

1) Witness may lie but Evidence does not lie. Describe it according to evidence act section.

The statement "witnesses may lie, but evidence does not lie" reflects a fundamental principle of the law of evidence, highlighting the reliability and objectivity of physical evidence compared to human testimony.

Here is how this principle is reflected in the Evidence Act, 1872:

Witness Testimony vs. Physical Evidence

1. Witness Testimony:

Witnesses provide evidence based on their perceptions and memory, which can be influenced by various factors such as bias, coercion, misunderstanding, or intentional deceit.

Under the Indian Evidence Act, sections related to witness testimony include:

- ✓ **Section 118:** Deals with the competency of witnesses, stating that all persons shall be competent to testify unless the court considers them unable to understand the questions due to their age or mental capacity.
- ✓ **Section 146:** Allows cross-examination of witnesses to test their credibility.
- ✓ **Section 155:** Provides grounds for impeaching the credit of a witness by the adverse party.

2. Physical Evidence:

Physical evidence includes documents, objects, and other tangible items that can provide objective proof.

The Evidence Act contains sections related to documentary and material evidence, including:

- ✓ **Section 3:** Defines "evidence" as all statements made by witnesses in relation to matters of fact under inquiry and all documents produced for the inspection of the court.
- ✓ **Section 59:** States that oral evidence must be direct and based on what the witness has personally seen, heard, or perceived.
- ✓ **Section 61:** Discusses the proof of contents of documents, allowing for both primary and secondary evidence.
- ✓ **Section 62:** Defines primary evidence as the original document itself.
- ✓ **Section 63:** Defines secondary evidence as certified copies or other copies made from the original.

Reliability of Evidence

- ✓ **Corroboration:** Physical evidence can often corroborate or contradict witness testimony, providing a more reliable basis for establishing the facts of a case. For

example, forensic evidence like fingerprints, DNA, or video footage can corroborate or challenge a witness's account.

- ✓ **Impartiality:** Physical evidence is generally considered impartial and less susceptible to manipulation compared to human testimony, which may be subject to personal interests or external pressures.

Legal Application

- ✓ **Judicial Interpretation:** Courts often place significant weight on physical evidence, especially when witness testimony is conflicting or unreliable. The objective nature of physical evidence can be crucial in determining the truth in legal proceedings.
- ✓ **Burden of Proof:** In criminal cases, the burden of proof lies on the prosecution to establish guilt beyond a reasonable doubt. Physical evidence can play a key role in meeting this burden, as it is often seen as more conclusive than oral testimony.

In summary, the Indian Evidence Act provides a framework for evaluating both witness testimony and physical evidence, recognizing the potential fallibility of human witnesses and the objective reliability of tangible evidence. This legal framework helps ensure that justice is served by weighing all available evidence to arrive at the truth.

2) What is hearsay evidence? Why it is not accepted?

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

Why is Hearsay Evidence Generally Not Accepted?

Hearsay evidence is generally not accepted in court for several reasons:

1. Lack of Direct Knowledge:

The person presenting the hearsay did not directly witness the event or situation. This makes it difficult to assess the accuracy of the statement.

2. Inability to Cross-Examine:

Since the person who made the original statement is not present in court, they cannot be cross-examined. Cross-examination is important because it allows the opposing party to challenge the truthfulness and reliability of the evidence.

3. Potential for Misinterpretation:

There is a risk that the witness may misinterpret or inaccurately recall what was said by the original speaker. This can lead to distorted or misleading evidence being presented in court.

4. Possibility of Fabrication:

Hearsay statements could be fabricated or exaggerated without the original speaker being present to confirm or deny the statement.

Hearsay Evidence in the Evidence Act

Under the Evidence Act, 1872, hearsay evidence is generally not admissible, except in certain circumstances. Here's a breakdown of relevant sections:

1. Section 60:

This section requires that oral evidence must be direct. This means that a witness can only testify about things they have directly seen, heard, or perceived.

2. Exceptions to the Rule:

Although hearsay evidence is typically inadmissible, there are exceptions where hearsay may be considered reliable and is allowed:

- ✓ **Dying Declarations (Section 32(1)):** Statements made by a person as to the cause of their death, or circumstances of the transaction leading to their death, are admissible when the person making the statement is unavailable to testify due to death.
- ✓ **Statements in the Course of Business (Section 32(2)):** Statements made in the ordinary course of business, such as entries in books of account, are admissible.
- ✓ **Statements against Interest (Section 32(3)):** Statements that are against the pecuniary or proprietary interest of the person making them can be admitted.
- ✓ **Public Documents (Section 35):** Entries in public records made by a public servant in the course of their official duty are admissible as evidence of the facts stated therein.

