

Question 1: Explain the scope and extent of applicability of the Evidence Act, 1872 as defined under Section 1. How does this section delineate the jurisdictions and cases where the Act is applicable or inapplicable?

The scope and extent of Section 1 of the Evidence Act, 1872:

Section 1 of the Evidence Act, 1872

Short title

1. This act may be called the Evidence Act, 1872.

Extent

- ☉ It extends to the whole of Bangladesh and applies to all judicial proceedings in or before any Court, including Courts-martial, other than Courts-martial convened under the [Army Act, 1952, the Naval Discipline Ordinance, 1961 or the Air Force Act, 1953] but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator;

Commencement

- ☉ And it shall come into force on the first day of September, 1872.

Scope and Extent of Section 1:

1. Title and Geographical Extent:

- ☉ The Act is titled the "Evidence Act, 1872".
- ☉ The Act extends to the whole of Bangladesh.

2. Applicability:

The Act applies to all judicial proceedings, which includes:

- ☉ Proceedings in any Court in Bangladesh.
- ☉ Proceedings before any Magistrate in Bangladesh.
- ☉ Proceedings before any other person legally authorized to take evidence in Bangladesh.

The Act also applies to proceedings in Court-martial, except:

- ☉ Court-martial convened under the Army Act, 1952.
- ☉ Courts-martial convened under the Naval Discipline Ordinance, 1961.
- ☉ Courts-martial convened under the Air Force Act, 1953.

3. Exceptions to Applicability:

- ☉ The Act does not apply to affidavits presented to any Court or officer in Bangladesh.
- ☉ The Act does not apply to proceedings before an arbitrator in Bangladesh.

4. Commencement:

- ☉ The Act came into force on the 1st day of September, 1872.

In essence, Section 1 establishes the Evidence Act, 1872 as the governing law for the admissibility and evaluation of evidence in all judicial proceedings within the territory of Bangladesh, with the exception of certain military tribunals and arbitration proceedings. This section delineates the broad jurisdiction and applicability of the Act, while also specifying the limitations and exclusions.

Section 1 of the Evidence Act, 1872 delineates the jurisdictions and cases where the Act is applicable or inapplicable in the following ways:

Jurisdictions where the Act is Applicable:

1. Judicial Proceedings in Courts:

- ☉ The Act applies to all judicial proceedings in any Court in Bangladesh, including proceedings before Judges and Magistrates.
- ☉ This includes civil, criminal, and other judicial proceedings in the regular court system.

2. Proceedings before Legally Authorized Persons:

- ☉ The Act applies to proceedings before any person who is legally authorized to take evidence in Bangladesh.
- ☉ This could include proceedings before quasi-judicial authorities, tribunals, commissions, etc.

3. Court-martial Proceedings:

- ☉ The Act applies to proceedings in Court-martial, except those convened under the Army Act, 1952, the Naval Discipline Ordinance, 1961, or the Air Force Act, 1953.

Jurisdictions where the Act is Inapplicable:

1. Affidavits:

- ☉ The Act does not apply to affidavits presented to any Court or officer in Bangladesh.
- ☉ Affidavits are governed by separate laws and procedures.

2. Arbitration Proceedings:

- ☉ The Act does not apply to proceedings before an arbitrator in Bangladesh.
- ☉ Arbitration proceedings have their own evidentiary rules and procedures.

By clearly specifying the judicial and quasi-judicial forums where the Evidence Act, 1872 is applicable, as well as the exceptions where it does not apply, Section 1 delineates the jurisdictional scope of the Act. This ensures the proper administration of justice by providing a unified framework for the admissibility and evaluation of evidence in the relevant legal proceedings.

Question 2: Define the terms "Fact," "Relevant," and "Facts in issue" as provided under Section 3 of the Evidence Act, 1872. Elaborate on the differences between "may presume," "shall presume," and "conclusive proof" as defined in Section 4 of the Evidence Act, 1872.

The key terms and concepts from Sections 3 and 4 of the Evidence Act, 1872 :

Section 3 Interpretation Clause:

1. Fact:

- ☉ "Fact" means and includes anything, state of things, or relation of things that can be perceived by the senses.
- ☉ It also includes any mental condition of which a person is conscious.

2. Relevant:

- ☉ One fact is said to be relevant to another when the two facts are connected in a way referred to in the provisions of the Act.

3. Facts in Issue:

- ☉ "Facts in issue" are the essential facts that need to be proved or disproved for a right, liability or disability to be established in a case.
- ☉ These are the main facts that are disputed between the parties.

Section 4 Presumptions:

1. "May Presume":

- ☉ When the Act says the Court "may presume" a fact, the Court can either treat that fact as proven unless disproved, or it can ask for proof of that fact.

