LAWXPERTSMV INDIA **JUDICIAL SERVICE EXAMINATION**

1.1.MODULE – GENERAL INTRODUCTION & MEANING OF EVIDENCE

INTRODUCTION :

1. The law of evidence as set out in the Indian Evidence Act, 1872 ("the Act"), *is a procedural law, not a substantive law.*

The Law of Evidence is the *lex fori* which governs the Courts. Whether a witness is competent or not; whether a certain matter requires to be proved by writing or not; whether certain evidence proves a certain fact or not; that is to be determined by the law of the country where the question arises, where the remedy is sought to be enforced, and where the Court sits to enforce it**. The Law of Evidence is a part of the law of procedure.**

2. The law of evidence is the same in civil as well as criminal proceedings, though there are sections of the Act that have exclusive application to either civil law (for instance, Ss.52 - 55, and Ss.115 - 117) or to criminal law (for instance, Ss.24 - 30).
3. This Act has come into force on the first day of September, 1872

PREAMBLE

The Preamble to this Act runs as under: "*Whereas it is expedient to consolidate, define and amend the law of evidence, it is hereby enacted as follows*" —

If the sections are clear, the terms of the Preamble cannot be called in aid to respect the operation or to cut them down. The Indian Evidence Act is a consolidation of the English law of evidence. It is law of mere procedure and does not affect substantive rights and since "alterations in the form of procedure are always retrospective, unless there is some good reason why they should not be", rules of

evidence are retrospective in their operation. Rules of evidence come into force at once and must be followed by courts in deciding on the rights of the parties, whatever may have been the previous state of law in regard to the proper presumptions and burdens of proof.

APPLICATION OF INDIAN EVIDENCE ACT

The Indian Evidence Act, 1872 (1 of 1872) extends to the whole of India and applies to all judicial proceedings in or before any court, including courts martial other than 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, nor to proceedings before an arbitrator .

JUDICIAL PROCEEDINGS: The words Judicial Proceedings' is not defined in this Act, but under Section 2(1) of the Criminal Procedure Code, 1973, it includes any proceedings in the course of which evidence is or may be legally taken on oath.

The following proceedings have been held to be not judicial:

(a) Proceedings before a Magistrate not authorised to conduct any enquiry.

(b) An inquest proceeding before the Coroners under Coroners's Act, 1871.

(c) An enquiry

under Section 340 Cr.P.C AND Section 176 CRPC.

under the Legal Practitioners' Act.

Sub-divisional Officer enquiring an election petition

(d) The Evidence Act has no application to enquiries by Tribunals, even though they may be judicial in character.

i. **Officers conducting Departmental Inquiries**
ii. **Departmental proceedings.**
iii. **Disciplinary Proceedings Tribunal.**

(e) Authorities under the Income-tax Act

(f) Labour Courts.

(g) Tribunal under the Motor Vehicles Act.

(h) Proceedings

- **under the Foreign Exchange Regulations Act**

- **a Collector under the Land Acquisition Act.**

(I)Commissioners under the Commissions of Inquiry Act, 1952

(j) Though the proceedings relating to contempt of Court are judicial in character, they are outside the scope of this Act.

AFFIDAVITS : Affidavit means a statement or a declaration in writing on oath or affirmation before a person having authority to administer an oath or affirmation.

The definition of the word 'Evidence in Section 3 does not mention an affidavit, **for it is specifically excluded by this section**. Therefore, an affidavit cannot be taken as evidence except as provided in Order 19, C.P.C.

PROCEEDINGS BEFORE ARBITRATORS : The Act is not applicable to proceedings before arbitrators as they have no powers to administer the oath and need not examine witnesses.

OVERVIEW OF INDIAN EVIDENCE ACT,1872

The Indian Evidence Act has been divided into three principal parts

PART I contains two Chapters, viz. I and II

- **Chapter I deals with preliminary definitions [Sections 1-4].**
- **Chapter II deals with the relevancy of facts, and shows in what way various relevant facts are connected with each other [Section 5-55].**

PART II contains four Chapters, viz. III, IV, V and VI

- **Chapter III deals with certain facts that need not be proved [Sections 56-58). There are notorious facts known to everybody and of which the court takes judicial notice.**
- **Chapter IV deals with oral evidence (Sections 59-60).**
- **Chapter V deals with documentary evidence [Sections 61-90).**
- **Chapter VI lays down the rules regarding the exclusion of oral or documentary evidence [Sections 91-100].**

PART III contains five Chapters, viz., VII, VIII, IX, X and XI.

- **Chapter VII deals with burden of proof and presumption [sections 101-114A).**

- **Chapter VIII deals with the subject of estoppel (sections 115-117].**
- **Chapter IX speaks of witnesses who are competent to testify [sections 118-134). Chapter X deals with the examination of witnesses (sections 135-166T).**
- **Chapter XI deals with the effect of improper admission and rejection of evidence [section 167).**

OBJECT AND REASONS : It is with the evidence law that the Judge separates the wheat from the chaff among the mass of facts that are brought before him, decides upon their just and mutual bearing, learns to draw correct inferences from circumstances, and to weigh the value of direct testimony.

The main principles of the law of evidence are:

1. Evidence must be confined to the matters in issue
2. Hearsay evidence must not be admitted;
3. The best evidence must be given in all cases.

PART I: RELEVANCY OF FACTS

Definitions : Section 3 of the Act defines several important terms, including 'Court', 'fact', 'document', 'evidence', 'proof', and 'conclusive proof'. Several of the definitions are not exhaustive, but rather, are inclusive in nature, for example, see the definitions of 'Court', 'fact', 'facts in issue', and 'evidence'.

FACT

Section 3 of the Indian Evidence Act, 1872 provides

"Fact" means and includes (1) anything, state of things, or relation of things, capable of being perceived by the senses; (2) any mental condition of which any person is conscious.

Illustrations :

(a) That there are certain objects arranged in a certain order in a certain place, is a fact.

(b) That a man heard or saw something, is a fact.

(c) That a man said certain words, is a fact.

(d) That a man holds a certain opinion, has a certain intention, acts in good faith or

fraudulently, or uses a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact

(e) That a man has a certain reputation, is a fact

MEANING :

- The definition under this section read with the illustrations refers to two kinds of facts, namely, physical fact and psychological fact. They can be proved either by direct or indirect evidence. This definition was taken from the classification of facts made by BENTHAM.
- According to him, physical facts are such as either have their seat in some inanimate being or if in one that is animate, then not by virtue of the qualities which constitute it such; while psychological facts are those which have their seat in an animate being by virtue of the qualities by which it is constituted animate".

The term "fact" is being used in three different senses :

i. *the information provided by witnesses and other evidence;*
ii. *the conclusions drawn by the trier of fact from the information presented in Court as to what actually happened;*
iii. *the legal concepts, facts in issue, that must be established if a particular party to legal proceedings is to succeed.*

RELEVANT

RELEVANT : One fact is said to be *'relevant'* to another when the one is connected with the other in any of the ways referred to in the provisions of the Act relating to the relevancy of facts.

1. The way the word "relevant" is defined would show no indication of the definiteness of that word; *it simply says that 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*.
2. **Sections 5 to 55 of the Act** give the methods one should adopt to know whether a particular fact is relevant for the determination of the issues arising out of the list

between the parties. Facts relevant to an issue are those facts which are necessary to prove or disprove the fact in issue.

3. The word "relevant' means that any two facts to which it is applied are so related to each other that, according to the common course of events, one, either taken by itself or in connection with other facts, proves or renders probable the past, present or future existence or non-existence of the other.
4. Relevant, strictly speaking, means admissible in evidence. Erroneous admission of any evidence does not make it relevant.
5. The word "relevant is used in the Act with two meanings: (a) as connected; (b) as admissible. Firstly, it should have some connection with the issue. Secondly, such fact must be admissible. Thus in the first place it is logical and in the second place it is legal.