Practical Implications

In practice, hearsay evidence is treated with caution due to its inherent unreliability. Courts prefer direct evidence where the witness can be questioned and the evidence can be evaluated for accuracy and credibility. The exceptions to the hearsay rule acknowledge situations where it may be impractical to obtain direct evidence, and the circumstances surrounding the hearsay provide sufficient assurance of its reliability.

In summary, hearsay evidence is generally excluded to ensure that the evidence presented in court is both reliable and capable of being tested through cross-examination. The Indian Evidence Act provides specific exceptions where hearsay is considered trustworthy and can be admitted into evidence.

3) All admissible evidence is relevant but all relevant evidence is not admissible. Discuss it.

The statement "all admissible evidence is relevant, but not all relevant evidence is admissible" captures an important principle in the law of evidence. It means that while

evidence must be relevant to be considered by the court, not every piece of relevant evidence can be admitted. Here's how this principle is reflected in the Evidence Act, 1872:

Key Concepts

1. Relevance:

Relevant evidence is any evidence that helps to prove or disprove a fact in issue in the case. It must have some logical connection to the matter being decided.

According to the Bangladesh Evidence Act:

- ✓ **Section 5:** States that evidence can only be given about facts that are in issue and relevant facts.
- ✓ **Section 3:** Defines "relevant" as any fact that makes the existence or non-existence of another fact more or less probable than it would be without the evidence.

2. Admissibility:

Admissible evidence is relevant evidence that is allowed to be presented in court according to the rules of evidence. For evidence to be admissible, it must not only be relevant but also comply with legal rules and not fall under any exclusionary rules.

The Bangladesh Evidence Act outlines various rules on admissibility:

Section 136: The judge decides on the admissibility of evidence. If a piece of evidence is relevant, the judge will consider its admissibility based on legal principles and rules.

Why Not All Relevant Evidence is Admissible

There are several reasons why relevant evidence might be excluded from being admissible in court:

1. Hearsay Rule:

Relevant evidence may be excluded if it is hearsay. As discussed earlier, hearsay is generally inadmissible because the original speaker cannot be cross-examined, making the evidence unreliable.

2. Privilege:

Certain communications are privileged and protected from being disclosed in court, even if they are relevant. This includes:

- ✓ **Attorney-Client Privilege (Section 126):** Confidential communications between a lawyer and their client are protected.
- ✓ **Marital Communications (Section 122):** Communications between spouses during marriage are protected.

3. Illegally Obtained Evidence:

Evidence obtained through illegal means, such as unlawful searches or coercion, may be excluded to protect the integrity of the legal system and individual rights.

4. Prejudicial vs. Probative Value:

Evidence that is highly prejudicial may be excluded if its potential to unfairly influence the jury outweighs its probative (evidentiary) value. For example, graphic photographs that may provoke an emotional response rather than provide factual information.

5. Character Evidence:

Generally, evidence of a person's character is not admissible to prove that they acted in accordance with that character on a specific occasion (Section 52). There are exceptions, such as in cases where character is directly at issue.

Practical Implications

- ✓ **Balancing Act:** The court must balance the need for relevant evidence with the need to ensure a fair trial. This involves excluding evidence that may be unfairly prejudicial, unreliable, or legally protected.
- ✓ **Judicial Discretion:** Judges have the discretion to determine the admissibility of evidence, weighing its relevance against any legal reasons for exclusion.

Conclusion

In summary, while relevance is a key criterion for evidence to be considered in court, admissibility is subject to additional legal requirements and protections. The Bangladesh Evidence Act provides a framework for determining both relevance and admissibility, ensuring that the evidence considered in legal proceedings is both pertinent and fair. This principle helps maintain the integrity of the judicial process by focusing on evidence that truly assists in resolving the issues at hand while protecting against potential abuses or unfairness.

4) Evidence act

- ✓ ***Section 6 Relevancy of facts forming part of 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.**

Here's an explanation of Sections 6, 7, 8, and 9 of the Bangladesh Evidence Act, 1872 in easy-to-understand language:

Section 6: Relevancy of Facts Forming Part of the Same Transaction

Explanation:

Section 6 deals with what is known as the "Res Gestae" rule, which refers to facts that are so closely connected with the main fact in issue that they form part of the same transaction. This means that events or circumstances that occur at the same time, place, or setting as the fact in issue can be considered relevant, even if they don't directly prove the main fact.

Key Points:

- ✓ Same Transaction: Facts that occur as part of the same incident or series of events are considered part of the same transaction.
- ✓ Continuity and Proximity: The facts must be closely connected in terms of time and place.

Example:

If a person is accused of robbery, the events that occurred immediately before, during, and after the robbery, such as the approach to the scene, the act itself, and the escape, can all be considered part of the same transaction.

Illustration:

Imagine a case where a person is accused of assault. If a witness saw the accused arguing loudly with the victim just moments before the assault, that argument is part of the same transaction and relevant to understanding the assault.

Section 7: Facts Which Are the Occasion, Cause, or Effect of Fact in Issue

Explanation:

Section 7 relates to facts that are relevant because they explain the background, cause, or effect of the main fact in issue. These facts help to paint a complete picture of the circumstances surrounding the fact in question.

Key Points:

- ✓ Occasion: Circumstances that set the stage for the event.
- ✓ Cause: Factors that directly lead to the occurrence of the event.
- ✓ Effect: The consequences or results of the event.

Example:

If a person is charged with arson, the fact that they were seen buying petrol and matches before the fire could be relevant as it may explain the cause of the fire.

Illustration:

In a murder case, if the accused was seen purchasing a weapon and making threats against the victim shortly before the murder, these facts are relevant because they show preparation and intent, which can be seen as the cause leading to the murder.

Section 8: Motive, Preparation, and Previous or Subsequent Conduct

Explanation:

Section 8 focuses on the relevance of a person's motive, preparation, and conduct before or after the occurrence of a fact in issue. These elements can help establish the context and intent behind actions related to the case.

Key Points:

- ✓ Motive: The reason why a person might commit a crime. Motive itself does not prove guilt, but it helps to establish intent.
- ✓ Preparation: Steps taken before committing a crime can show planning and intention.
- ✓ Conduct: Behavior before and after the event can provide insight into a person's mindset and involvement in the crime.

Example:

If someone is accused of theft, evidence showing they were in financial distress (motive) and were caught on camera scouting the location beforehand (preparation) can be relevant.

Illustration:

In a fraud case, if the accused was found transferring large sums of money to an offshore account before the crime was discovered, this conduct can indicate an intention to commit fraud and conceal the proceeds, making it relevant to the case.

Section 9: Facts Necessary to Explain or Introduce Relevant Facts

Explanation:

Section 9 pertains to facts that help explain or provide context for other relevant facts in a case. These facts may not directly prove the issue but are necessary to make the relevant facts understandable and coherent.

Key Points:

- ✓ Introduction: Facts that introduce the main facts in a way that makes them clear and understandable.
- ✓ Explanation: Facts that clarify or provide background for relevant facts.
- ✓ Example: In a case involving a contract dispute, details about the parties' previous negotiations can help explain the terms and intentions behind the contract.

Illustration:

Suppose a witness testifies about seeing a crime from a specific location. In that case, evidence showing how the witness was able to observe the event from that location (such as photographs or a map) can be introduced to explain the reliability of their testimony.

Summary

- ✓ Section 6 focuses on facts that are part of the same transaction as the fact in issue, highlighting events closely connected in time and space.
- ✓ Section 7 involves facts that explain the occasion, cause, or effect of the fact in issue, helping to understand the broader context.
- ✓ Section 8 covers motive, preparation, and conduct, which can illuminate a person's intent and involvement.
- ✓ Section 9 deals with facts that explain or introduce relevant facts, ensuring that the context and background are clear.

Together, these sections help ensure that the court considers all relevant aspects of a case, providing a comprehensive understanding of the facts and circumstances involved.

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

Admissions and confessions are important concepts in the law of evidence. They play a crucial role in both civil and criminal cases under the Evidence Act, 1872. Here's a detailed explanation of each, their differences, and when confessions are relevant or not:

What is Admission?

Admission refers to any statement made by a party to a legal proceeding, acknowledging a fact that is against their interest. In civil cases, an admission can be used as evidence against the person who made it, as it indicates the acknowledgment of some fact in dispute.

Key Points about Admissions:

Sections 17-23: These sections of the Bangladesh Evidence Act deal with admissions.

Who Can Make Admissions: Admissions can be made by parties to the proceeding or by authorized representatives or agents.

Purpose: Admissions are used to prove facts against the person making them, as they are presumed to speak against one's own interest.

Not Conclusive: While admissions are relevant, they are not conclusive proof and can be rebutted by the person who made the admission.

Example: In a civil case involving a debt, if a defendant admits in a letter that they owe money to the plaintiff, that statement can be used as evidence against the defendant.

What is Confession?

Confession specifically refers to a statement made by an accused person in a criminal case, admitting guilt or acknowledging the commission of a crime. Confessions are a subset of admissions, but they are specifically related to criminal liability.

Key Points about Confessions:

Sections 24-30: These sections of the Bangladesh Evidence Act address confessions.

Nature: A confession is a direct acknowledgment of guilt or involvement in a criminal act.

Voluntariness: For a confession to be admissible, it must be made voluntarily, without any coercion, threat, or promise.

Example: If a person accused of theft confesses to the police that they stole the items in question, that statement is considered a confession.