2. "Shall Presume":

- ☉ When the Act says the Court "shall presume" a fact, the Court must treat that fact as proven unless it is disproved.

3. "Conclusive Proof":

- ☉ When the Act declares one fact to be conclusive proof of another, the Court must treat the second fact as proven once the first fact is proven, and cannot allow evidence to disprove the second fact.

In summary, Section 3 defines key terms like "fact," "relevant," and "facts in issue" that are fundamental to the application of the Evidence Act. Section 4 then explains the different levels of presumptions the Court can make from optional presumptions to mandatory presumptions to conclusive proof. These provisions guide the Court in determining which facts need to be proven and the weight to be given to different types of evidence.

Question 3: Explain the principle established under Section 5 of the Evidence Act, 1872 regarding the admissibility of evidence. How does this section define the boundaries of what evidence can be presented in a trial?

The key principle established under Section 5 of the Evidence Act, 1872 regarding the admissibility of evidence:

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

1. Scope of Admissible Evidence:

- ☉ Under this section, evidence can be given in any suit or proceeding about:
- ☉ The existence or nonexistence of every fact that is "in issue" in the case.
- ☉ Any other facts that are "relevant" as declared in the Act.
- ☉ No other facts can be presented as evidence, except as allowed by other provisions of the law.

2. Defining "Facts in Issue":

- ☉ "Facts in issue" are the essential facts that need to be proven or disproven for the case to be decided.
- ☉ These are the main disputed facts between the parties.

3. Limits on Admissibility:

- ☉ This section makes it clear that only facts that are "in issue" or "relevant" can be presented as evidence.
- ☉ It does not allow a party to present evidence of any other facts, unless permitted by other laws.

In essence, Section 5 sets the boundaries of what evidence can be presented in a trial. It restricts the admissibility of evidence to only those facts that are directly relevant to the disputed issues in the case. This ensures that the trial remains focused on the material facts and prevents the introduction of irrelevant or superfluous evidence. By defining the scope of admissible evidence, this section helps maintain the fairness and efficiency of the judicial process.

Question 4: Discuss the concept of res gestae as outlined in Section 6 of the Evidence Act, 1872. How does this concept influence the determination of relevant facts in legal proceedings?

The concept of "res gestae" as outlined in Section 6 of the Evidence Act, 1872 and how it influences the determination of relevant facts in legal proceedings.

Section 6 Relevancy of facts forming part of the same transaction:

1. Concept of Res Gestae:

- ☉ The term "res gestae" refers to events or statements that are so closely connected to the main incident or transaction in question that they form a part of the same overall event.

- ☯ Under Section 6, facts that are not directly "in issue" can still be considered relevant if they form part of the same transaction as the facts in issue.

2. Determining Relevance:

- ☯ According to this section, facts that are connected to the main incident or transaction, whether they occurred at the same time and place or at different times and places, can be considered relevant evidence.
- ☯ The key is that these connected facts must be so closely related that they can be seen as forming part of the same overall event or transaction.

3. Influence on Relevance:

- ☯ The concept of res gestae expands the scope of relevant facts beyond just the primary disputed issues in the case.
- ☯ It allows the court to consider surrounding circumstances and contextual facts that, while not directly in issue, help provide a more complete picture of the transaction or incident at the heart of the dispute.
- ☯ This ensures that the court has a fuller understanding of the overall events when determining the relevant facts and reaching a decision.

In summary, Section 6 introduces the principle of res gestae, which allows facts that are closely connected to the main incident or transaction to be considered relevant evidence, even if they are not directly in issue. This helps create a more comprehensive evidentiary record for the court to evaluate the case and reach a just determination.

Question 5: Evaluate the provisions concerning the admissibility of confessions under Sections 24 to 30 of the Evidence Act, 1872. What safeguards are provided to ensure that confessions are not obtained under force or coercion?

Sections 24 to 30 of the Evidence Act, 1872 deal with the admissibility of confessions in legal proceedings. These provisions establish several important safeguards to ensure that confessions are not obtained through force, coercion or improper means. Let's go through the key points:

1. Section 24 Confession due to inducement, threat or promise is irrelevant:

- ☯ This section states that a confession is irrelevant if it appears to the court that it was caused by any inducement, threat or promise from a person in authority.
- ☯ The idea is to prevent confessions obtained through improper means from being used as evidence.

2. Section 25 Confession to police officer is not admissible:

- ☯ This section categorically bars the use of any confession made to a police officer as evidence against the accused person.
- ☯ This is a strict rule aimed at preventing police from extracting confessions through coercive methods.

3. Section 26 Confession while in police custody is not admissible:

- ☛ Similarly, this section prohibits the use of any confession made by an accused person while in police custody, unless it was made in the immediate presence of a magistrate.
- ☛ This adds another layer of protection against confessions obtained under duress or undue influence.

4. