

Fact in Issue (Section 3)

The term "**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.

- **Explanation:** Facts in issue are the core facts that must be proved or disproved to determine the outcome of a case. They are directly connected to the rights and liabilities of the parties involved in the legal proceedings.
- **Example:** In a murder trial, the fact that 'A' caused the death of 'B' is a fact in issue, as it directly affects whether 'A' is guilty of murder.

Section 5 - Evidence may be given of facts in issue and relevant facts

Explanation:

- **Admissibility of Evidence:**
 - **Section 5** establishes that evidence may be given only of facts that are **in issue** or **relevant** as per the Evidence Act, 1872.
- **Boundaries of Evidence:**
 - The section restricts the admissibility of evidence to only those facts that directly pertain to the issues being decided in the trial.
 - **Irrelevant facts** or facts not connected to the issues cannot be presented as evidence.

Q. All admissible evidence is relevant but all relevant evidence is not admissible. Discuss it.

Relationship Between Admissibility and Relevance of Evidence

1. Definition of Relevant Evidence:

- Under **Section 5 of the Evidence Act**, relevant evidence refers to any fact that is connected to the fact in issue or helps to prove or disprove it. Evidence is considered relevant if it makes the existence of any fact more or less probable than it would be without the evidence.

2. Definition of Admissible Evidence:

- **Admissible evidence** is evidence that is allowed to be presented in court under the rules of evidence. Admissibility is determined by both relevance and additional legal standards such as reliability, competency, and rules excluding certain types of evidence (e.g., hearsay or privileged communications).

3. Key Principle:

- **All admissible evidence is relevant**, meaning it relates to a fact in issue or helps to prove a case.
- **Not all relevant evidence is admissible**, because it may be excluded by legal rules even though it is connected to the case.

4. Examples Where Relevant Evidence is Not Admissible:

- **Hearsay Evidence (Section 60)**: Even if relevant, hearsay is generally inadmissible because the original speaker is not available for cross-examination.
- **Privileged Communications (Section 122)**: Communications between spouses or lawyer-client may be relevant but are inadmissible due to legal privilege.
- **Illegally Obtained Evidence**: Evidence obtained through illegal means (e.g., without a proper search warrant) might be relevant but could be excluded to protect legal principles.
- **Character Evidence (Section 54)**: In criminal cases, the bad character of the accused is generally irrelevant unless evidence of good character has been given.

Section 6 Relevancy of facts forming part of the same transaction. Explain it.

Section 7 Fact which are the occasion, cause or effect of fact in issue. Explain it.

Section 8 Motive, preparation and previous or subsequent conduct. Explain it.

Section 9 Fact necessary to explain or introduce relevant facts. Explain it.

1. Section 6 – Relevancy of Facts Forming Part of the Same Transaction:

- This section states that facts, even if not directly in issue, are relevant if they are so connected with a fact in issue that they form part of the same transaction.
- **Illustration:** In a murder case, statements made by bystanders during the event or shortly before or after the act are relevant, as they are part of the same event.
- **Purpose:** Section 6 allows evidence of events that are part of the "res gestae" (things done), showing the complete picture of the crime.
- **Res Gestae** that means "things done" or "events", refers to spontaneous statements made during or immediately after an event, which are considered reliable and admissible as evidence because they are part of the event itself.

2. Section 7 – Facts Which Are the Occasion, Cause, or Effect of Facts in Issue:

- Section 7 makes relevant any fact that is the occasion, cause, or effect (immediate or otherwise) of a fact in issue. It also includes facts that establish the state of things that made the occurrence possible.
- **Illustration:** If someone is accused of robbery, facts showing the victim carried money before the robbery or marks indicating a struggle are relevant.
- **Purpose:** This section includes facts explaining why or how the fact in issue occurred, like causes or effects.

3. Section 8 – Motive, Preparation, and Previous or Subsequent Conduct:

- Facts showing motive or preparation for an act in issue are relevant. Similarly, the conduct of the parties before or after the act can also be relevant if it influences or is influenced by the facts in issue.
- **Illustration:** In a case of poisoning, evidence that the accused bought poison before the event is relevant to show preparation. Similarly, fleeing after the crime is considered subsequent conduct.
- **Purpose:** This section helps establish intent, preparation, or guilt through actions and behavior related to the crime.

