**Definition of fact in issue**

* **:**  a fact that is raised by the pleadings directly and is necessary to be determined by the decision so that it will become res judicata —distinguished from *fact in controversy* — compare [issue of law](http://www.merriam-webster.com/dictionary/issue%2Bof%2Blaw)
* Facts in issue are predetermined “by the Court basing upon the facts of the case. This stage is called “Framing of Issues” Later the Court looks into the relevancy of the facts in supporting or denying those facts in issue.
* Therefore, the facts in issue are fixed first, and later evidence is allowed to prove the facts. If the facts proved by admissible evidence then only they become relevant facts, and then they play vital role in deciding the case.
* What is **FACTS IN ISSUE**?
* These are the facts that a plaintiff will base his claim on or which the defendant denies the claim on.
* Fact In Issue v Relevant Facts
* **Fact in Issue**

Fact in issue” means 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

In other words, fact in issues means the matter which is in dispute or which forms the subject of investigation.

**Example**

* A is charged with murder B.
* The prosecutor must proved the following facts
* (a)  B died
* (b)  A caused the death of B
* (c) A had intention to cause the death of B
* (a) – (c) = Fact In Issues
* **Relevant Facts**
* Relevant Facts are facts so connected with each other as to prove or disprove the facts in issue.
* Relevant facts are not themselves issues before the court. However, they are useful inference regarding the facts in issue.
* Example
* A is charged with murder of B.
* Facts in issue
* (a) B died
* (b)  A caused the death of B
* (c)   A had intention to cause the death of B
* Relevant facts
* A had the motive to kill B and also the opportunity to commit murder are relevant facts for the prosecution. An inference as to the existence of the facts in issues may be drawn from these relevant facts.
* **Distinction between Relevant Facts and Facts in Issue**
* Facts in issue are facts which are in dispute and which form the subject of decision in a case.
* Relevant facts are connected facts, because of their connection with the principal fact, they lead to an inference as to the existence or non-existence of the facts in issue.

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| **PART I**  **RELEVANCY OF FACTS**  CHAPTER II  OF THE RELEVANCY OF FACTS | | | | |
|  | | | | [Section Index](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=24) |
|  | |  |  | |
|  | **Evidence may be given of facts in issue and relevant facts** |  | 5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other fact as are hereinafter declared to be relevant, and of no others.  **Explanation**.-This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.  *Illustrations*  (a) A is tried for the murder of B by beating him with a club with the intention of causing his death.  At A's trial the following facts are in issue:–  A's beating B with the club;  A's causing B's death by such beating;  A's intention to cause B's death.  (b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the [Code of Civil Procedure](http://bdlaws.minlaw.gov.bd/pdf_part.php?id=86). | |

**Direct Evidence**

Your evidence is direct if it is based on your personal knowledge or observation and if true to believed, proves a fact out of inference or presumptions. It a testimony of

What you hear with your ears

What you see with your eyes

What you smell with your nose

What you touch with your hand or body

What you taste with your mouth or tongue

The term ‘direct’ relates to the source of your knowledge, being deposed to. It is also called “positive evidence”.

**Circumstantial Evidence**

Also called indirect evidence or oblique evidence because it is based on inference rather than personal knowledge or observation. It is evidence of some collateral fact from which the existence or non-existence of some fact in question may be inferred as a probable

consequence.

Your evidence is ‘direct’ if it is a testimony of a fact which you perceive with one of your senses – hearing, sight, smell, touch or taste. That is to say it is the testimony as to the perception of a fact in issue.

A,B, and C went to the Public House, and while they drank, a violent quarrel broke out among them. A and C challenge each other; they both angrily rush out. T followed trying to stop them.

Soon after leaving the hall, C suddenly drew out a knife, stabbed A twice. A slumped and died.

Police has arrested C for suspected murder of A; and obtained statements form C, B, and T among other.

‘T’ in his statement wrote:

“I was in the Public house, I got on a table next to where A, B, and C sat. At a point, A, B, and C had bitter alteration with one another. They spoke in high tones; A said to the other, let’s go down if you’ll live to tell your story tomorrow”. Both rushed down. I rushed down with them to try and stop them, but it was no use C pulled out a dagger, stabbed A two times and A fell down. He bled profusely and efforts to revive him failed”.

C has been charged with the murder of ‘A’ and the Police seeks to tender T’s statement.

**In this case, the fact in issue is:**

Whether it was C who killed A.

T witnessed C perpetuating the act of killing A. T’s testimony of what she heard with her ears, and saw with her eyes is a direct evidence of it – evidence of the fact in issue T’s testimony relates directly on the very issue before the court.

The problem with direct evidence is that it is seldom available and there may be no witness(es)

in most cases when crime is committed. Where direct testimony of eye witnesses is not

available, the court is permitted to infer from the facts proved, the existence of other facts that may be logically inferred (Udo-debia& others v The State (1976)). Where it is available, direct evidence is the best evidence.