Distinction between Admission and Confession

Distinction between admission and confession as per the Bangladesh Evidence Act, 1872, laid out in a table format for easy understanding:

Aspect	Admission	Confession
Definition	An admission is a statement, oral or written, suggesting any inference as to any fact in issue or relevant fact, made by the parties to a proceeding.	A confession is a statement made by a person accused of a crime, admitting guilt for that crime.
Relevance	Admissions are generally relevant in both civil and criminal cases.	Confessions are primarily relevant in criminal cases.
Section	Defined and dealt with under Sections 17 to 23 of the Bangladesh Evidence Act.	Defined and dealt with under Sections 24 to 30 of the Bangladesh Evidence Act.
Scope	Broader scope, including statements that infer facts relevant to the case.	Narrower scope, specifically involving acknowledgment of guilt for a crime.
Nature	Can be either inculpatory (against interest) or exculpatory (in favor).	Generally inculpatory, as it admits to the commission of a crime.
Form	Can be oral or written.	Can be oral or written, but must be explicit about the crime.
Involvement	Made by parties involved in civil or criminal proceedings.	Made by the accused in criminal proceedings.
Admissibility	Generally admissible as evidence.	Must meet certain legal criteria to be admissible, especially under Section 24 (not made under inducement,

Aspect	Admission	Confession
		threat, or promise).
Use in Civil Cases	Frequently used to establish facts or claims.	Not applicable, as confessions are relevant to criminal law.
Effect	May not directly prove guilt but can support a claim or defense.	Directly implicates the person in the crime.
Withdrawal	Can be retracted or explained by the person making the admission.	Once made and admitted, confessions are difficult to retract, especially if made voluntarily.

Key Sections:

Sections 17-23: Cover admissions, detailing when and how admissions can be used in both civil and criminal proceedings.

Sections 24-30: Cover confessions, focusing on conditions under which a confession can be admitted as evidence, including restrictions against confessions made under duress.

Summary

Admissions: Relevant in both civil and criminal cases, admissions can include statements about any relevant fact and do not necessarily imply guilt.

Confessions: Primarily relevant in criminal cases, confessions specifically acknowledge guilt for a crime and must meet certain legal standards to be admissible.

This distinction helps clarify how different types of statements are treated under the law and their respective implications in legal proceedings.

When Confessions Are Relevant

1. Voluntary Confessions (Section 24):

- **Relevance:** A confession is considered relevant and admissible if it is made voluntarily. This means that the confession must be made freely, without any inducement, threat, or promise from a person in authority.
- **Criteria for Voluntariness:** The court assesses whether the confession was influenced by any factor that might have overpowered the accused's free will, such as fear of harm or hope of benefit.

Example: An accused person who voluntarily confesses to a crime in the presence of a magistrate, without any external pressure or promise of leniency, is making a relevant confession.

2. Confession Leading to Discovery of Facts (Section 27):

- **Relevance:** If a confession leads to the discovery of a new fact, that specific portion of the confession related to the discovery is admissible, even if the confession itself might be inadmissible.
- **Scope:** Only the part of the confession that directly relates to the discovery is relevant. For example, if an accused confesses to stealing and then reveals the location of the stolen items, the part about the location is admissible if the items are indeed found there.

Example: An accused person tells the police where they have hidden stolen goods, and the

6) What is dying declaration? Why dying declaration is admissible? What are 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))

A dying declaration is a statement made by a person who believes they are about to die, regarding the cause or circumstances of their impending death. In legal proceedings, a dying declaration is an exception to the hearsay rule and can be used as evidence, even though it is made outside the courtroom. The concept of dying declarations is rooted in the idea that a person who believes they are on the brink of death has no reason to lie and is likely to speak the truth.

Why is a Dying Declaration Admissible?

Dying declarations are admissible under certain conditions due to the following reasons:

1. **Presumption of Truthfulness:** It is presumed that a person facing imminent death is unlikely to lie, as they have no hope for recovery and no motive to misrepresent facts.
2. **Necessity:** In many cases, the dying declaration may be the only evidence available to explain the circumstances of the death, especially when the victim is the only witness to the crime.
3. **Historical Trust:** Traditionally, dying declarations have been considered trustworthy due to the solemnity and sincerity of a person facing death.

Dying Declaration Under Bangladesh Law (Section 32(1))

Section 32(1) of the Bangladesh Evidence Act, 1872, deals with the admissibility of dying declarations:

- ✓ **Applicability:** This section applies when the statement is made by a person about the cause of their death or the circumstances of the transaction that resulted in their death.
- ✓ **Expectation of Death:** Unlike some jurisdictions, Bangladesh law does not require the declarant to be under the expectation of imminent death when making the statement. The statement is relevant if it relates to the cause of death or circumstances surrounding it.
- ✓ **Nature of Proceedings:** The dying declaration is admissible regardless of the nature of the proceedings, whether civil or criminal, as long as the cause of death is in question.