4. Section 9 – Facts Necessary to Explain or Introduce Relevant Facts:

- Section 9 allows for facts necessary to explain, introduce, or support other relevant facts. These facts might also help clarify the time, place, or circumstances of the facts in issue.

- **Illustration:** If a document is presented in court, facts explaining the circumstances in which the document was created are relevant.
- **Purpose:** This section ensures that the court gets a clear understanding of the context or background of the facts being presented.

Motive (Section 8)

Motive refers to the **reason why a person commits a particular act**. It is relevant when it helps establish the likelihood of a fact in issue or relevant fact. Although motive itself is **not proof of a crime**, it helps the court understand why a person might have acted in a certain way.

Illustration: If 'A' is accused of murdering 'B', and it is shown that 'A' had a financial dispute with 'B'

Facts Necessary to Introduce Relevant Facts (Section 9)

Facts necessary to introduce relevant facts are those that help clarify or connect the relevant facts or facts in issue. They include facts that establish the **identity of anything or people**, the **time and place of events**, or the relationship between the parties.

Illustration: If a document's authenticity is in question, details about the state of the property and family circumstances at the time the document was created might be necessary to understand the context of the document's creation.

Witnesses may lie but circumstantial evidence does not lie. Describe it according to the evidence act.

Witnesses may lie due to personal biases, intimidation, or faulty memory, making their testimony unreliable at times. However, physical evidence like forensic materials and circumstantial facts are objective and remain unaffected by human manipulation or emotions. Under the Evidence Act, physical and forensic evidence plays a vital role in establishing the truth and corroborating the overall narrative.

1. Why Witnesses May Lie:

- **Personal bias or interest:** Witnesses may be biased due to their relationship with a party or personal interests.
- **External pressure/Fear or intimidation:** A witness may be threatened or coerced to lie.
- **Misleading memory:** Memory decay or confusion can cause witnesses to provide inaccurate information.
- **Motive to deceive:** Some witnesses may have a motive to misrepresent facts, such as revenge, financial gain, or protecting someone.
- **Subjectivity:** Witnesses can be influenced by personal perception and bias, making their statements less reliable.

2. Reliability of Physical and Circumstantial Evidence:

- **Section 3 (Definition of Evidence):** Circumstantial evidence includes physical items or forensic materials (e.g., blood, fingerprints) which are considered "**physical or forensic evidence**". These are less prone to manipulation and more reliable because they remain consistent over time.
- **Section 6 – Facts Forming Part of the Same Transaction:** Circumstantial evidence, like marks from a struggle, establishes facts surrounding the crime. These facts form part of the crime itself and are considered relevant.
- **Section 7 – Occasions, Cause, or Effect of Facts in Issue:** Physical evidence such as fingerprints, DNA, or objects found at a crime scene (e.g., a weapon) directly connect the accused with the crime and provide concrete proof, making the event highly probable without relying on human recollection.
- **Section 8 – Motive, Preparation, and Conduct:** Circumstantial evidence related to motive, preparation, and conduct reveals crucial facts through objective details, providing context that helps clarify the truth.

3. How Physical Evidence Helps:

- **Section 45 (Expert opinion):** When the court requires the opinion of experts (e.g., forensic or scientific evidence), it's considered more reliable because it is less subject to human flaws like bias or memory errors.
- **Direct connection:** Physical evidence like DNA or fingerprints directly connects a suspect to a crime, providing objective facts that cannot lie.
- **Expert analysis:** Experts (under Section 45) can interpret physical or forensic evidence, which the court views as reliable since it is based on scientific analysis, unlike witness testimony, which can be subjective.
- **Consistency over time:** Unlike human testimony, physical evidence such as fingerprints or digital records remains unchanged and offers precise information about the crime.

“An admission may be proved against the person who made it but not in his favor”. explain under evidence act.

Explanation of Section 21 (Evidence Act): Admissions

1. General Rule:

- An admission is relevant and may be used as evidence against the person who made it or their representative.
- Admissions are typically statements against one's own interest, aiding the opposing party in proving their case.

2. Exceptions: When Admission Can Favor the Declarant:

- **(a) Dying Declaration or Section 32:**
 - Relevant if the person cannot testify due to death or incapacity; admissible for third parties or if the declarant was alive.
- **(b) State of Mind or Body:**
 - Statements about mental or physical condition at the time, supported by truthful conduct, may favor the declarant.
- **(c) Relevant Otherwise:**
 - Admissions that are part of the res gestae or same transaction may benefit the declarant for purposes beyond being admissions.

3. Illustration:

- If A says, “I owe B 5,000 Taka,” B can use this against A in court. However, A cannot use this to showcase honesty unless it falls under the exceptions above.

What is admission & confession? Distinguish between them.
When confession is relevant when not? (Section 24-28)

Admission and Confession: Definitions and Distinctions

1. Admission:

- **Definition:** An admission is a statement, either oral or written, made by a party in a legal proceeding that suggests an inference related to a fact in issue or a relevant fact. It can be made by the party themselves or their representative.

2. Confession:

- **Definition:** A confession is a specific type of admission that acknowledges guilt in a criminal act. It is a statement made by an accused person admitting to committing the crime or any element of the offense.
- **Section 24-28** of the Evidence Act governs confessions in legal proceedings.

Distinction Between Admission and Confession:

1. Nature:

- **Admission:** Can be related to any fact in issue or relevant fact (civil or criminal cases), and does not necessarily admit guilt.
- **Confession:** Is always related to criminal cases and is an explicit acknowledgment of guilt.

2. Scope:

- **Admission:** Can be used in both civil and criminal cases.
- **Confession:** Is only relevant in criminal cases.

3. Voluntariness:

- **Admission:** Does not have strict requirements about voluntariness.
- **Confession:** Must be voluntary; otherwise, it may be excluded under the Evidence Act.

When Confession May Not Be Admissible:

1. Section 24: Confession caused by inducement, threat, or promise

- A confession is **irrelevant** if made due to inducement, threat, or promise from someone in authority, leading the accused to believe they would gain some advantage or avoid harm by confessing.

2. Section 25: Confession to a police officer

- A confession made to a police officer is **inadmissible** in court. The rationale is to avoid the risk of police coercion or undue pressure on the accused.

3. Section 26: Confession made while in police custody

- Any confession made while the accused is in the custody of the police is **inadmissible**, unless it is made in the immediate presence of a Magistrate. This safeguard prevents the possibility of coercion during police custody.

When Confession May Be Admissible:

1. Section 27: Discovery of facts based on confession

- If any fact is discovered as a direct consequence of the confession made by the accused, then so much of the confession as relates distinctly to the discovery is **relevant**, even if the confession was made in police custody.

2. Section 28: Confession after the removal of inducement, threat, or promise

- If a confession is made after the influence of any inducement, threat, or promise is **completely removed**, it becomes **relevant**.

3. Section 29: Confession despite promise of secrecy or deception

- A confession is still **relevant** even if it was made under a promise of secrecy or due to deception, or if it was made while the accused was drunk, or if they were not warned that it could be used against them.

4. Section 30: Confession affecting co-accused

- When multiple persons are tried jointly for the same offence, a confession made by one accused that affects others can be **taken into consideration** against the others, as well as the one making the confession. However, this is not conclusive evidence and needs corroboration.

What is a dying declaration? Why is the dying declaration admissible? What is the distinction between Bangladesh law and British law? To whom dying declaration can be given? What is the evidential value of dying declaration? Section 32(1)

Dying Declaration (Section 32(1) of the Evidence Act), PRB - 266

1. What is a Dying Declaration?

A **dying declaration** is a statement made by a person who is on the verge of death, explaining the cause or circumstances leading to their death. This statement is considered an exception to the general rule that hearsay evidence is not admissible in court. It is based on the belief that a person who is dying is unlikely to lie, as they have no motive to do so.

Relevant Section from the Evidence Act

Section 32(1) of the Evidence Act:

This section allows the admission of statements made by a person as to the cause of their death, or the circumstances that led to their death, in cases where the cause of that person's death is in question. These statements are considered relevant even if the person was not under the expectation of imminent death at the time of making the statement.

2. Why is a Dying Declaration Admissible?

- A dying declaration is admissible because it is presumed that a person on the verge of death is unlikely to lie, as they are aware of their imminent death. This sense of approaching death is considered to motivate the person to speak the truth, making their statement reliable.

3. Distinction Between Bangladesh Law and British Law:

- **Bangladesh Law (Section 32(1)):** In Bangladesh, dying declarations are admissible regardless of whether the person expected death at the time of making the statement. The crucial factor is that the statement pertains to the cause or circumstances of death.
- **British Law:** In British law, for a dying declaration to be admissible, the person making the statement must have believed they were facing imminent death and had no hope of survival. The belief in impending death is more strictly applied.

4. To Whom Can a Dying Declaration Be Given?

- A dying declaration can be given to:
 - **Magistrates:** It is often preferable for a Magistrate to record the statement.

- **Police officers:** If no Magistrate is available, a police officer may record the dying declaration.
- **Doctors or other witnesses:** In urgent circumstances, a dying declaration can also be given to a doctor or any person present at the time.
- **Any Person Present:** In urgent situations, a dying declaration may be made to any person present, including family members, friends, or bystanders

5. Evidential Value of a Dying Declaration:

- **High Evidentiary Value:** A dying declaration can form the sole basis for conviction if it is found to be credible and free from doubt. The court may rely on it without corroboration.
- **Considerations for Reliability:**
 - The person must be mentally fit and conscious when making the statement.
 - The declaration must be clear, specific, and relate directly to the cause of death.
 - Courts often scrutinize dying declarations closely, especially if there is no corroborating evidence.

If a person who made a dying declaration survives, the statement loses its special status under the Evidence Act and is **treated as a regular statement**. Here's how its evidentiary value is considered based on relevant sections:

1. **No Longer a Dying Declaration (Section 32(1)):** A dying declaration is admissible only when the declarant is dead and the statement relates to the cause or circumstances of their death. If the person survives, it is no longer a dying declaration and cannot be used under this section.
2. **Treatment as Regular Statement (Sections 60 & 157):** The statement is now treated as regular oral evidence (Section 60) and can be used for corroboration if the person testifies in court (Section 157).
3. **Cross Examination as to previous statement in writing (Section 145):** If the in-court testimony contradicts the prior statement, it can be used to impeach the witness's credibility (Section 145).
4. **Requirement of Cross-Examination (Section 138):** Since the declarant is alive, they must testify in court and be subject to cross-examination (Section 138). This allows the defense to challenge the statement's reliability, which is not possible if it were a dying declaration.
5. **Hearsay and Admissibility (Section 60):** As a regular statement, it may be considered hearsay and inadmissible unless it qualifies under an exception to the hearsay rule, such as being directly admissible oral evidence (Section 60).

Aspect	Bangladesh	England
Legal Basis	Section 32(1) of the Evidence Act, 1872	Common Law (Traditionally) & Criminal Justice Act, 2003
Expectation of Death	Not required for admissibility	Impending Death Required under common law;
Form of Declaration	Oral or written; no specific form needed	Must be made under settled expectation of death under common law;
Corroboration Requirement	Not mandatory but preferred	Often necessary to ensure reliability
Scope of Admissibility	Cause or circumstances of death	Cause of death;
Suicide	admissible	Not admissible

What is hearsay evidence? Why is it not accepted?

Definition: Hearsay evidence refers to a statement made by someone who is not testifying in court but is presented by another person to prove the truth of the matter asserted. In simpler terms, it involves a witness reporting what someone else said, rather than what they directly experienced.

