

Case: The Curious Case of XYZ Enterprises

Background:

XYZ Enterprises is a company that supplies electronic goods. It is owned by Mr. A, who manages it with his business partner Mr. B. They have a warehouse where they store their products. Mr. C, an employee, is accused of stealing goods from the warehouse. Meanwhile, an accident occurs at the warehouse involving a delivery truck driven by Mr. D, which leads to injuries for a passerby, Mr. E. Let's use this scenario to illustrate each section of the burden of proof under the Evidence Act, 1872.

Section 101: The burden of proof lies on the person who asserts the fact (Desires any court to give judgment on any legal right or liability). If a person wants the court to believe in a certain fact, it is their responsibility to provide evidence for it.

Example: Mr. A must prove Mr. C stole goods from the warehouse.

Section 102: The burden of proof in a suit or proceeding lies on the person who would fail **if no evidence was provided** on either side.

Example: Mr. C must prove his termination was unjustified to win his case.

Section 103: The burden of proof as to any **particular fact** lies on the person who wishes the court to believe in its existence.

Example: Mr. C must prove he was on leave during the alleged theft.

Section 104: When one has to prove a **certain condition precedent** to establish a fact, the burden of proof lies on them.

Example: Dying declaration - death must be proved first.

Section 105: In criminal cases, if the accused claims that the case falls under a **general or special exception**, the burden of proving that falls on the accused.

Example: Mr. C must prove he stole under duress.

Example: Right to Self defense.

Section 106: When any fact is **especially within the knowledge of any person**, the burden of proving that fact lies on him.

Example: Mr. D must prove the truck's brakes were defective.

Example: Traveling on the railway without a ticket.

Section 107: When a person is shown to have been alive within **thirty years**, the burden of proving that he is dead lies on the person who affirms it.

Example: Mr. A must prove his partner Mr. F is dead.

Section 108: A person who has not been heard of for **seven years** is presumed dead unless proven otherwise.

Example: Anyone claiming Mr. F is alive must provide evidence.

Section 109: When the question is about the existence of a **relationship**(Partners, Landlord and Tenant, Principal and Agent), the burden of proving it lies on the person affirming its existence.

Example: Mr. B must prove Mr. D was Mr. A's agent.

Section 110: When a person is shown to be in possession of property, the burden of proving that he is not the **owner** lies on the person who affirms that he is not the owner.

Example: Mr. D must prove the vehicles are not owned by Mr. A.

Section 111: The person in a position of **active confidence** must prove that the transaction was made in good faith.

Example: Mr. A must prove the property sale to Mr. H was in good faith.

Section 112: A **child born during the marriage** is presumed legitimate unless the contrary is proved.

Example: Mr. B must provide evidence to rebut the presumption that a child born during his marriage is his.

Section 113 (Omitted): When a territory is ceded, the presumption is that all rights to that territory have ceased unless the contrary is proved.(Omitted)

Example: XYZ Enterprises must prove their land rights continue after the territory was ceded.

Section 114: The court may presume the existence of certain facts which it believes would have normally occurred.

Example: The court may presume the truck was speeding unless XYZ Enterprises proves otherwise.

Section 6: Facts that are not directly part of the fact in issue but are so closely linked to it that they form part of the **same transaction/event** are relevant, even if they happened at different times or places. This helps the court understand the complete story.

Example: If Mr. A is accused of hitting Mr. B, then things said or done by Mr. A or Mr. B just before, during, or right after the incident are relevant to understanding the whole situation.

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.

Section 7: Facts that show the **cause, occasion, or effect** of the fact in issue or other relevant facts are also considered important. This means any fact that helps explain why something happened or what happened because of it can be used as evidence.

Example: If Mr. A is accused of stealing money from Mr. B, the fact that Mr. B recently showed his money to others could help explain why Mr. A decided to steal it.

Section 8: Any fact that shows **motive (reason), preparation, previous or subsequent conduct** or behavior before or after an event is relevant if it helps explain the situation. This helps show why a person acted in a certain way.

Example: If Mr. A is accused of poisoning Mr. B, the fact that Mr. A bought poison similar to what was used before Mr. B's death is relevant because it shows preparation and motive.

Section 9: Facts that help **explain, introduce, or clarify other relevant facts**, or that support or oppose an inference (conclusion) drawn from a relevant fact, are important. This includes facts that identify people involved or the time and place of events.

Example: If Mr. A says a will is fake, details about Mr. B's health and family situation at the time the will was made can help understand whether the will is genuine or not.

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.

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', this motive could be relevant to explain 'A's conduct.

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.

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.

Admissibility of Accomplice Evidence Against Co-Accused

Section 30:

When more persons than one are being tried jointly for the same offense, and a confession made by one of them implicates himself and the other(s), the court may take that confession into consideration against both the person who made it and the others involved.

Illustration: If A and B are jointly tried for the murder of C, and A confesses saying, “B and I murdered C,” this confession can be considered as evidence against both A and B .

Section 114(b):

The court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. This means that the evidence of an accomplice needs to be supported by other independent evidence to be reliable.

Section 133:

An accomplice is considered a competent witness against an accused person, and a conviction is not illegal merely because it is based on the uncorroborated testimony of an accomplice. However, due to the inherent risk of relying on accomplice evidence alone, corroboration is generally sought to strengthen the credibility of such testimony .

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.

Key Points:

- **Legally Permissible:** Conviction based on uncorroborated accomplice evidence is legal under **Section 133**.

- **Judicial Practice:** Courts typically look for corroboration (as suggested by **Section 114(b)**) to ensure the reliability of such evidence.

Character under Sections 52 to 55 of the Evidence Act

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 .

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.

Relevance of Character:

In Civil Cases:

- **Section 52:** The character of any person involved in a civil case is generally irrelevant to prove conduct imputed to them. This means that the character cannot be used to show that a person acted in a certain way based on their character traits, unless the character itself is relevant to the issue being tried.
- **Section 55:** The character of a person can be relevant in civil cases only if it affects the amount of damages to be awarded. For example, if someone's character is such that it may increase or decrease the damages they should receive, it becomes relevant.

In Criminal Cases:

- **Section 53:** In criminal proceedings, the fact that the accused person has a good character is relevant. The defense can introduce evidence of the accused's good character to suggest they are less likely to have committed the crime.
- **Section 54:** The bad character of the accused is not relevant in criminal proceedings unless the accused has introduced evidence of their good character. If they do so, the prosecution can then introduce evidence of the accused's bad character.
 - **Explanation 1:** This does not apply if the bad character is itself a fact in issue (e.g., in cases where bad character forms part of the charge, like habitual offenses).
 - **Explanation 2:** A previous conviction can be used as evidence of bad character.

Previous Conviction as Evidence of Bad Character (Section 54, Evidence Act)

The fact that an accused person has a bad character is generally **irrelevant** in criminal proceedings, **unless** evidence of good character has been introduced by the accused.

Explanation 2 to Section 54 specifically states that a **previous conviction is relevant as evidence of bad character**. This means that if the accused has been previously convicted of a crime, that prior conviction can be introduced as evidence of bad character, provided it meets the conditions laid out in the section.

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.

Presumptions Related to Documents (Sections 79–85C)

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 .

1. Direct Evidence:

Direct evidence refers to testimony or material that directly proves a fact in issue without requiring any inference or presumption. It involves first-hand evidence of an event, such as a witness testifying that they saw the crime being committed.

- **Relevant Section:**

- The concept of direct evidence is implied in **Section 60**, which requires that oral evidence must be direct. This means the witness must provide first-hand knowledge of what they have seen, heard, or perceived through their senses.

2. Circumstantial Evidence:

Circumstantial evidence, also known as indirect evidence, involves facts or circumstances from which the court can infer the existence of a fact in issue. It does not directly prove the fact but provides a basis from which the fact can be inferred logically.

- **Relevant Sections:**

- **Section 6:** Covers facts forming part of the same transaction, allowing circumstantial evidence to be admitted if it is so connected with a fact in issue as to form part of the same transaction.
- **Section 7:** Refers to facts that are the occasion, cause, or effect of facts in issue, making such circumstantial evidence relevant.
- **Section 8:** Deals with motive, preparation, and conduct, which are often proved through circumstantial evidence.
- **Section 9:** Includes facts necessary to explain or introduce relevant facts, such as identity, time, or place, which can be established through circumstantial evidence.

3. Primary Evidence:

Primary evidence refers to the original document or material evidence itself, which directly establishes the content or existence of the document or fact in question. It is considered the best form of evidence and must be produced unless secondary evidence is admissible under certain circumstances.

- **Relevant Sections:**

- **Section 62:** Defines primary evidence as the original document itself, which must be produced in court. It is considered the highest quality of evidence.
- **Section 64:** Mandates that primary evidence must be provided unless the circumstances allow for the submission of secondary evidence as per the conditions mentioned in the Act.

Hearsay Evidence and Relevant Sections from the Evidence Act

Section 60:

Oral evidence must be direct. A witness should testify to what they have personally seen, heard, or perceived. Hearsay, being second-hand information, is excluded under this rule.

Exceptions:

Section 32:

Certain exceptions to the hearsay rule are allowed when the person who made the statement is unavailable (e.g., dead or cannot be found). This includes statements related to the cause of death (dying declarations) and statements made in the ordinary course of business or against the person's interest.

Section 33:

Testimony given in previous judicial proceedings is admissible if the witness is unavailable in the current proceeding, provided the opposing party had an opportunity to cross-examine them earlier.

Section 6:

Allows hearsay evidence when the statements are made during the occurrence of an event and are so closely connected that they form part of the same transaction (res gestae exception).

