to consolidate, define and amend the Law of Evidence. The Act **extends to the whole of India except the State of Jammu and Kashmir** and ***applies to all judicial proceedings in or before any Court,*** **including Court-martial** (other than the Court martial convened under the Army Act, the Naval Discipline Act or the Indian Navy Discipline Act, 1934 or the Air Force Act) **but not to affidavits** presented to any Court or officer, or **to proceedings before an arbitrator**.

Judicial Proceedings

The Act does not define the term "judicial proceedings" but it is defined under Section 2(i) of the Criminal Procedure Code as "a proceeding in the course of which evidence is or may be legally taken on oath". However, the proceedings under the Income Tax are not "judicial proceedings" under this Act. That apart, the Act is also not applicable to the proceedings before an arbitrator.

An affidavit is a declaration sworn or affirmed before a person competent to administer an oath. Thus, an affidavit per se does not become evidence in the suits but it can become evidence only by consent of the party or if specifically authorised by any provision of the law. They can be used as evidence only under Order XIX of the Civil Procedure Code.

Q: Define the term "Evidence" under the Evidence Act.

Evidence

As per Section 3 of the Evidence Act "Evidence" means and includes:

1. 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**;
2. all documents (including electronic records) produced for the inspection of the Court; such documents are called **documentary evidence**.

   Evidence under Section 3 of the Indian Evidence Act, 1872 may be either oral or personal (i.e. all statements which the Court permits or requires to be made before it by witnesses, and documentary (documents produced for the inspection of the court), which may be adduced in order to prove a certain fact (principal fact) which is in issue.

Q: Define the term "Fact", "Relevant Fact" and "Facts in issue" under the Evidence Act.

Fact

According to Section 3, *"fact"* means and includes:

a) anything, state of things, or relation of things capable of being perceived by the senses;

b) any mental condition of which any person is conscious.

Thus facts are classified into physical and psychological facts.

Relevant Fact

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts. (Section 3)

Where in a case direct evidence is not available to prove a fact in issue then it may be proved by any circumstantial evidence and in such a case every piece of circumstantial evidence would be an instance of a "relevant fact".

Facts in issue

According to Section 3 the expression "facts in issue" means and includes-any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability, or disability, asserted or denied in any suit or proceedings, necessarily follows.

Illustration

A is accused of the murder of B. At his trial the following facts may be in issue:

- that A caused B's death;
- that A intended to cause B's death;
- that A had received grave and sudden provocation from B;
- that A at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

A fact in issue is called as the principal fact to be proved or *factum probandum* and the relevant fact the evidentiary fact or *factum probans* from which the principal fact follows. The fact which constitute the right or liability called "fact in issue" and in a particular case the question of determining the "facts in issue" depends upon the rule of the substantive law which defines the rights and liabilities claimed.

Facts in issue and issues of fact

The Court has to frame issues on all disputed facts which are necessary in the case. These are called:

'issues of fact' - when described in the context of **Civil Procedure Code**, and

'fact in issue' – when described in the language of **Evidence Act**

Q: Courts are concerned with legal relevancy and not logical relevancy of the facts. Comment

A fact is said to be logically relevant to another when it bears such casual relation with the other as to render probably the existence or non-existence of the latter. *All facts logically relevant are not, however, legally relevant*. Relevancy under the Act is not a question of pure logic but of law, as no fact, however logically relevant, is receivable in evidence unless it is declared by the Act to be relevant. Of course every fact legally relevant will be found to be logically relevant; but every fact logically relevant is not necessarily relevant under the Act as common sense or logical relevancy is wider than legal relevancy. A judge might in ordinary transaction, take one fact as evidence of another and act upon it himself, when in Court, he may rule that it was legally irrelevant. And he may exclude facts, although logically relevant, if they appear to him too remote to be really material to the issue.

Q: What is the relevancy of facts connected with the fact to be proved?

The facts coming under this category are as follows:

1. Res gestae or facts which though not in issue, are so connected with a fact in issue as to form part of the same transaction

Section 6 embodies the rule of admission of evidence relating to what is commonly known as res

gestae. Acts or declarations accompanying the transaction or the facts in issue are treated as part of the res gestae and admitted as evidence. The obvious ground for admission of such evidence is the spontaneity and immediacy of the act or declaration in question.