Dying Declaration Under British Law

In British law, dying declarations are also admissible, but there are key differences:

- ✓ **Expectation of Death:** British law requires that the declarant must have a settled, hopeless expectation of death. The declarant must believe they are on the verge of death for the declaration to be admissible.
- ✓ **Scope:** The dying declaration is typically limited to homicide cases in British law, meaning it is admissible primarily when the cause of death is in question in a murder trial.

Distinction Between Bangladesh Law and British Law

Distinguishing between Bangladesh law and British law involves understanding the differences in their legal systems, sources of law, and specific practices. Here is a simplified comparison in a table format:

Aspect	Bangladesh Law	British Law
Legal System	Based on the Common Law system inherited from the British colonial period, with influences from Islamic law in personal matters.	Based on the Common Law system, which has developed through judicial precedents and statutory laws.
Sources of Law	Includes the Constitution of Bangladesh, statutes, ordinances, case law, and customary law.	Includes Acts of Parliament, case law (judicial precedents), statutory instruments, and common law principles.
Constitution	Has a written Constitution, enacted in 1972, which is the supreme law of the land.	The UK does not have a single written constitution; it relies on statutes, common law, and conventions.
Parliamentary	Unicameral legislature, known as	Bicameral legislature, consisting of

Aspect	Bangladesh Law	British Law
System	the Jatiya Sangsad (National Parliament).	the House of Commons and the House of Lords .
Judiciary	The judiciary is independent and consists of the Supreme Court, which is divided into the High Court Division and the Appellate Division.	The judiciary includes the Supreme Court, comprising the High Court and Court of Appeal, along with other subordinate courts.
Role of Precedents	Judicial precedents are highly respected but not binding on higher courts, as the Supreme Court can overrule them.	Judicial precedents (case law) are a fundamental source of law and are binding on lower courts.
Statutory Interpretation	Statutory laws are interpreted in accordance with the Constitution and existing legal principles.	Statutory laws are interpreted using common law principles, and the courts often apply rules of statutory interpretation.
Criminal Law	Governed by the Penal Code, 1860, and the Code of Criminal Procedure, 1898, both of which were influenced by British law.	Criminal law is governed by various statutes such as the Theft Act, Offences Against the Person Act, and others.
Civil Law	Civil law includes the Contract Act, 1872, and other statutes, many inherited from the British colonial period.	Civil law is governed by statutes like the Sale of Goods Act and the Law of Contract Act, with principles developed through case law.
Family Law	Influenced by religious laws, with separate provisions for Muslims, Hindus, and Christians (e.g., Muslim Family Laws Ordinance, 1961).	Governed by statutes like the Matrimonial Causes Act and common law, without religious considerations in legal proceedings.
Human Rights	Fundamental rights are enshrined in the Constitution and are enforceable by the courts.	Human rights are protected under the Human Rights Act 1998, incorporating the European Convention on Human Rights into domestic law.
Language of the Law	Laws are primarily enacted in Bangla (Bengali), though many	Laws are enacted in English , which is the primary language of legal

Aspect	Bangladesh Law	British Law
	original laws are in English.	proceedings.

Key Points

- ✓ **Legal System:** Both Bangladesh and the UK use the common law system, but Bangladesh also incorporates elements of Islamic law in personal matters.
- ✓ **Constitution:** Bangladesh has a written constitution, while the UK relies on a combination of statutes, conventions, and case law.
- ✓ **Parliament:** Bangladesh has a unicameral parliament, while the UK has a bicameral system.
- ✓ **Judiciary:** Both countries have an independent judiciary, but the structure and hierarchy differ.
- ✓ **Influence of Precedents:** In both systems, precedents play a significant role, but the extent of their binding nature varies.

This table provides a concise overview of the key differences and similarities between the legal systems of Bangladesh and the UK.

To Whom Can a Dying Declaration Be Given?

A dying declaration can be made to various individuals, including:

1. **Magistrate:** Ideally, a dying declaration should be recorded by a magistrate to ensure its authenticity and reliability. This helps establish the statement's credibility and ensures proper documentation.
2. **Police Officer:** If a magistrate is unavailable, a police officer can record the dying declaration, though courts may scrutinize such declarations closely to rule out coercion or influence.
3. **Medical Professionals:** Doctors or medical personnel attending to the injured person may record the dying declaration if the declarant's condition is critical.
4. **Any Person Present:** In urgent situations, a dying declaration may be made to any person present, including family members, friends, or bystanders.