**Circumstantial Evidence**

Circumstantial evidence is an indirect evidence – evidence other than a direct evidence. When the evidence available does not consist of the fact in issue but of evidential facts, such evidence is circumstantial. It is neither evidence of the fact in issue nor a detailed account of what happened. It is evidence facts. It is also – evidence of a number of items pointing to the same direction

-evidence of other facts from which the fact in dispute can be inferred, either directly or

indirectly with more or less certainty.

-also described as presumptive or indirect evidence.

**Examples of Circumstantial Evidence**

. finger-prints at the scene of crime leading to the presumption that the person who made the prints was there

. possession of a murder weapons or of stolen, goods

**Illustration**

It is arraigned before the court for the murder of Z.

There was no direct evidence as to who killed Z. But there are before the court:#

Fact W which may prove fact X

Fact X which may prove fact Y

Fact Y which may prove fact Z

Fact W is a direct evidence of fact X but a circumstantial evidence of fact Z.

**Illustration 2:**

AB is being tried for the murder of XY before a court. The prosecutor’s evidence is as follows:

Busola: My name is Busola. XY was my husband. AB said I have jilted and married AB and he is aggrieved. He vowed to take my life. I know AB for over 5 years, he owns the gun and cartridges. Keys are in the house of Haruna, his friends for safe keeping.

On Friday October 15, my husband XY left the house at 12.00 noon for a party. I did not see him again until the next day when the Public showed the dead body .

Haruna said: I am Haruna Allan, am a friend to AB and XY and Busola. In 2009, AB bought a double barrel gun; and cartridges; and kept them in my house or safe keeping. On Thursday 14 October, AB met me. He said he needed to service and clean up the gun and he withdrew the gun and cartridges.

The police investigating officer’s testimony before the court: I am detective constable John.

In the course of investigation the allegation of murder levied against AB; I conducted a search in his person and home; I found a gun in his house. It was concealed in the chimney. I also got some cartridges. They are the type commonly fired from the type of gun.

I searched the body of the deceased. I found injuries and pellets in the body of the deceased.

The pellets corresponded with the cartridges. The injuries were fresh. I inspected the place where the body of the deceased was found. There were foot prints. The foot prints

corresponded with the impressions made at the accussed house.

There were flakes of paints in the clothing found with the accused. The flakes of paints

corresponds with the paints at the scene of murder.

A and B also made sentences saying:

I am not guilty of murder. I did not kill Deji. He was my friend. I bought a double barrel for hunting, not to kill any person. I am being framed up by the Police. I am innocent of the charge.

The Pathologist wrote:

I performed autopsy on the deceased. I found bullet injuries on the chest which caused

excessive bleeding from which Deji died. Deji died of gun shoot. I extracted pullets from the body deposited by the gun that the deceased received. Received some shooting with blood stains. Here are they. I examined the blood. It is of the same blood group AA with that of the deceased.

The Ballistic Expert says:

The investigatory office sent me some pellets and a double barrel guns. These are the pellets and the gun. I examined them scientifically. The pellets corresponded with the

bullets/cartridges commonly fired from the type of the double barrel. Both are lethal.

Remember that the subject of inquiry is Murder.

The fact in issue is whether it was AB who killed XY

There is no direct evidence of any person to the effect he saw, Chukwu when he killed XY, if at all.

What you have are different items of evidence of Busola, Haruna, Constable John, Pathologist and Ballistician. The testimonies of each of these witnesses are indirect, presumptive or Circumstantial evidence.

How do you describe this type of evidence. Can it be liken to a chain?

“It has been said’, say Pellock that circumstantial evidence is to be considered as a chain and each pieces of evidence as a link in the chain, but that is not so, for then, if any one link breaks, the chin would fall.

It is more like the case of rope comprises of several cords. On strand of the cord might be

insignificant to sustain the weight but three stranded together may be quite of sufficient

strength.

Thus, it may be in circumstantial evidence, there may be a combination of circumstances, no one of which would raise a reasonable conviction or more than a mere suspicion, but there (no more) taken largely may create a conclusion of guilt with as much certainty as human appears can require or admit of”.

**Nwadialo has explained that in order to support or sustain a conviction, circumstantial evidence must:**

**. be cogent and compelling**

**. point irresistibly to the accused and to no other else as one culprit**

**. be incompatible with the innocence of the accused**

**. be incapable of explanation on the basis of other reasonable hypothesis than one of guilt**

**Take illustrations from a civil cause.**

**W alleged that H has committed adultery. Direct evidence in this type of case is hardly obtainable.**

**Circumstantial evidence may be evidence of**

. familiarity

. Opportunity

. Birth Registration of a child of a woman other than that of the woman’s husband

. Birth of a child after a long absence of the woman’s husband

. visit to brothel

. Veneral disease

. Blood test

Circumstantial evidence is subject to some infirmities:

1. There is a possibility that the witness may be telling a lie

2. The witness may be mistaking

3. The inference may be erroneous in the particular case.

Direct evidence consists of testimony of empirical observer – what he or she presumed with his or her own senses. Conversely, a circumstantial evidence is evidence of an inference from which that fact in issue may be drawn.