

INDIAN EVIDENCE ACT, 1872

Presented by –
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Indian Evidence Act, 1872-

Drafted by Sir James Stephen

Enforced on 1st September, 1872

It applies to whole of India except Jammu and Kashmir

Indian Evidence Act, 1872

What is to be Proved Sec. 5 to 55

How it is to be Proved Sec. 56 to 100

Who shall be Proved Sec. 101 to 166

Applicability of the Act

Applicable to –

1. All judicial Proceeding or
2. Proceeding before Court or
3. Court martial other than convened under Army, Navy and Air Force Act

Not Applicable to-

1. Proceeding before Arbitrator
2. Affidavit

Imp Definitions

- Court-

Includes all judges , magistrate, and all persons legally authorize to take evidence except arbitrator.

- Document-

means any matter expresses or describe upon any substance by means of letter, marks, figures or more than one of those means which may be used or intended to be used for the purpose of recording that matter.

Imp Definitions-

- Evidence-

means and includes-

1. All statements which court require or permit to make before it by witnessessuch statements are called as oral evidence.
2. All documents produced before court for its inspection....are called as documentary evidence.

Facts and Fact in issue

□ Facts-

means and includes-

1. Anything , state of thing or relation of thing which can be perceived by The Senses. (Physical Facts)
2. Any mental condition by which any person become conscious. (psychological facts)

Facts in issue-

Any fact which either by itself or in connection with any other fact, the existence, non existence, nature or extent of any rights, liability or disability asserted or denied in any suit or proceeding.



Every Fact-in-issue is a fact but
every fact is not Fact-in-issue.

Proved, Disproved and Not Proved

- Proved-

Fact is said to be proved if after considering all the matter before it court either believe that it exist or consider its existence so probable that ordinary prudent man ought under same circumstances would act upon the belief that it exist.

- Disproved-

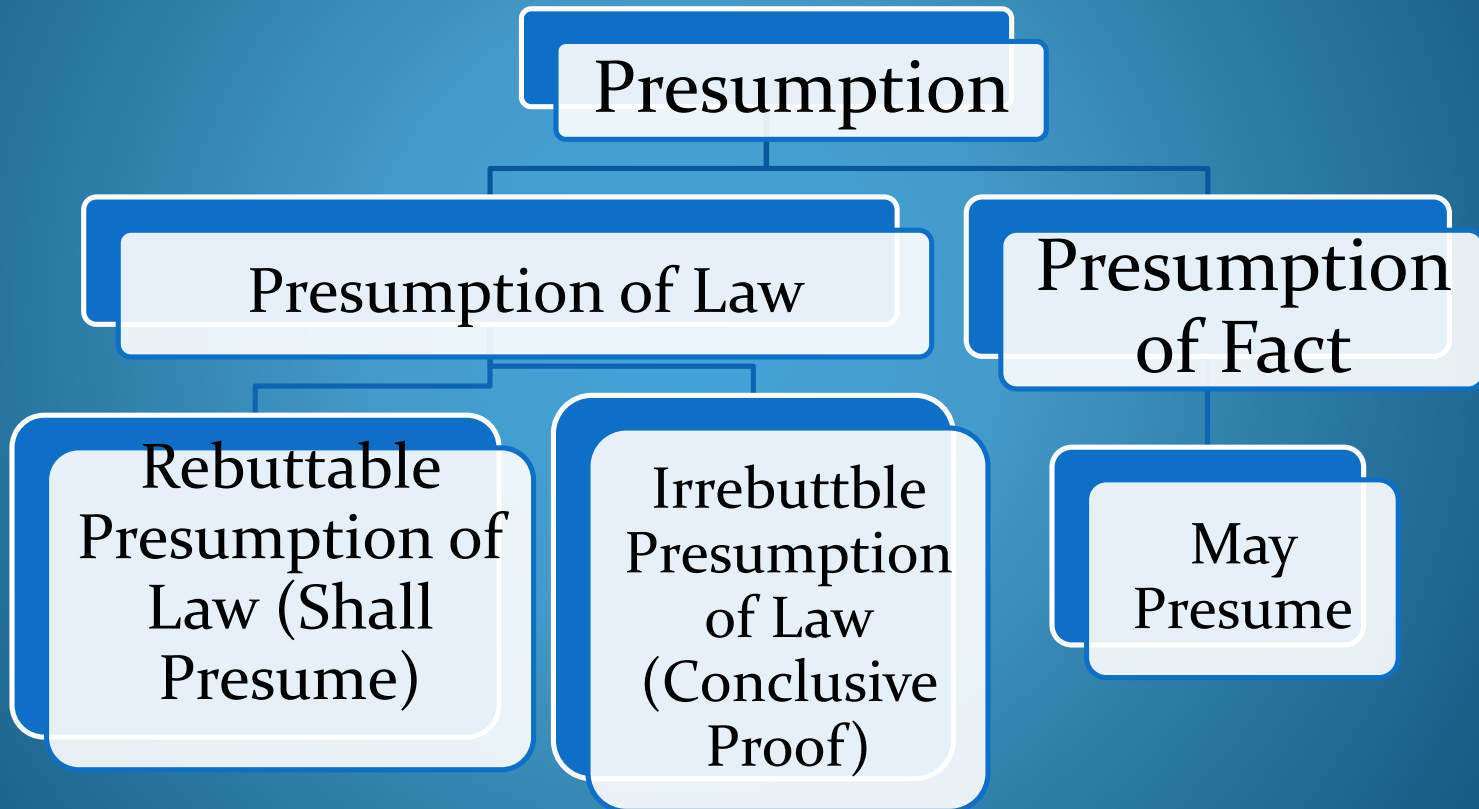
Fact is said to be disproved if after considering all the matter before it court either believe that it does not exist or consider non existence so probable that ordinary prudent man ought under same circumstances would act upon the belief that it does not exist.

Proved, Disproved and Not Proved

- Not Proved –

When fact is neither proved nor disproved is said to be Not Proved.

Sec 4: Presumption

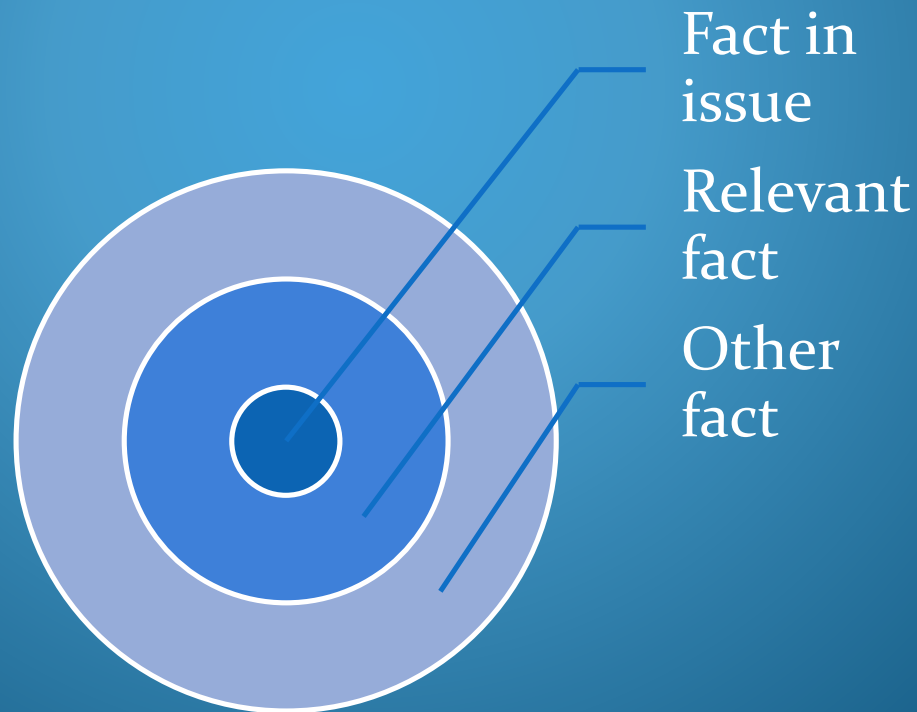


Sec 4: Presumption

May Presume	Whenever it is provided by this Act	Court may Presume a fact	Court may presume such fact as proved	Unless and until it disproved	May call for further proof of it
Shall Presume	Whenever it is directed by this Act	Court shall presume a fact	Shall presume such fact as a proved	Unless and until it is disproved	
Conclusive Proof	Whenever it is directed by this Act	One fact is a conclusive proof of another fact	On proof of one fact court shall presume another fact is proved	Shall not allowed disproving of it	

Sec. 5 –

Evidence shall be given of fact in issue and relevant fact and no other fact.



ADMISSION SEC 17 TO 23 R.W 31

Admission is a statement oral or in writing or containing in electronic form which suggest any inference as to fact in issue or relevant fact and made by any person and under the circumstances hereinafter provided.

Statement

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graph TD; Statement[Statement] --- H[ ]; H --- L[Self serving statements  
(Exceptionally admission)]; H --- R[self harming statements  
(as a general rule admissions)]
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Self serving statements
(Exceptionally admission)

self harming statements
(as a general rule admissions)

Who can make an admission

1. Party to proceeding
2. Agent of the parties expressly or impliedly authorized
3. Person who has interest in subject matter during the continuance of that interest
4. Person who sue or be sued in a representative character if he makes that statement when he held that character
5. Person from whom interest in subject matter is derived if he makes that statement before he parted with his interest or during his continuance of his interest
6. Person whose position or liability is in question
7. Person expressly referred by party

Rules of admissions-

- As a general rule self harming statements are admission except u/s 21. if such statement is relevant u/s 32 then admission can be proved by or on behalf of the person making of it.
- U/s 22 , oral admission as to content of document is not relevant except if-
 1. Genuineness of document is in question
 2. Party shows that they are entitle to give secondary evidence
- U/s 23, admission under promise of secrecy is not relevant.
- Sec. 31 – admission is not a conclusive proof. It acts as a estoppel.

Confession- sec 24 to 30

- Confession not defined under Act.
- According to Stephen, “Confession is an admission made at any time by a person charged with the crime stating or suggesting an inference that he committed a crime.”
- Kinds of confession –
 - 1. Judicial confession – in judicial proceeding
 - 2. Extra judicial Confession –other than judicial proceeding
 - 3. Retracted confession – later denies that he gave confession.

Confession when relevant

- Confession made under promise, threat, or inducement is not relevant. (S. 24)
- Confession made before police officer is not relevant.(S.25)
- Confession made by any person while in police custody is not relevant except immediate presence of magistrate.(S.26)
- If threat, inducement or promise fully removed then it is relevant, (S. 28)
- Confession under Promise of secrecy is relevant u/s 29.
- Confession by co-accused is relevant u/s 30.

Doctrine of confirmation by Subsequent Event -Sec 27

- Confession made before police officer is not relevant but whatever evidence collected by police which is related with that offences is relevant.
- Discovery made in furtherance of information received from accused can be proved. (S. 27)

Dying declaration Sec 32(1)

“Person who is about to die would not lie.”

When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction, which resulted in his death, in cases in which the cause of that person's death comes into question.

Sec 32(1) is an exception to the rule that hearsay evidence is no evidence unless tested by cross examination.

Admissibility of dying declaration

1. Declarant must have died
2. Injuries have caused his death
3. Cause of his death must be in question
4. Dying declaration must be complete and clear
5. Declarant must be in fit condition
6. It must be voluntary

Evidentiary value of dying declaration

1. DD must have been recorded by a competent Magistrate.
2. DD must have been recorded in exact words.
3. DD must have been made soon after the incident.
4. The incident must have occurred in lightened place.
5. Where successive declaration are made all must be identical.

Statement by a person who cannot be called as witness Sec 32

Persons –

1. Who is dead
2. Who is unsoundmind
3. Who cannot be found
4. Whose attendance cannot be procured

Circumstances-

1. As to cause of his death
2. Ordinary course of business or discharging professional duty
3. Against the interest of maker
4. Related to public custom or public right
5. Relates to existence of relationship
6. Relates to family affairs

Expert Opinion Sec 45 to 51

- When court has to form an opinion on the point on foreign law, science or art or handwriting or finger impression, opinion of a person who is specially skilled in that field is a relevant fact.
- Such person is called as “Expert.” (S.45)
- If opinion of expert is relevant, facts bearing upon or inconsistent with, opinion of expert are also relevant u/s 46.
- When court has to form an opinion as to handwriting of any person who is acquainted with that handwriting of that person is relevant u/s 47.

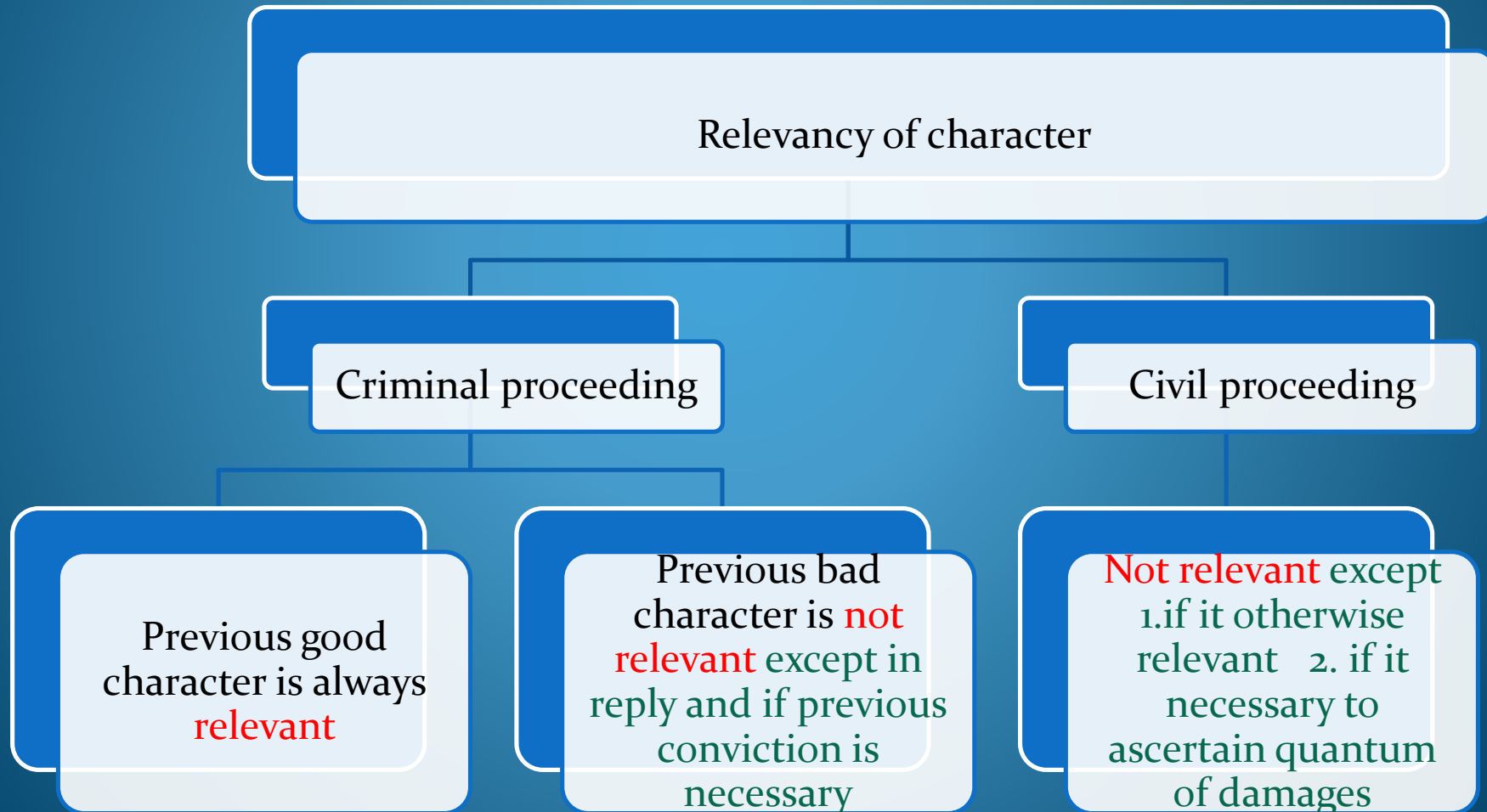
Expert Opinion Sec 45 to 51

- When court has to form an opinion as to existence of any custom, opinion of a person who is likely to know its existence if it existed is relevant u/s 48.
- When court has to form an opinion as to usage of any body or religious institution or meaning of any word used in any district, person who has special means of knowledge is relevant u/s 49.

Expert Opinion Sec 45 to 51

- Opinion as to existence of relationship of one person with another person by blood, marriage or adoption – person who is family member or special means of knowledge is relevant u/s50.
- Such opinion shall not be sufficient proof of marriage for proceeding u/s 494, 495, 497,498of IPC.
- Expert opinion is not binding on the court.
- It is advisory in nature.

Relevancy of character Sec 52 to 55



Facts which need not to be proved Sec 56 to 58

No fact of which court will take judicial take need not to be proved. (Sec 56)

Sec 57- Court can take judicial notice of following facts-

1. All laws enforced in India
2. Proceeding of Parliament, constituent assembly
3. Articles of war of Army, Navy & Airforce
4. Existence of title, flag of any state recognised by Govt of India
5. Geographical division, division of time
6. Territories under dominion of India

Continued...

7. Continuance , commencement & termination of hostilities
8. Public holidays, history, science, art, literature
9. Rules of roads
 - Facts admitted need not to be proved Sec 58
 1. Before Hearing- must be in writing
 2. At the time of hearing – Orally or in writing
 3. By rules of pleading

Oral Evidence Sec 59 & 60

- All facts except the content of document or electronic record may be proved by oral evidence.(S 59)
- Oral evidence must be direct- S. 60
 1. Who has seen
 2. Who has heard
 3. Who has perceived

Documentary evidence

- Contents of the document may be proved by either primary or secondary evidence. Sec 65.

Primary evidence S. 61

Document itself produced before court for inspection

If executed in several part each part
If executed in counter part each counterpart

Secondary evidence S.62

1. Certified copies

2. Copies made from original by mechanical process

3. Copies compared with original

4. Counterparts which did not executed

5. Oral accounts of the contents of document given by some person who has himself seen it

When secondary evidence is admissible Sec.65

1. If original is in possession & power of
 - a) person against whom it is to be proved or
 - b) Person who is out of reach or
 - c) Person not subject to jurisdiction of this courtAfter the notice to produce, fails to produce
2. If existence, condition or contents of the original are admitted in writing
3. If original is destroyed or lost
4. If original is not easily movable
5. If original is public document & certified copy of its is permissible under this Act
6. If original document contains numerous accounts & details

Rules as to produce of notice

Sec66

Notice is mandatory u/s 65 (a) Except-

1. When document to be proved itself is a notice
2. When from the nature of the case adverse party must know that he will be required to produced it
3. When it appears or is proved that the adverse party has obtained possession of the original by fraud or force
4. When adverse party or his agent has the original in court
5. When adverse admitted the loss of original
6. When original is out of reach of the court

Some other provisions relating to documentary evidence

Sec. 67- proof of signature & handwriting of person alleged to have signed and written such signature & handwriting shall be proved in his own handwriting.

Sec 68- if any document required by Law to be attested then such document shall not be used as a evidence unless at least one attesting witness has been examined.

Public document & private document

Public document sec 74

- Documents forming the acts or records of acts of sovereign authority, of official bodies & tribunals , of public officers , legislative , judicial & executive of India or Foreign Country
- Public record kept in any state of private documents

Private document sec 75

- Any other document

List of public document & private document

- Public document-

1. Birth certificate
2. Charge sheet
3. Confession u/s 164 Cr.p.c

- Private document-

1. Sale deed
2. Document kept by Post or Telegraph office showing the time of the receipt and delivery of telegarms



Presumptions as to documents

Sec 79 to 90 A

Sr. No.	Section No.	Presumption relating to	Kinds of presumption	What is to be presumed
1	79	Certified copies of public document	Shall presume	Its genuineness
2	80	Document produced as a record of evidence	Shall presume	Its genuineness
3	81	Official gazette, newspaper etc. (title of the newspaper or heading of the newspaper and not the content)	Shall presume	Its genuineness

4	82	Presumption as to document admissible in England without seal and sign (dormant)	Shall presume	Genuineness of sign and seal or signed and sealed by the person who had authority
5	83	Presumption as to Govt maps and plans	Shall presume	Accuracy of maps and plans
6	84	Book containing foreign judicial decision	Shall presume	Its genuineness
7	85	Power of attorney	Shall presume	Execution

8	86	Certified copies of foreign judgment	May presume	Genuiness
9	87	Books, maps and plans (private plans referred when question is of public importance)	May Presume	It was written and published by the person and at the time whose name it purports to be
10	88	Telegraphic messages forwarded from office	May presume	It corresponds with the addressee
11	89	Document not produced after notice to produce	Shall presume	Execution

12	90	Document purporting to be 30 years old (Ancient Document)	May Presume	Execution
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Exclusion of oral evidence by documentary evidence sec 91 to 100

Sec 91-

When a terms of any contract, grant or other disposition of property reduced in the form of document or which are required by law to be reduced in the form of document then no evidence shall be given as to terms of contract, grant or other disposition of property. Except- document itself or secondary evidence whenever admissible.

Continued...

1. If any public servant required by law to be appointed in writing , writing by which he is appointed need not to be proved .
2. If there are more than one original one original need to be proved.

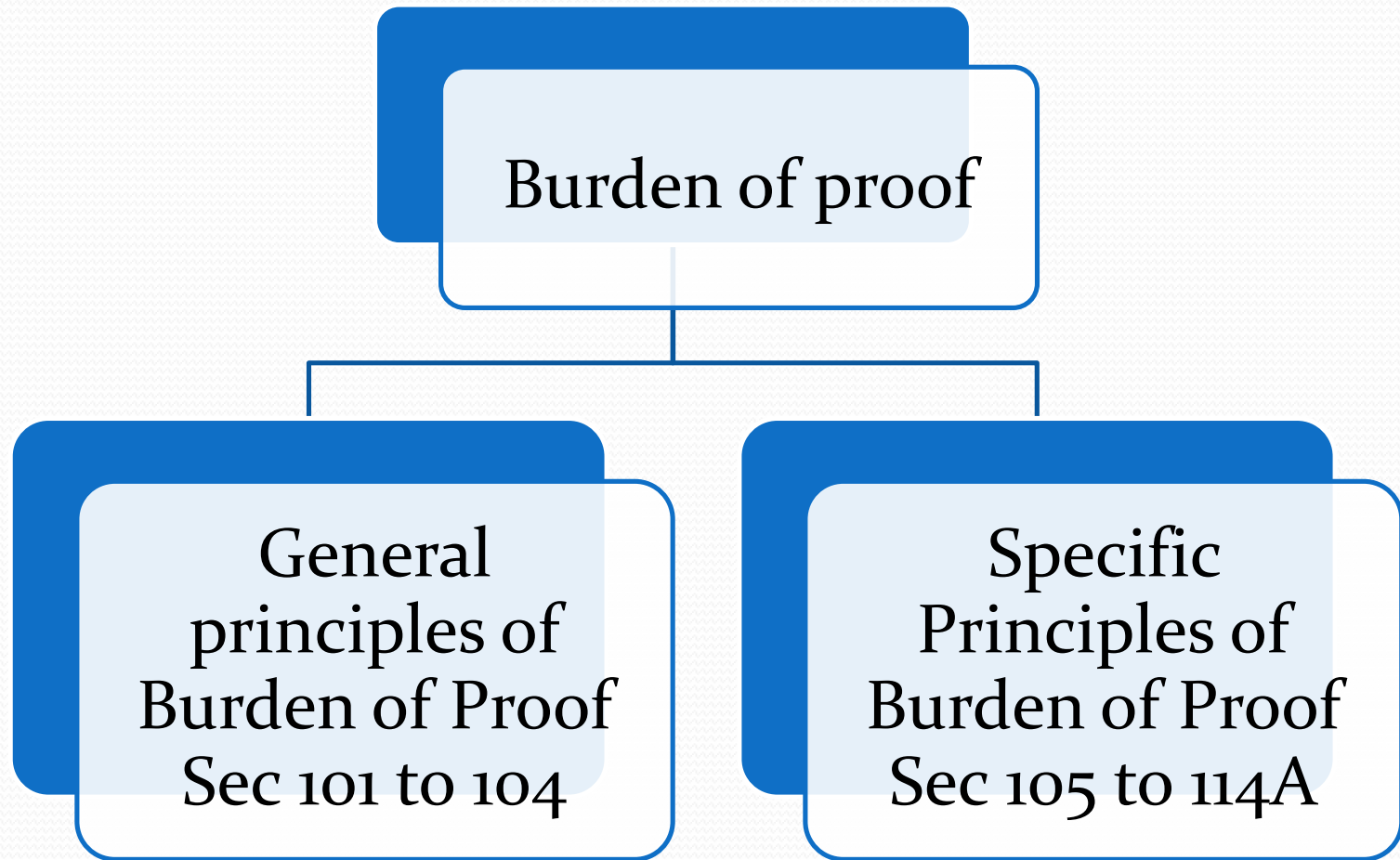
Sec 92-whenver any terms any contract, grant or other disposition of property reduced into the form of document & it is proved u/s 91, No oral evidence shall be given as to terms of contract, grant or other disposition of property to contradict, subtract, alter or vary such document.