Why Hearsay Evidence is Generally Not Accepted:

1. **Lack of Direct Knowledge:** The person presenting hearsay did not witness the event directly, making it difficult to assess the statement's accuracy.
2. **Inability to Cross-Examine:** The original speaker is not present in court, preventing cross-examination, which is crucial for testing reliability and truthfulness.
3. **Potential for Misinterpretation:** The witness may misinterpret or inaccurately recall what was said, leading to distorted evidence.
4. **Possibility of Fabrication:** Hearsay can be exaggerated or fabricated, and the original speaker is not available to verify the statement.
5. **Lack of Cross-Examination:** The person who originally made the statement is not present in court, so their credibility and accuracy cannot be tested through cross-examination.
6. **No Oath:** The original speaker did not make the statement under oath, which means they did not formally promise to tell the truth.
7. **No Opportunity to Observe Demeanor:** The court and jury cannot assess the behavior and demeanor of the person who made the statement, which is important for evaluating their honesty and reliability.
8. **Risk of Misinterpretation:** As information is passed from person to person, it can become distorted or misinterpreted, leading to inaccuracies.

Hearsay in the Evidence Act:

1. **Section 60:** Requires that oral evidence must be direct; hearsay is generally inadmissible unless certain exceptions apply.
2. **Exceptions (under Section 32 and 35):**
 - **Dying Declarations (Section 32(1)):** Statements about the cause of death are admissible when the person cannot testify due to death.
 - **Statements Against Interest (Section 32(3)):** Statements that harm the maker's pecuniary interest can be admitted.

Practical Implications:

Courts prefer direct evidence because it can be tested through cross-examination. While hearsay is generally excluded, exceptions apply where obtaining direct evidence is impractical, and the hearsay statement is deemed reliable.

What is character? When character is relevant when not? (Section 52-55)

Definition of Character:

The Evidence Act defines "character" in the context of legal proceedings. It includes both **reputation** and **disposition** but is limited to general reputation and general disposition, not specific acts, except in certain circumstances.

Explanation : A sudden donation before an election can not be treated as evidence of good character.

Section 52: Character in Civil Cases

- **Definition:** In civil cases, the character of any person is irrelevant to prove or disprove any conduct attributed to them unless such character itself is directly in issue. This means that evidence regarding someone's character is not admissible unless the case is about the person's character itself.
- **Example:** In a breach of contract case, whether one party has a good or bad character is not relevant to the breach.

Section 53: Character in Criminal Cases

- **Definition:** In criminal proceedings, the fact that the accused is of good character is relevant. This allows the accused to provide evidence of their good character to show the improbability of committing the alleged crime.
- **Example:** If 'A' is accused of theft, 'A' can present evidence of good character, like testimonials from the community, to argue that it's unlikely for them to commit the crime.

Section 54: Previous Bad Character Not Relevant, Except in Reply

- **Definition:** The bad character of an accused person is not relevant in criminal proceedings unless the accused has given evidence of their good character. In such cases, the prosecution can present evidence to counter this by showing bad character.
- **Example:** If 'A' presents evidence of being a law-abiding citizen to argue against theft charges, the prosecution can introduce past convictions of theft to challenge this claim.

Section 55: Character as Affecting Damages

- **Definition:** In civil cases where the amount of damages is at issue, evidence of the plaintiff's good or bad character is relevant, so long as it directly impacts the damages being claimed.
- **Example:** In a defamation case, if the plaintiff claims significant harm to their reputation, the defendant may introduce evidence of the plaintiff's bad character to argue that the plaintiff's reputation was already poor, thereby reducing the damages .

What is judicial notice? Which should be regarded as judicial notice? (Section 56, 57)

1. What is Judicial Notice?

- Judicial notice refers to the acceptance of certain facts by the court as true without requiring formal proof or evidence. The court recognizes these facts because they are either well-known, obvious, or cannot reasonably be disputed.
- **Section 56 of the Evidence Act** states that no fact that the court will take judicial notice of needs to be proven by the parties.

2. What Should Be Regarded as Judicial Notice? (Section 57)

- **Section 57** lists specific facts that courts must take judicial notice of, including:
 1. **All laws in force in Bangladesh.**
 2. **The course of proceedings of Parliament.**
 3. **The seals of all courts in Bangladesh.**
 4. **The accession to office, names, titles, and functions of public officials, if their appointment has been notified in an official gazette.**
 5. **The existence of the national flag and other state symbols.**
 6. **The territorial divisions of Bangladesh, such as districts and divisions.**
 7. **Common knowledge**
 8. **Calendars and time standards**
 9. **Geographical divisions**

Conclusion:

Judicial notice saves time by allowing courts to accept certain facts without proof. Courts must take judicial notice of laws, public documents, and facts that are universally known and cannot reasonably be disputed, as outlined in **Section 57**.