FACTS-IN-ISSUE

A '*fact in issue*' includes <u>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 proceeding, necessarily follows. All relevant facts may not form part of the facts in issue.</u>

Illustration: A *is accused of the murder of B by clubbing B to death. At A's trial, the following facts may be in issue: (1) That A caused B's death; (2) That A intended to cause B's death; and (3) That A had received grave and sudden provocation from B. The fact that B had an incurable disease may be a relevant fact, but may not be a fact in issue.*

Facts in issue, which are sometimes called "principal" facts, are those necessary by law to establish the claim, liability or defence, forming the subject-matter of the proceedings; and which are in dispute between the parties. The *facts in issue in a case*, sometimes called ultimate facts, are the facts which a party to litigation (including the prosecution in a criminal case) must prove in order to succeed in his claim or defence and to show his entitlement to relief (or to obtain conviction).

This expression is used in secs. 5, 6, 7, 8, 9, 11 and illustrations (d) of Section 21 and Sections 36 and 43. Facts in issue can be divided into main facts in issue and subordinate or collateral facts. Main facts are those which are necessary under the rule

of law to establish the claim, or the liability or the defence. They arise by the pleadings of the parties in dispute.

EVIDENCE

MEANING : The term 'evidence' has been defined inclusively and can be understood as the material placed before a court, based on which a court determines the existence or nonexistence of a fact in issue. The definition under S.3 of the Act specifically covers oral and documentary evidence.

- According to Chief Justice Monir, Law of Evidence can be defined, "*as a system of rules for ascertaining controverted questions of fact in judicial inquiries. It bears the same relation to a judicial investigation as logic to reasoning.*"
- According to Sir James Stephen "*the Law of Evidence is that part of the law of procedure which, with a view to ascertain individual rights and liabilities in individual cases, decides:*
  (1) what facts may, and what may not be proved in such cases,
  (2) what sort of evidence must be given to a fact which may be proved, and
  (3) by whom and in what manner the evidence must be given by which any fact is proved.

WIGMORE states that the term evidence means <u>any knowable facts or group of facts, not a legal or a logical principle, considered with a view to its being offered before a legal tribunal for the purpose of producing a persuasion, positive or negative, on the part of the tribunal as to the truth of a proposition, not of law, or of logic, on which the determination of the tribunal is to be asked.</u>

In *Ram Jas v. Surendra Nath. AIR 1980 All 385*, the Allahabad High Court observed that the Law of Evidence does not affect substantive rights of parties but only lays down the law for facilitating the course of Justice. The Evidence Act lays down the rules of evidence for the purpose of the guidance of the courts.

CLASSIFICATION OF EVIDENCE: Broadly speaking, Evidence can be classified into (1) Direct and Indirect or circumstantial evidence. (2) Primary and Secondary Evidence (3) Oral and Documentary Evidence (4) Real Evidence (5) Original and Hearsay Evidence (6) Presumptive Evidence.

DIRECT EVIDENCE

MEANING OF DIRECT EVIDENCE: The existence of a given thing or fact is proved either by its actual production, or by the testimony or admissible declaration of someone who has himself perceived it is said to be **Direct Evidence.**

Direct evidence consists either of

- the testimony of the witness who perceived the fact or
- the production of the documents which constitute the fact which is in question.

Pericipient evidence or Direct Evidence is evidence of facts which a witness personally perceives using any of his senses. This direct evidence is sometimes called ***original evidence*** which arises from the personal knowledge of the witness. Direct evidence, if believed, proves the existence of a fact in issue without any inference of presumption.

INDIRECT OR CIRCUMSTANTIAL EVIDENCE :

Indirect Evidence otherwise known as ***circumstantial evidence*** is evidence that gives rise to a logical inference that such a fact does exist. Circumstantial evidence may be either conclusive or presumptive. It is conclusive when there is a connection between the principal fact and the evidentiary fact. It is presumptive where the fact rests on a greater or a less degree of probability.