Illustration

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

  Thus, the evidence about the fact which is also connected with the same transaction, cannot be said to be inadmissible. The essence of the doctrine of res gestae is that the facts which, though not in issue are so connected with the fact in issue as to form part of the same transaction and thereby become relevant like fact in issue.

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

It states that if two or more transaction although not part of the same transaction shall hold relevant if they are the occasions caused or effects of facts of an issue.

Illustrations

a) The question is, whether A robbed B.
The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it, or mentioned the fact that he had it, to third persons, are relevant.

b) The question is, whether A murdered B.
Marks on the ground, produced by a struggle at or near the place whether the murder was committed, are relevant facts.

c) The question is, whether A poisoned B.
The state of B's health before the symptoms ascribed to poison, and habits of B known to A, which afforded an opportunity for the administration of poison, are relevant facts.

3. Motive, preparation and previous or subsequent conduct.

According to Section 8, any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

- *'Motive'* means which moves a person to act in a particular way. It is different from intention. The substantive law is rarely concerned with motive, but the existence of a motive, from the point of view of evidence would be a relevant fact, in every criminal case. That is the first step in every investigation. Motive is a psychological fact and the accused's motive, will have to be proved by circumstantial evidence.
- When the question is as to whether a person did a particular act, the fact that he made preparations to do it, would certainly be relevant for the purpose of showing that he did it.
- The Section makes the conduct of certain persons relevant. Conduct means behaviour. The conduct of the parties is relevant. The conduct to be relevant must be closely connected with the suit, proceeding, a fact in issue or a relevant fact, i.e., if the Court believes such conduct to exist, it must assist the Court in coming to a conclusion on the matter in controversy. It must influence the decision.
- If these conditions are satisfied it is immaterial whether the conduct was previous to or subsequent to the happening of the fact in issue.
  What is relevant under Section 8 is the particular act upon the statement and the statement and the act must be so blended together as to form a part of a thing observed by the witnesses and sought to be proved.

Illustrations

a) A is tried for the murder of B.
The fact that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

b) A sues B upon a bond for the payment of money. B denies the making of the bond. The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

c) A is tried for the murder of B by poison.
The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

d) The question is, whether a certain document is the will of A.
The facts that, not long before the date of the alleged will, A made inquiry into matters to which the provisions of the alleged will relate that he consulted Vakils in reference to making the will, and that he caused drafts of other wills to be prepared, of which he did not approve, are relevant.

e) A is accused of a crime.
The facts that, either before, or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of persons who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

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

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

h) **The question is, whether A committed a crime**.
The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter, are relevant.

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

j) the question is, whether A was robbed.
The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made are relevant. The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under Section 32, clause (1), or as corroborative evidence under Section 157.

4. Facts necessary to explain or introduce relevant facts.

According to Section 9, such facts are -

a) which are necessary to explain or introduce a fact in issue or relevant fact, or

b) which support or rebut an inference suggested by a fact in issue or relevant fact, or
c) which establish the identity of a person or thing whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or
d) which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Facts which establish the identity of an accused person are relevant under Section 9.

Illustrations

a) The question is, whether a given document is the will of A.
The state of A's property and of his family at the date of the alleged will may be relevant facts.
b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.
The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.
The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.
c) A is accused of a crime.
The fact that, soon after the commission of the crime, A absconded from his house, is relevant under Section 8, as conduct subsequent to and affected by facts in issue.
The fact that, at the time when he left house, he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that the left home suddenly.
The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.
d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A—"I am leaving you because B has made me a better offer". This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.
e) A accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it - "A says you are to hide this". B's statement is relevant as explanatory of a fact which is part of the transaction.
f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Q: What is hearsay evidence? State its exceptions.

Section 59 of the Indian Evidence Act provides that except content of the documents, all other facts may be proved by oral evidence. Section 60 further provides that the oral evidence must be direct and it should not be indirect or hearsay. Thus it can be stated that in all cases the evidence has to be that of a person who himself witnessed the happening of a fact. Such a witness is called eye witness. Therefore, it is normally said "hearsay evidence is no evidence". The general rule known as the hearsay rule is that what is stated about the fact in question is irrelevant.

However, there are three exceptions to the aforesaid rule that hearsay evidence is no evidence. They are as under:

- Admissions and confessions;
- Statements as to certain matters under certain circumstances by persons who are not witnesses; and
- Statements made under special circumstances.