Evidential Value of Dying Declaration

The evidential value of a dying declaration depends on several factors:

1. **Credibility:** The court evaluates the credibility of the dying declaration based on the declarant's mental and physical condition, the circumstances under which it was made, and whether it was made voluntarily.

2. Corroboration: While corroboration is not always necessary, courts prefer when a dying declaration is supported by other evidence. A credible and consistent dying declaration can be the sole basis for conviction if it is clear and reliable.

3. Consistency: A dying declaration that is consistent with other evidence and facts of the case holds more weight. Inconsistent or contradictory declarations may weaken the evidential value.

4. Voluntariness: The declaration must be made voluntarily without any coercion, inducement, or influence from others.

Limitations and Challenges

1. Inconsistencies: If there are multiple dying declarations and they contradict each other, the reliability of such declarations may be questioned.

2. Mental State: The declarant's mental and physical state is crucial in assessing whether they were capable of making a reliable and truthful statement.

3. Bias or Influence: Any evidence of bias, influence, or manipulation can undermine the validity and admissibility of the dying declaration.

Conclusion

Dying declarations are an important exception to the hearsay rule, allowing the court to consider the statements of individuals who are unable to testify in court due to their death. The admissibility and evidential value of a dying declaration depend on the circumstances under which it was made and the legal framework governing its acceptance. In Bangladesh, the law provides a broader scope for admitting dying declarations compared to British law, emphasizing the necessity and presumed truthfulness of such statements in legal proceedings.

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

Judicial notice is a legal doctrine that allows a court to recognize certain facts as true without requiring formal evidence. It enables courts to acknowledge facts that are generally known or easily verifiable, thus streamlining the judicial process by eliminating the need for parties to prove such facts with evidence. The concept is used to promote efficiency and judicial economy in legal proceedings.

What is Judicial Notice?

- ✓ Definition: Judicial notice is the act by which a court recognizes certain facts as being so well-known or established that they do not require proof.

- ✓ Purpose: The purpose of judicial notice is to simplify the legal process by avoiding the unnecessary presentation of evidence for facts that are indisputable or easily verifiable.
- ✓ Scope: Judicial notice applies to facts that are common knowledge within the jurisdiction of the court or can be verified from reliable sources.

Judicial Notice Under the Bangladesh Evidence Act (Sections 56 and 57)

Section 56: Facts Judicially Noticeable Need Not Be Proved

Section 56 of the Bangladesh Evidence Act, 1872, states:

No fact of which the Court will take judicial notice need be proved.

This section establishes that any fact that falls under the category of judicial notice does not need to be proven by the parties in a legal proceeding. This reduces the burden on the parties to establish facts that are already accepted as true by the court.

Section 57: Facts of Which Court Must Take Judicial Notice

Section 57 outlines specific categories of facts that the court must take judicial notice of:

1. Laws in Force: All laws currently in force in Bangladesh, including statutes and regulations, do not require proof.
2. Public Acts and Notifications: Acts passed by the legislature, government notifications, and statutory rules that have been published in the official gazette.
3. Judicial Proceedings: The proceedings of the superior courts of Bangladesh.
4. Public Documents: Public documents issued by the government, such as records of official acts.
5. Territorial Divisions: The geographical and administrative divisions of Bangladesh, including boundaries and jurisdictions of various administrative and judicial bodies.
6. Calendar and Time: Facts related to the official calendar, such as days of the week, months, and the calculation of time according to the Gregorian calendar.
7. Common Knowledge: Facts that are generally known and accepted by the public, such as historical events, scientific facts, and well-established geographical details.

Which Facts should be Regarded as Judicially Noticeable?

1. Laws and Regulations:

- ✓ **Statutory Law**: All enacted laws and regulations in Bangladesh are judicially noticeable.
- ✓ **Amendments**: Amendments to existing laws that are officially published.
- ✓ **Constitutional Provisions**: Provisions of the Constitution of Bangladesh.

2. Government Acts and Publications:

- ✓ Official Gazettes: Government orders, notifications, and rules published in the official gazette.
- ✓ Public Reports: Reports and records officially released by government authorities.

3. Judicial Records:

- ✓ Previous Decisions: Judgments and orders of the Supreme Court and other higher courts.
- ✓ Court Rules: Rules governing the procedure of the courts.

4. Geographical Facts:

- ✓ Boundaries: Established national and administrative boundaries, including districts and divisions.
- ✓ Geographical Features: Well-known geographical features like major rivers, mountains, and cities.

5. Science and Mathematics:

- ✓ Scientific Principles: Well-established scientific principles and facts (e.g., the earth revolves around the sun).
- ✓ Mathematical Truths: Basic mathematical principles and calculations.

6. Historical Events:

- ✓ Major Historical Events: Events of historical significance that are widely recognized and undisputed (e.g., Bangladesh Liberation War of 1971).