Justice Hidayatullah : Circumstantial evidence means communication of facts, creating a network from which there is no escape for the accused, because the facts taken as a whole do not admit any inference except that of the guilt of the accused.

'Circumstantial evidence' may be defined as any fact (*sometimes called an "evidentiary fact, 'factum probans' or 'fact relevant to the issue'*) from the existence of which the judge or jury may infer the existence of a fact in issue (sometimes called a "principal fact' or 'factum probandum)

WHEN CIRCUMSTANTIAL EVIDENCE CAN CONVICT A PERSON? In the case of circumstantial evidence, onus is on the prosecution to prove that the chain of events is complete to establish the guilt of the accused.

The circumstances relied upon in support of the conviction must be fully established and the chain circumstances must be so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and further it must be such as to show that within all human probability the act must have been done by the accused and, if two views are possible on such evidence, the view pointing towards the innocence of the accused is to be adopted. [1]

ESSENTIAL INGREDIENTS TO PROVE GUILT BY CIRCUMSTANTIAL EVIDENCE ARE: STATE OF U.P. V. DR. R.P. MITTAL AIR 1992 SC 2045 :

(1) Circumstances from which conclusion is drawn should be fully proved.

(2) Circumstances should be conclusive.

(3) All facts so established should be consistent only with the hypothesis of guilt and inconsistent with innocence of the accused.

(4) Circumstances should exclude the possibility of guilt of a person other than the accused.

(5)There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.(*Bodh Raj v. State of J&K)*

IF CHAIN LINK IS MISSING: While it is true that there should be no missing links in the prosecution case, it is not the law that every one of the links must appear on the surface of the evidence adduced. Some of these links may have to be inferred from the proved facts. Those links may be termed as inferential links. In drawing those inferences or to be more accurate, presumptions, a judge of fact is required to have due regard to the common course of natural events, to human conduct and their relations to the facts of the particular case**.**

EXAMPLE : In a case of rape and murder of a minor girl, the doctor found injuries on the male organ of the accused as to which no explanation could be given by the accused. Instead he gave false answer. It was held that injuries sustained by the accused was à

[1] Reddy Sampath Kumar v. State of A.P.. (2005) 7 SCC 603, 604 (para 7): AIR 2005 SC 3478; Kumaravel v. State, 2009 CrLJ 262, 266-67 (para 12.4).

formidable incriminating circumstance and the false answer given by him could be counted as providing a missing link for completing the chain of circumstances.[2]

CIVIL AND CRIMINAL LAW : Regarding the appreciation of circumstantial evidence in civil cases. preponderance of probabilities should be looked at in deciding the cases, whereas, in criminal cases. Strict scrutiny of each of the facts placed by circumstantial evidence and their cumulative effect has to be taken into consideration and if they are of such nature as to be incompatible with the innocence of the accused, then only conviction can follow.

CASE LAWS :

Brijlala Pd. Sinha v. State of Bihar, AIR 1998 SC 2443 : 1998 CrLJ 3611.

In a case the police officials were charged to have killed the occupants of a speeding vehicle by fire-arms. They took the plea that the occupants of the vehicle also were firing from their fire-arms but the pistols shown to have been found near the dead bodies were found to be never used and defective by ballistic expert and the glasses of the police vehicle were not broken. No damage was found in the vehicle in which the police officers. Police officials were convicted.

Shankar Shridhar Kavale v. State of Maharashtra, 1998 CrLJ 4491

Where in a murder trial, the blood stained clothes of the deceased and an axe. the weapon of offence, were recovered on the pointing out of the accused, the dead body also was recovered from his house which he failed to explain and the motive was also proved, they all constitute circumstantial evidence sufficient to convict the accused.

PRIMARY & SECONDARY EVIDENCE.

Primary evidence means the best or highest kind, that which the law regards as affording the greatest certainty of the fact in question: thus, production of the original document, or proof of an admission of its contents by the party against whom it is tendered, is considered primary in this sense.