1. Admissions and Confessions (Sections 17 to 31)

Admissions

An admission is defined in Section 17 as a statement, oral or documentary or contained in electronic form which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances mentioned under Sections 18 to 20. Thus, whether a statement amounts to an admission or not depends upon the question whether it was made by any of the persons and in any of the circumstances described in Sections 18-20 and whether it suggests an inference as to a fact in issue or a relevant fact in the case. Thus admission may be verbal or contained in documents as maps, bills, receipts, letters, books etc.

*An admission may be made by a **party**, by the **agent** or **predecessor-in-interest** of a party, by a **person having joint propriety of pecuniary interest** in the subject matter (Section 18) or by a "**reference**" (Section 20).*

An admission is the best evidence against the party making the same unless it is untrue and made under the circumstances which does not make it binding on him.

An admission by the Government is merely relevant and non conclusive, unless the party to whom they are made has acted upon and thus altered his detriment.

An admission must be clear, precise, not vague or ambiguous.

These Sections deal only with admissions oral and written. Admissions by conduct are not covered by these sections. The relevancy of such admissions by conduct depends upon Section 8 and its explanations. *Oral admissions as to the contents of electronic records are not relevant unless the genuineness of the record produced is in question. (Section 22A)*

Confessions

Sections 24 to 30 deal with confessions. However, the Act does not define a confession but includes in it admissions of which it is a species. Thus confessions are special form of admissions. *Whereas every confession must be an admission but every admission may not amount to a confession.* Sections 27 to 30 deal with confessions which the Court will take into account. A confession is relevant as an admission **unless** it is made:

a) to a person in authority **in consequence of some inducement, threat or promise** held out by him in reference to the charge against the accused;
b) to a **Police Officer**; or
c) to any one at a time **when the accused is in the custody of a Police Officer and no Magistrate is present**.

Thus, a statement made by an accused person if it is an admission, is admissible in evidence. **The confession is an evidence only against its maker and against another**

person who is being jointly tried with him for an offence. The confession made in front of magistrate in a native state recorded is admissible against its maker is also admissible against co-accused under Section 30.

Illustrations

a) A and B are jointly tried for the murder of C. It is proved that A said-"B and I murdered C". The Court may consider the effect of this confession as against B.

b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said—"A and I murdered C".

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

According to Section 24, confession caused by inducement, threat or promise is irrelevant. To attract the prohibition contained in Section 24 of the Evidence Act the following six facts must be established:

- that the statement in question is a confession;
- that such confession has been made by an accused person;
- that it has been made to a person in authority;
- that the confession has been obtained by reason of any inducement, threat or promise proceeded from a person in authority;
- such inducement, threat or promise, must have reference to the charge against the accused person;
- the inducement, threat or promise must in the opinion of the Court be sufficient to give the accused person grounds, which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

2. Statements by persons who cannot be called as witnesses

Certain statement made by persons who are dead, or cannot be found or produced without unreasonable delay or expense, makes the second exception to the general rule. However, the following conditions must be fulfilled for the relevancy of the statements:

a) That the statement must relate to a fact in issue or relevant fact,

b) That the statement must fall under any of following categories:
   - the statement is made by a person as to the cause of this death or as to any of the circumstances resulting in his death;
   - statement made in the course of business;
   - Statement which is against the interest of the maker;
   - a statement giving the opinion as to the public right or custom or matters of general interest;
   - a statement made before the commencement of the controversy as to the relationship of persons, alive or dead, if the maker of the statement has special means of knowledge on the subject;
   - a statement made before the commencement of the controversy as to the relationship of persons deceased, made in any will or deed relating to family affairs to which any such deceased person belong;

- a statement in any will, deed or other document relating to any transaction by which a right or custom was created, claimed, modified, etc.;
- a statement made by a number of persons expressing their feelings or impression;
- evidence given in a judicial proceeding or before a person authorised by law to take it, provided that the proceeding was between the same parties or their representatives in interest and the adverse party in the first proceeding had the right and opportunity to cross examine and the questions in issue were substantially the same as in the first proceeding.

3. Statements made under special circumstances

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

a) Entries made in books of account, including those maintained in an electronic form regularly kept in the course of business. Such entries, though relevant, cannot, alone, be sufficient to charge a person with liability; (Section 34)

b) Entries made in public or official records or an electronic record made by a public servant in the discharge of his official duties, or by any other person in performance of a duty specially enjoined by the law; (Section 35)

c) Statements made in published maps or charts generally offered for the public sale, or in maps or plans made under the authority of the Central Government or any State government; (Section 36)

d) Statement as to fact of public nature contained in certain Acts or notification; (Section 37)

e) Statement as to any foreign law contained in books purporting to be printed or published by the Government of the foreign country, or in reports of decisions of that country. (Section 38)

Q: What is the difference between Confessions and Admissions

Confessions vs. Admissions

1. There can be an admission either in a civil or a criminal proceedings, whereas there can be a confession only in criminal proceedings.
2. An admission need not be voluntary to be relevant, though it may effect its weight; but a confession to be relevant, must be voluntary.
3. There can be relevant admission made by an agent or even a stranger, but, a confession to be relevant must be made by the accused himself. A confession of a co-accused is not strictly relevant, though it may be taken into consideration, under Section 30 in special circumstances.

Q: What are the cases under which opinion of the third person shall be relevant?

The general rule is that opinion of a witness on a question whether of fact or law, is irrelevant. However, there are some exceptions to this general rule. These are:

1. ***Opinions of experts. (Section 45)***
   Opinions of experts are relevant upon a point of (a) foreign law (b) science (c) art (d) identity of hand writing (e) finger impression special knowledge of the subject matter of enquiry become relevant.

Illustrations

a) The question is, whether the death of A was caused by poison.
   The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

b) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.
   The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant. Similarly the opinions of experts on typewritten documents as to whether a given document is typed on a particular typewriter is relevant.

2. *Facts which support or are inconsistent with the opinions of experts are also made relevant.* (Section 46)

3. *Others: In addition to the opinions of experts, opinion of any other person is also relevant in* the following:
   - Opinion as to the handwriting of a person if the person giving the opinion is acquainted with the handwriting of the person in question; (Section 47)
   - Opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate; (Section 47A)
   - Opinion as to the existence of any general right or custom if the person giving the opinion is likely to be aware of the existence of such right or custom; (Section 48)
   - Opinion as to usages etc. words and terms used in particular districts, if the person has special means of knowledge on the subject; (Section 49)
   - Opinion expressed by conduct as the existence of any relationship by persons having special means of knowledge on the subject. (Section 50)

Q: What is privileged communications?

There are **some facts of which evidence cannot be given though they are relevant**. Such facts are stated under Section 122 (Communications during marriage), Section 123 (Affairs of State), Section 126 and 127 (Professional communication), where evidence is prohibited under those Sections. They are also referred to as 'privileged communications'

Communications during marriage

Under Section 122 of the Act, communication between the husband and the wife during marriage is privileged and its disclosure cannot be enforced. This provision is based on the principle of domestic peace and confidence between the spouses. The Section contains two parts; the first part deals with the privilege of the witness while the second part of the Section deals with the privilege of the husband or wife of the witness.

Evidence as to affairs of State

Section 123 applies only to evidence derived from unpublished official record relating to affairs of State. According to Section 123, no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Professional communications

Section 126 to 129 deal with the professional communications between a legal adviser and a client, which are protected from disclosure. A client cannot be compelled and a legal adviser cannot be allowed without the express consent of his client to disclose oral or documentary communications passing between them in professional confidence. The rule is founded on the impossibility of conducting legal business without professional assistance and securing full and unreserved communication between the two. Under Sections 126 and 127 neither a legal adviser i.e. a barrister, attorney, pleader or vakil (Section 126) nor his interpreter, clerk or servant (Section 128) can be permitted to disclose any communication made to him in the course and for the purpose of professional employment of such legal adviser or to state the contents or condition of any document with which any such person has become acquainted in the course and for the purpose of such employment.

Q: What are the various types of evidences?

Oral evidence

Oral evidence means statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry. But, if a witness is unable to speak he may give his evidence in any manner in which he can make it intelligible as by writing or by signs. (Section 119)

Thus, the two broad rules regarding oral evidence are:

- all facts except the contents of documents may be proved by oral evidence;
- oral evidence must in all cases be “direct”.

However, all facts except contents of documents or *electronic records* may be proved by oral evidence (Section 59) which must in all cases be “direct” (Section 60). The direct evidence means the evidence of the person who perceived the fact to which he deposes.

Direct evidence

According to Section 60 oral evidence must in all cases whatever, be direct; that is to say:

- if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;
- if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;
- if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

- if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

In defining the direct evidence in Section 60, the Act impliedly enacts what is called the rule against hearsay. Since the evidence as to a fact which could be seen, by a person who did not see it, is not direct but hearsay and so is the evidence as to a statement, by a person who did hear it.

Documentary evidence

A *"document"* means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used for the purpose of recording that matter. Documents produced for the inspection of the Court is called Documentary Evidence. Section 60 provides that the contents of a document must be proved either by primary or by secondary evidence.

Primary evidence

"*Primary evidence*" means the document itself produced for the inspection of the Court (Section 62). The rule that the best evidence must be given of which the nature of the case permits has often been regarded as expressing the great fundamental principles upon which the law of evidence depends. The general rule requiring primary evidence of producing documents is commonly said to be based on the best evidence principle and to be supported by the so called presumption that if inferior evidence is produced where better might be given, the latter would tell against the withholder.

Secondary evidence

Secondary evidence is generally in the form of compared copies, certified copies or copies made by such mechanical processes as in themselves ensure accuracy. Section 63 defines the kind of secondary evidence permitted by the Act. According to Section 63, "secondary evidence" means and includes:

- certified copies given under the provisions hereafter contained;
- copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- copies made from or compared with the original;
- counterparts of documents as against the parties who did not execute them;
- oral accounts of the contents of a document given by some person who has himself seen it.

Evidence Relating to Electronic Record

Under Section 65B(1) any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this Section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible. The conditions in respect of a computer output related above, have been stipulated under Section 65B(2) of the Evidence Act.

Circumstantial evidence

Circumstantial Evidence is a kind of derived evidence, that can be gained from sources seen as secondary. Circumstantial Evidence is used only in case the primary evidence is missing or unavailable. In English law the expression direct evidence is used to signify evidence relating to the 'fact in issue' (*factum probandum*) whereas the terms circumstantial evidence, presumptive evidence and indirect evidence are used to signify evidence which relates only to "relevant fact" (*facta probandum*).

Q: What is Rules of presumption?

The Act recognises some rules as to presumptions. Rules of presumption are deduced from enlightened human knowledge and experience and are drawn from the connection, relation and coincidence of facts and circumstances. A presumption is not in itself an evidence but only makes a prima facie case for the party in whose favour it exists. A presumption is a rule of law that courts or juries shall or may draw a particular inference from a particular fact or from particular evidence unless and untill the truth of such inference is disproved. There are three categories of presumptions:

1. **presumptions of law**, which is a rule of law that a particular inference shall be drawn by a court from particular circumstances.
2. **presumptions of fact**, it is a rule of law that a fact otherwise doubtful may be inferred from a fact which is proved.
3. **mixed presumptions**, they consider mainly certain inferences between the presumptions of law and presumptions of fact.

Q: Write a short note on Principle of Estoppel

Principle of Estoppel

The general rule of estoppel is when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing (Section 115). However, there is no estoppel against the Statute. Where the Statute prescribes a particular way of doing something, it has to be done in that manner only.

Estoppel is based on the maxim *'allegans contratia non est audiendus'* i.e. a person alleging contrary facts should not be heard. The principles of estoppel covers one kind of facts. It says that man cannot approbate and reprobate, or that a man cannot blow hot and cold, or that a man shall not say one thing at one time and later on say a different thing.

The doctrine of estoppel is based on the principle that it would be most inequitable and unjust that if one person, by a representation made, or by conduct amounting to a representation, has induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it.

In Biju Patnaik University of Tech. Orissa v. Sairam College, AIR 2010 (NOC) 691 (Orissa), one private university permitted to conduct special examination of students prosecuting studies under one time approval policy. After inspection, 67 students were permitted to appear in the examination and their results declared.

However, university declined to issue degree certificates to the students on the ground that they had to appear for further examination for another condensed course as per syllabus of university. It was held that once students appeared in an examination and their results declared, the university is estopped from taking decision withholding degree certificate after declaration of results.

Different kinds of Estoppel:

- Estoppel By Contract
- Equitable Estoppel
- Estoppel By Negligence
- Estoppel By Silence