Presumptions Related to Documents (Sections 79–85C)

Presumption: Definition and Types

Presumption in legal terms is an assumption that a fact is true until it is disproved. It helps simplify court proceedings by allowing certain facts to be accepted without direct evidence. There are three main types of presumptions under the Evidence Act:

1. **May Presume (Discretionary Presumption):** The court has the option to presume a fact unless it is disproved. The court can either accept it as true or ask for more evidence.
2. **Shall Presume (Mandatory Presumption):** The court must presume the fact to be true unless it is disproved. The burden of proof lies with the opposing party to disprove it.
3. **Conclusive Proof:** The court is required to accept a fact as true without allowing any contradictory evidence. It is legally binding and cannot be challenged in court.

Section 79 – Genuineness of Certified Copies:

The court assumes that certified copies of documents are genuine if they are issued by an authorized officer whose official character was held at that time.

Section 80 – Record of Evidence:

When a document purporting to be a record or memorandum of evidence or a statement/confession given by a witness in judicial proceedings is produced, the Court shall presume that the evidence or statement was duly taken and that the document is genuine, and that any statements or confessions made were taken in accordance with law.

Section 81A – Presumption as to Gazette in Digital Forms:

The court shall presume the genuineness of digital records purporting to be the Official Gazette or digital records directed by any law to be kept, provided they are kept in the proper form and custody.

Section 82 – Documents Admissible in the United Kingdom:

Documents admissible in the UK, when certified by a competent authority, are presumed genuine by the court.

Section 83 – Maps or Plans by Government Authority:

Maps or plans made by the Government authority are presumed accurate by the court.

Section 84 – Collections of Laws and Reports of Decisions:

The court presumes the authenticity of published books or Gazettes, published under the authority of the government, that contain laws and court decisions.

Section 85 – Powers-of-Attorney:

The Court shall presume that every document purporting to be a power-of-attorney and to have been executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate,

Consul, or Vice-Consul of Bangladesh, or of the United Kingdom, or a representative of the Government of Bangladesh, was duly executed and authenticated.

Section 85A – Agreements in digital form:

The court presumes that an electronic agreement/digital record, containing digital signature, is genuine.

Section 85B – Digital Records and Digital Signatures:

Electronic records and digital signatures are presumed genuine(not altered).

Section 85C – Digital Signature Certificates:

A digital signature certificate is **presumed genuine** if issued by a recognized Certifying Authority under the government acts and regulations. This presumption applies unless it is proved that the certificate is invalid or was not issued by the designated authority.

Section 90 – Presumption as to Documents Thirty Years Old

The court **may presume** that a document, which is thirty years old and produced from proper custody, has been duly signed, written, and executed by the person it purports to be from. This presumption applies to both the signature and every part of the document, including any handwriting.

Section 90A – Presumption as to Digital Records Five Years Old

The court **may presume** that a digital record, which is five years old and produced from proper custody, has been duly signed with a digital signature by the person it purports to be from. This presumption applies to the digital signature, assuming it was affixed by the person or someone authorized by them .

What is the burden of proof? Discuss the rules of burden of proof. (section 101-12)

The *burden of proof* refers to the obligation of a party in a legal proceeding to prove the facts in support of their claim or defense. Under the **Evidence Act of 1872**, sections 101 to 111 provide the rules regarding the burden of proof. Here's an overview:

1. **Section 101: Burden of Proof**
 - The party who asserts a fact must prove that fact. In civil cases, the burden lies on the plaintiff, and in criminal cases, it typically rests on the prosecution.
2. **Section 102: Burden of Proof in Case of Evidence on Both Sides**
 - If both parties present evidence, the burden remains on the party who would fail if no further evidence is given.
3. **Section 103: Burden of Proof as to Particular Facts**
 - The party relying on a particular fact must prove it. For example, if a defendant pleads a specific defense, they bear the burden to prove the facts supporting that defense.
4. **Section 104: Burden of Proving a Fact to be Proved to Make Evidence Admissible**
 - When the admissibility of evidence depends on a certain fact, the party offering the evidence must prove that fact (e.g., authenticity of a document).
5. **Section 105: Burden of Proving Exceptions in Criminal Cases**
 - In criminal trials, once the prosecution proves the basic elements of the offense, the burden shifts to the accused to prove any exceptions or defenses (e.g., self-defense).
6. **Section 106: Burden of Proving Facts Especially Within Knowledge**
 - If a fact is especially within a party's knowledge, the burden of proving it lies on that party. For instance, a person claiming a specific alibi must provide proof.
7. **Section 107: Burden of Proving Death of Person Known to Have Been Alive**
 - The person asserting the death of someone known to have been alive within 30 years bears the burden of proving the death.
8. **Section 108: Burden of Proving Person Not Heard of for Seven Years**
 - A person is presumed dead if they haven't been heard from for seven years, but the burden lies on the claimant to prove the circumstances of their death.
9. **Section 109: Presumption of Certain Relationships**
 - When a relationship like landlord-tenant or employer-employee has existed for some time, the burden of disproving it lies on the person challenging it.
10. **Section 110: Burden of Proof in Ownership Cases**
 - The person in possession of property is presumed to be the owner unless proven otherwise.
11. **Section 111: Burden of Proof in Certain Cases of Accused**
 - If the accused person in a criminal case holds something under suspicious circumstances (e.g., stolen goods), the burden shifts to them to explain.

The burden of proof can shift between parties during the trial, depending on the claims, defenses, and evidence presented.

Is the evidence of an accomplice admissible against a co-accused?(section 114-b, 30,133)

Yes, the evidence of an accomplice is admissible against a co-accused, but with caution and under certain conditions as specified in the **Evidence Act of 1872**:

1. **Section 133**: An accomplice is a competent witness, meaning their evidence can be admitted in court. However, courts generally treat such testimony with caution due to the potential for bias or self-interest.
2. **Section 30**: If more than one person is tried jointly for the same offense, a confession made by one accused can be considered against the co-accused. However, the court requires corroboration—such evidence cannot be the sole basis for conviction.

Is it legal to convict on the basis of uncorroborated evidence

Yes, it is legally possible to convict an accused based solely on the uncorroborated evidence of an accomplice. This is outlined under **Section 133** of the Evidence Act, which states that an accomplice is a competent witness against an accused, and a conviction is not illegal merely because it is based on uncorroborated testimony.

However, **Section 114(b)** adds a layer of caution by suggesting that courts should generally presume that an accomplice is untrustworthy unless corroborated in material particulars. In practice, this means that while the law allows for a conviction based solely on an accomplice's testimony, judges are advised to seek corroboration due to the risk of relying on potentially unreliable evidence.

Who is competent to give evidence to court?

Competency to Give Evidence (Section 118)

Definition: All persons are competent to testify unless the court considers that they are unable to understand the questions put to them or give rational answers due to reasons such as:

- Tender age (very young children).
- Extreme old age.
- Disease of body or mind.
- Any other similar cause.

Explanation: This means that everyone is generally allowed to give evidence in court unless they lack the mental or physical ability to comprehend and respond accurately. A **lunatic**, for example, is not automatically disqualified unless their condition prevents them from understanding the questions and providing rational answers.

Illustration: A child who is too young to understand the nature of the questions or a person suffering from a severe mental disorder that impairs their ability to respond logically would be considered incompetent to testify.

Section 119: Competency of Witnesses Who Cannot Speak

Definition: A witness who cannot speak may give their evidence in any manner they can make it intelligible, such as by writing or sign language. Such evidence is considered valid as oral evidence.

Illustration: If a deaf and mute person witnesses a crime, they can use sign language or write their testimony in court. This testimony is legally recognized and treated the same as spoken words.

Judicial, Extra-Judicial and Retracted Confession. When confession may or may not be relevant?