Continued...

Exception-

1. Oral evidence can be given of any fact which invalidate the document.
2. Oral evidence can be given of any fact on which document is silent, without contradicting terms of document.
3. Oral evidence can be given of nay oral agreement which condition precedent of contract.
4. Oral evidence may be given of any custom or usage of business.

Burden of Proof



General principles of Burden of Proof Sec 101 to 104

- He who asserts, he shall prove. (Sec 101).
- He who fails if no evidence is given he shall prove.(Sec 102)
- He who has Knowledge of that particular fact, he shall prove (Sec.103)
- He who desires to make that evidence admissible, he shall prove.(Sec 104)

Specific Principles of Burden of Proof Sec 105 to 114A

- Sec . 105 Burden of proving fact that case of accused comes within general exception or special exception or exception of any provision is on the accused & court shall presume absence of such circumstances.
- Sec 106- Any person who has special knowledge of that fact, he shall prove.
- Sec 107- Presumption as to continuance of Life
Burden of proving death of a person known to alive within 30 yrs.
He who alleges death, he shall prove.

Continued...

- Sec 108- Presumption as to death

when question before the court that any man is alive or dead & if he has not been seen that he was not known or heard for the period of 7 yrs, he who alleges life, he has to prove.

Sec 109- Burden of Proof as to existence of relationship when question before court is that whether any person is partner or not or whether they are landlord or tenant or not or principal or agent or not & if it has been shown that they had acted in that capacity he who alleged cessation of that relationship ,he shall prove.

Continued....

- **Sec 110- Burden of proof as to ownership**

Possession is prima facie proof of ownership .

When question before court that any person who is in owner of anything which he shows in possession or not, he who alleged he is not owner, he shall prove.

Sec 110 is applicable to movable as well as immovable property.

- **Sec 111A-** when any person found at place which is declared as disturb area or where there is continuance breach of peace for one month & if such person is charged with or offence 120, 121A, 121B then court shall presume he has committed that offence.

Continued....

- **Sec 113- Notification in official Gazette of Cessation of Territory is a conclusive proof**

Notification in official Gazette of cessation of territory is a conclusive proof of cessation of territory.

- **Sec 113 A- Presumption as to abetment of suicide**

If married women committed suicide within 7 years of her marriage court may presume that her husband or his relative abetted the suicide.

- **Sec 113 B- Presumption as to dowry death**

Court shall presume her husband and his relative caused her death.

Continued...

Sec 114- Presumption as to existence of certain fact-

Court may presume existence of certain fact having regard to common course of natural regard, human conduct or public or private business.

For ex- 1. If any person found in possession of stolen property after commission of theft court may presume either he has committed theft or he has received stolen property.

2. court may presume that accomplice is unworthy of credit unless corroborated in evidence.

Sec 114 A- In a prosecution u/s 376, 376 A,B,C,D,E, F, if women state on affirmation that there was absence on consent, court shall presume that there was absence of consent.

Estoppel

Estoppel

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graph TD; A[Estoppel] --> B[Estoppel by record  
Sec 11 C.P.C. (Res Judicata)]; A --> C[Estoppel by deeds & document  
Sec 91 & 92 Of Indian Evidence Act]; A --> D[Estoppel by Conduct  
Sec 115 to 115 Of Indian Evidence Act]
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Estoppel by record
Sec 11 C.P.C. (Res
Judicata)

Estoppel by deeds
& document
Sec 91 & 92 Of
Indian Evidence
Act

Estoppel by
Conduct
Sec 115 to 115 Of
Indian Evidence
Act

Continued....

- Sec 115- Estoppel

Whoever by act, omission or declaration causes or permits another person to believe the thing is true & to act upon such belief neither he nor representative in interest shall be allowed to deny that thing in any suit or proceeding between them. Estoppel is question of fact and not fact of law.

- Sec 116- estoppel as to Landlord, Tenant & License

No tenant of any immovable property shall be allowed to deny the authority or title of landlord during the continuance of tenancy.

Continued...

- No licensee of any immovable property shall be allowed to deny the authority or title of licensor during the continuance of license.
- Sec 116 is applicable to immovable property.
- Sec 117- No acceptor of bill of exchange shall be allowed to deny the authority of drawer to draw such bill. No bailee of goods shall be allowed to deny title of the bailor.
- Sec 117 is applicable to movable property.

Competency & compatibility of witness Sec 118 to 134

- Sec 118- Who may testify

All persons shall be competent to testify unless court considers that he is incapable to understand the nature of question put to him or incapable to give rational answer of those questions due to tender age, extreme old age or any disease whether of body or of mind.

Explanation- Lunatic is not incompetent to testify unless court consider that he is incapable to understand the nature of question put to him or incapable to give rational answers of those questions due to his lunacy.

Witnesses unable to communicate

Sec 119

- A person who is unable to communicate verbally may give his testimony in any manner in which he can give or make it intelligible it may be in writing or it may be by sign but such writing or sign must be made in open court. Such testimony shall be deemed to be an oral evidence.
- Sec 120- Parties to the suit their husband and wife
Husband and wife of the parties in criminal proceeding shall be competent witness

Privileged Communications

- Sec 121- Privileges of Judges and magistrate
- No Judge or Magistrate shall except upon order of court to which he is subordinate shall be compelled to give evidence as to his own conduct.
- Sec 122- Communication made during marriage

No person who is or has been married shall be compelled or permitted to disclose any communication made to him by person with whom he is or has been married if that communication is made during the continuance of marriage except express consent of other spouse or proceeding between them.

Communication made during continuance of marriage remains privileged even after divorce.

Continued...

- Sec 123- Evidence as to affairs of state

No person shall be compelled to disclose evidence as to affairs of unpublished record of state except authority of head of the department who may or may not give consent.

Sec 124- Official Communication

No public servant shall be permitted to disclose any communication made to him in official capacity.

Sec 125- Information as to commission of an offence

No police officer shall be compelled to disclose from where he got information as to commission of an offence.

No Revenue officer shall be compelled to disclose from where he got an information of evasion of tax.

Continued...

- Sec126- Professional communication

No Barrister, Advocate, Attorney, Vakil, or Pleader shall be compelled to disclose any communication made to him during his engagement as a Barrister, Advocate, Attorney, Vakil, or Pleader Except any illegal act or offence after such engagement.

Sec 127-

Sec 127 is also applicable to clerk or assistant of Barrister, Advocate, Attorney, Vakil, or Pleader.

Accomplice

- Sec 133- Accomplice

Accomplice shall be competent witness and conviction is not illegal only on the ground of that it is based on uncorroborated testimony of an accomplice.

Sec 134- No. Of Witnesses

No particular number of witnesses is required to prove any fact.

Examination of witnesses Sec135 to 166

- Examination in Chief- Examination of witnesses by party who calls him is called as examination in chief.
- Cross examination- Examination of witnesses by the adverse party is called as cross examination.
- Re examination- Examination by witnesses by the party who calls after cross examination is called as Re examination.

Continued...

- Sec 140- Cross Examination of witnesses to summons to produce a document
- A person summons to produce a document does not become witness by mere fact that he has produced that document he shall not be cross examined unless he is called as witness.
- Sec 141- Witnesses as to Character –
- Witnesses as to character may be cross examined or re examined

Continued...

- Sec 142- Leading questions
- Leading question means question suggesting the answer. Leading question must not if objected by adverse asked in examination in chief or re examination.
- Provided that- court may permit leading question in examination in chief or re examination if –
 - 1. they are introductory
 - 2. sufficiently proved
 - 3. undisputed
- Leading question may be asked in cross examination.

Continued...

- Sec 145 r.w. 146- a witness may be cross examined as to previous statement made by him in writing without such writing shown him or without such writing being proved unless it intend to contradict to him.
- Sec 151- Court may forbid indecent and scandalous questions.
- Sec 152- Court shall forbid question intending to insult or annoy

Hostile witness

- Sec 154- Hostile witness
- Court may permit a party to put question to his own witness which may be asked in cross examination. (discretionary power of court)
- Sec 159- Refreshing Memory
- Sec 165- Power of judge to put question
- Court may put question to party or witness whether it is relevant at any time. If court ask question neither party has right to object with the permission of court either party may cross examined.

Some of Imp section

Sec 167- Improper admission and rejection of evidence is not ground for new trial.

Sec 6-Doctrine of Res Gestae

Sec 9 Identification parade

Sec11- Plea of alibi



THANK YOU