7. Public Holidays and Calendar:

- ✓ Public Holidays: Recognized public holidays and national observances.
- ✓ Calendar: The structure of the Gregorian calendar and timekeeping.

Importance and Limitations of Judicial Notice

Importance

- ✓ Efficiency: Judicial notice speeds up legal proceedings by eliminating the need to prove facts that are already known or easily verifiable.
- ✓ Accuracy: It ensures the accuracy of facts recognized as being beyond dispute.
- ✓ Uniformity: Judicial notice promotes consistency and uniformity in legal decisions by relying on established and commonly accepted facts.

Limitations

- ✓ Disputed Facts: Judicial notice cannot be taken for facts that are disputed or not universally recognized.

- ✓ Limited Scope: Only applies to facts that fall within the categories outlined in Section 57 or are otherwise incontrovertible.
- ✓ Judicial Discretion: The decision to take judicial notice lies within the discretion of the court, which may choose not to recognize certain facts if they are not sufficiently notorious or clear.

Conclusion

Judicial notice is a powerful tool in the legal system that allows courts to recognize certain facts without requiring formal proof. Under Sections 56 and 57 of the Bangladesh Evidence Act, 1872, a wide range of facts can be judicially noticed, promoting efficiency and accuracy in legal proceedings. By understanding which facts are judicially noticeable, legal practitioners can effectively navigate the evidentiary requirements of the court and focus on disputing only those facts that require substantive proof.

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

In the context of the Bangladesh Evidence Act, 1872, "character" refers to the qualities, traits, or reputation of a person, which might include honesty, integrity, or moral standing. The relevance of a person's character in legal proceedings is addressed in Sections 52 to 55 of the Act. Here's a simple explanation of what character is and when it is relevant or not:

Definition of Character

Character: The attributes or reputation of a person that reflect their behavior or moral qualities. It can be considered "good" or "bad" based on societal norms and legal standards.

Relevance of Character

When Character is Relevant-

1. Civil Cases (Section 55):

Character is relevant when it directly affects the amount of damages claimed in a lawsuit. For instance, in a defamation case, the plaintiff's character might be relevant to determine the extent of harm caused by the defamatory statement.

2. Criminal Cases (Section 53):

The character of the accused is relevant if it helps to show they are less likely to have committed the offense. This means the accused can present evidence of their good character to suggest they are innocent.

3. Character Directly in Issue:

In cases where the character itself is a central issue, such as defamation or breach of promise to marry, character evidence is relevant. This is because the outcome depends directly on the reputation or qualities of the person involved.

When Character is Not Relevant

1. General Rule in Civil Cases (Section 52):

Character is not relevant in civil cases to prove or disprove liability unless the character itself is in issue. For example, a person's character is generally not used to determine if they are responsible for a breach of contract.

2. Bad Character of the Accused (Section 54):

In criminal cases, evidence of the accused's ****bad character**** is generally not admissible unless the accused has presented evidence of their ****good character****. This prevents prejudice against the accused based solely on past behavior unless it is relevant to the current case.

Summary

- ✓ **Civil Cases:** Character is generally not relevant unless it affects damages or is directly in issue.
- ✓ **Criminal Cases:** The accused can introduce good character evidence, but bad character evidence is not typically admissible unless to counter good character claims made by the accused or if directly relevant to the case.

These rules help ensure that the court focuses on facts and relevant evidence rather than being influenced by personal biases or past behaviors unrelated to the case at hand.

9) What is 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 case to prove their claims or allegations to the satisfaction of the court. In the context of the Bangladesh Evidence Act, 1872, Sections 101 to 112 outlines the rules governing the burden of proof. Here's a simple explanation:

What is the Burden of Proof?

Burden of Proof: This is the duty of a party to present evidence to support their claims or defenses in a legal proceeding. It indicates who must prove what in a case.

Rules of Burden of Proof

- ✓ **Section 101: Who has the Burden of Proof?**

The person who asserts a fact in a legal proceeding has the burden of proving that fact.
Example: If a plaintiff claims that the defendant owes them money, the plaintiff must prove this claim.

✓ Section 102: On Whom the Burden Lies

The burden of proof lies on the party who would fail if no further evidence is provided.

Example: In a civil case, if the plaintiff has not provided sufficient evidence to support their claim, they would lose the case.

✓ Section 103: Burden of Proof as to Particular Fact

If a party claims a specific fact, they must prove it.

Example: If the defendant claims they were not present at the crime scene, the defendant must prove this alibi.

✓ Section 104: Burden of Proof as to Admission and Execution of Documents

If a party relies on a document, they must prove that it was executed (signed and agreed upon) by the person it is attributed to.