1. Judicial Confession

- **Judicial confessions** are those made before a **Magistrate** or a **court of law**.
- **Section 164 of the Code of Criminal Procedure (CrPC)** governs the recording of judicial confessions.
- **Relevance:** These are admissible in court as they are made in front of an authority (Magistrate) under proper safeguards, ensuring they are voluntary and not obtained through coercion or inducement.
- *Made before a magistrate or judge during legal proceedings.*
- *Recorded as part of the official court record.*
- *Carries high evidentiary value and can be used as substantive evidence.*

2. Extra-Judicial Confession

- **Extra-judicial confessions** are made outside of court to any person other than a Magistrate, such as a friend, relative, or even the police.
- **Relevance:** These are generally less reliable due to the possibility of coercion or pressure. However, they can still be admitted as evidence, provided the court finds them credible and voluntary, and they are corroborated by other evidence (Section 24 to Section 30 of the Evidence Act).
- *Made outside court, to a non-judicial person (e.g., police, friends).*
- *Less evidentiary weight; requires corroboration for reliability.*

3. Retracted Confession

- A **retracted confession** is one that the accused initially makes but later withdraws or claims to have been made under duress, coercion, or inducement.
- **Relevance:** Courts are cautious with retracted confessions and usually look for corroborative evidence to support such a confession. A conviction solely based on a retracted confession is rare unless it is supported by other strong evidence.
- *Initially made but later withdrawn or denied by the accused.*
- *Treated with caution; needs strong corroboration for conviction.*

Key Types of Evidence and Relevant Sections

1. Direct Evidence:

- First-hand evidence directly proving a fact without inference or presumption.
- Example: A witness testifying they saw the crime being committed.
- **Relevant Section:**
 - Section 60: Oral evidence must be direct, based on first-hand knowledge.

2. Circumstantial Evidence:

- Indirect evidence where facts/circumstances allow inference of a fact in issue.
- Example: Evidence of motive, preparation, or conduct.
- **Relevant Sections:**
 - Section 6: Facts forming part of the same transaction.
 - Section 7: Facts that are the occasion, cause, or effect of the fact in issue.
 - Section 8: Evidence of motive, preparation, and conduct.
 - Section 9: Facts explaining identity, time, or place.

3. Documentary Evidence:

- Evidence in the form of documents, such as written contracts, letters, or records.
- **Relevant Sections:**
 - Section 61: Proof of the contents of documents.
 - Section 62: Primary evidence (original documents).
 - Section 63: Secondary evidence (copies or substitutes of documents).
 - Section 65: Cases when secondary evidence is admissible.

4. Primary Evidence:

- Original document or material directly proving content or existence.
- Considered the best form of evidence.
- **Relevant Sections:**
 - Section 62: Defines primary evidence as the original document itself.
 - Section 64: Requires primary evidence unless secondary evidence is permitted.

5. Secondary Evidence:

- Copies, certified documents, or alternatives to original documents when originals are unavailable.
- **Relevant Sections:**
 - Section 63: Defines what constitutes secondary evidence.
 - Section 65: Specifies circumstances under which secondary evidence is admissible.

6. Oral Evidence:

- Testimony given by a witness in court about what they have personally seen, heard, or perceived.
- **Relevant Section:**
 - Section 60: Oral evidence must be direct, i.e., based on first-hand knowledge.

7. Hearsay Evidence:

- Testimony based on what the witness has heard from others, rather than personal knowledge.
- Generally inadmissible unless falling under exceptions.
- **Relevant Sections:**
 - Section 60: Oral evidence must be direct, making hearsay inadmissible.
 - Exceptions include Section 6 (Res Gestae) and Section 32 (Statements by persons unable to testify).

8. Physical or Forensic Evidence:

- Tangible objects or forensic analysis (e.g., fingerprints, DNA, blood samples) used to prove facts.
- **Relevant Section:**
 - While not specifically addressed, forensic evidence is admitted under Sections 45 (Expert Opinion) and 7 (Facts connected with the fact in issue).

9. Expert Opinion:

- Opinion provided by an expert in a specific field (e.g., medical, handwriting, or forensic experts) to assist in forming conclusions on technical matters.
- **Relevant Sections:**
 - Section 45: Allows expert opinions to be admissible as evidence.
 - Section 46: Facts that support or oppose the expert's opinion are also relevant.