Section 157:

Permits the use of previous statements made by a witness to corroborate their testimony in court, if made at or near the time of the event.

Hearsay evidence is generally not admissible in court because it is considered unreliable for several reasons:

1. **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.
2. **No Oath:** The original speaker did not make the statement under oath, which means they did not formally promise to tell the truth.
3. **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.
4. **Risk of Misinterpretation:** As information is passed from person to person, it can become distorted or misinterpreted, leading to inaccuracies.
5. **Violation of Best Evidence Rule:** The law prefers direct testimony from individuals who have firsthand knowledge of the facts. Hearsay is second-hand information and therefore less reliable.

Witness May Lie, But Circumstances Do Not: Explained with Evidence Act Provisions

1. Human Testimony is Fallible:

- **Subjectivity:** Witnesses can be influenced by personal perception and bias, making their statements less reliable.
- **Memory Issues:** Testimonies can be distorted due to forgetfulness or misremembering events.

- **Deception:** Witnesses may intentionally mislead the court for personal reasons or external pressure.

2. Circumstances as Objective Evidence:

- **Section 6 – Facts Forming Part of the Same Transaction:** Circumstantial evidence, like events closely connected to the fact in issue, remains constant and unbiased, providing a clear and objective picture of the event.
- **Section 7 – Occasions, Cause, or Effect of Facts in Issue:** Circumstances such as the cause or effect of an incident can either support or contradict witness testimony, offering a more consistent and objective view of the case.
- **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. Importance in Legal Contexts:

- **Section 9 – Facts Necessary to Explain or Introduce Relevant Facts:** Circumstances provide the necessary context to understand or explain relevant facts, making them essential for verifying witness statements and supporting the overall narrative of the case.
- **Evidence Weighting:** Circumstantial evidence, when logically connected, often carries more weight than direct testimony because it is less likely to be influenced by human factors.
- **Building a Case:** Circumstantial evidence can help establish facts even without direct testimony, as it is based on the objective reality of the event.

4. Reliability:

- **Objective Reality:** Circumstantial evidence reflects the actual events as they happened, without being influenced by emotions or falsehoods, making it a reliable form of evidence.
- **Reduced Bias:** As it is not subject to human emotions, circumstantial evidence provides an unbiased account of events, making it crucial for establishing facts in a case.

1. Judicial Confession:

- 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:

- Made outside court, to a non-judicial person (e.g., police, friends).
- Less evidentiary weight; requires corroboration for reliability.

3. Retracted Confession:

- Initially made but later withdrawn or denied by the accused.
- Treated with caution; needs strong corroboration for conviction.

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

Key Points from Section 21:

1. **General Rule:**
 - An admission is relevant and may be proved against the person who made it or their representative in interest. This means that any statement made by a party, which is against their own interest, can be used by the opposing party as evidence against them.
2. **Exceptions:** An admission may be used in favor of the person who made it in the following cases:
 - **(1) Statement as Dying Declaration or Relevant Under Section 32:** If the admission is such that it would be relevant as a dying declaration or a statement under Section 32, which deals with statements by persons who cannot be called as witnesses due to death, incapacity, etc., it can be used by the person making it if they were alive or if the statement applies to a third party.
 - **(2) Statement Regarding the State of Mind or Body:** An admission can be used in favor of the person making it if it describes the existence of a state of mind or body, made at or about the time when such state existed, and is accompanied by conduct that makes its falsehood improbable.
 - **(3) Statement Relevant Otherwise than as an Admission:** If an admission is relevant for reasons other than being an admission, such as being part of the res gestae or forming part of the same transaction, it may be used by the person making it.

Illustration:

- If A admits, “I owe B 5,000 Taka,” B can use this statement against A in court. However, A cannot use this statement to prove that they are an honest person who readily admits their debts unless it falls under the exceptions mentioned above.

When a Confession is Not Admissible:

- **Section 24:** A confession is not admissible if it appears to the court that it was made due to any inducement, threat, or promise from a person in authority, which made the accused believe they would gain some advantage or avoid some harm in the proceedings.
- **Section 25:** A confession made to a police officer is not admissible against the accused.
- **Section 26:** A confession made while the accused is in police custody is not admissible unless it is made in the immediate presence of a Magistrate.

When a Confession May be Admissible:

- **Section 27:** Information given by an accused in custody that leads to the discovery of a fact may be admissible, but only the part of the confession that directly relates to the discovery.
- **Section 28:** A confession is admissible if it is made after the impression of any inducement, threat, or promise has been removed.
- **Section 29:** A confession does not become inadmissible merely because it was made under a promise of secrecy, due to deception, while intoxicated, or in response to questions the accused was not obliged to answer, even if they were not warned that the confession could be used against them.

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.

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. **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.
4. **Use for Impeachment (Section 145):** If the in-court testimony contradicts the prior statement, it can be used to impeach the witness's credibility (Section 145).
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