Example: If a party submits a contract as evidence, they must prove it was signed by the relevant parties.

✓ Section 105: Burden of Proving that Case of Accused Comes Within Exceptions

In criminal cases, if the accused claims their actions fall within an exception to the crime (such as self-defense), the accused must prove this exception.

Example: If charged with assault, the accused must prove they acted in self-defense.

✓ Section 106: Burden of Proving Fact Especially Within Knowledge

If a fact is especially within the knowledge of one party, the burden to prove it lies on them.

Example: If the defendant claims they were at a specific location, only they can provide evidence for this claim.

✓ Section 107: Burden of Proving Death of Person Known to Have Been Alive Within 30 Years

If a person is known to have been alive within 30 years, the burden of proving they are dead lies on the party asserting their death.

Example: If a party claims inheritance based on another's death, they must prove the person has died.

✓ Section 108: Burden of Proving Person is Alive Who Has Not Been Heard of for Seven Years

If a person has not been heard from for seven years, they are presumed dead, and the burden is on anyone claiming they are alive to prove it.

Example: If someone is missing for over seven years, the law presumes them dead unless proven otherwise.

- ✓ Section 109: Burden of Proof as to Relationship in Cases of Partners, Landlords, Tenant, and Principal-Agent

In certain relationships (such as landlord-tenant), it is presumed that the relationship exists, and the burden of disproving it lies on the party challenging the existence.

Example: If a landlord sues for unpaid rent, the tenant must prove they were not a tenant if they dispute this.

- ✓ Section 110: Burden of Proof as to Ownership

The burden of proof for ownership lies on the person disputing the possession of the current possessor.

Example: If someone claims ownership of land occupied by another, they must prove they own it.

- ✓ Section 111: Proof of Good Faith in Transactions Where One Party is in a Position of Active Confidence

If a person in a position of trust benefits from a transaction, they must prove the transaction was made in good faith.

Example: If a trustee benefits from a deal with a beneficiary, the trustee must prove it was fair and in good faith.

- ✓ Section 112: Birth During Marriage

A child born during a marriage is presumed to be the legitimate child of the married couple, unless proven otherwise.

Example: If someone claims a child is illegitimate, they must provide proof.

Summary

The burden of proof in legal cases in Bangladesh is primarily on the party making the assertion or claim. Different sections of the Evidence Act specify who must prove what, depending on the nature of the fact and the relationship between the parties involved. Understanding these rules helps ensure that evidence is presented fairly and effectively in court.

10. What is oral evidence? Which accomplished is he competent to be a witness? What is evidential value of evidence of accomplished (section 114-b, 30,133)

What is Oral Evidence?

Oral evidence refers to the testimony given by witnesses in court. It is the spoken word of a witness, provided under oath, regarding facts that they have personally observed or experienced. According to the Bangladesh Evidence Act, 1872:

Oral Evidence: Defined in Section 59, it includes statements made by witnesses in court and is admissible if it relates to facts directly perceived by the witness.

Who is an Accomplice?

An accomplice is a person who is involved with another in the commission of a crime. They may provide evidence in court, often as a witness for the prosecution, to testify against their co-accused.

Competency of an Accomplice as a Witness

An accomplice is considered a competent witness under the Bangladesh Evidence Act, 1872. However, their testimony is treated with caution due to their involvement in the crime. Let's explore the relevant sections:

✓ Section 133: Accomplice as a Witness

Competency: An accomplice is a competent witness against an accused person, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Evidential Value of an Accomplice's Evidence

✓ Section 114(b): Presumption about Accomplice Evidence

Presumption: The court may presume that an accomplice is unworthy of credit unless corroborated in material particulars. This means that while an accomplice can be a witness, their testimony is often treated with suspicion and requires additional corroboration for credibility.

✓ Section 30: Consideration of Confession by Co-Accused

Joint Trials: When two or more persons are tried jointly for the same offense, and a confession made by one of them affecting themselves and the others is proved, the court may take the confession into consideration against all of them.

Limitations: The confession of a co-accused cannot be used as the sole basis for conviction; it must be supported by independent evidence.

Summary of Evidential Value

- ✓ Competency: Accomplices are competent to testify in court, but their testimony is often treated with caution.
- ✓ Need for Corroboration: Courts generally seek corroborative evidence to support an accomplice's testimony due to their direct involvement in the crime and potential motives for lying, such as reducing their punishment.
- ✓ Confessions by Co-Accused: Such confessions can be considered but require independent evidence to lead to a conviction.

Conclusion

While oral evidence is crucial in legal proceedings, the testimony of an accomplice, given their involvement in the crime, is approached with caution. The Bangladesh Evidence Act, 1872, provides guidelines to ensure that such testimony is corroborated to uphold the integrity of the judicial process.