[2] State of Maharashtra v. Suresh, (2000) 1 SCC 471.

Secondary evidence means inferior or substitutionary evidence, that which itself indicates the existence of more original sources of information; thus, a copy , or the testimony of a witness who has read the document, is secondary.

In *Lucas v. Williams, LORD ESHER* remarked ; "Primary evidence is evidence which the law requires to be given first: secondary evidence is evidence which may be given in the absence of that better evidence, when a proper explanation of its absence has been given."

However, there are exceptions to this rule. an example of which is Section 51-A of the Land Acquisition Act, 1894 under which as an alternative to original deeds, certified copies, may be brought on record evidencing a transaction, without proving the absence of primary evidence.

ORAL EVIDENCE

Section 60 of the Indian Evidence Act, 1872 suggests the provision of recording oral evidence. “All those statements which the court permits or expects the witnesses to make in his presence regarding the truth of the facts are called Oral Evidence.” It is the evidence which the witness has personally seen or heard. Verbal evidence is to be always to-the-point or positive, necessarily.

DOCUMENTARY EVIDENCE :

Section 3 of The IEA says that all those documents which are presented in the court for inspection such documents are called documentary evidences.

PETER MURPHY defines documentary evidence as “Evidence afforded by any document produced for the inspection of Court, whether as direct or hearsay evidence of its contents. Where there is documentary evidence and also a mass of conflicting oral testimony, it is always desirable and indeed safe to let the documents speak for themselves.

Example : A certified copy from the school register regarding the age, and the affidavit by the father giving the date of birth, would amount to documentary evidence.

Document procured by illegal means is no bar to its admissibility if it is relevant and its genuineness is proved. While examining its genuiness the circumstances under which it came to be produced in the court have to be taken into consideration.

REAL EVIDENCE

Real Evidence was devised by *Bentham* and adopted by *Best*, “real evidence' is not a term which has received the blessing of common judicial usage. There is general agreement that it covers the production of material objects for inspection by the judge or jury in Court, but it is debatable how much further the term should be extended.

PHIPSON states : "Material objects other than documents, produced for inspection of the Court, are commonly called real evidence. This, when available, is probably the most satisfactory kind of all, since, save for identification or explanation, neither testimony nor inference is relied upon. Unless its genuineness is in dispute, the thing speaks for itself.

The term “real evidence” having been used in three divergent senses :

(1) EVIDENCE FROM THINGS AS DISTINCT FROM PERSONS.
(2) MATERIAL OBJECTS PRODUCED FOR THE INSPECTION OF THE Court.
(3) PERCEPTION BY THE COURT (OR ITS RESULT) AS DISTINCT FROM THE FACTS PERCEIVED.

HEARSAY EVIDENCE:

Hearsay evidence is given when a witness recounts a statement made (orally, in a document or otherwise) by another person and where the proponent of the evidence asserts that what the person, who made the statement, said was true.”The contents of the document without examining the author are worst piece of hearsay evidence.

Where the evidence of a witness regarding the incident was only hearsay, no value could be attached to the same.

OTHER TYPES OF EVIDENCE :

CONCLUSIVE EVIDENCE :

Conclusive evidence, which is rare, is tantamount to a rule of law, since it is evidence which no party is permitted to contradict by evidence. Conclusive evidence, therefore, is inaptly named, and it would be preferable to state the fact so proved as a rule of law.

For example, the rule that the child under the age of 7 years is to be taken as incapable of committing a criminal offence.

LAST SEEN EVIDENCE

The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of the other persons coming in between exists. In absence of any other positive evidence to conclude that accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

Jaswant Gir v. State of Punjab, (2005) 12 SCC 438, 441 : Where there was a considerable time-gap between the deceased boarding the vehicle of the accused and the time the dead body was found, it was held that in absence of any other links in the chain of circumstantial evidence, it was not possible to convict the accused solely on the basis possible to convict the accused solely on the basis of the "last seen" evidence.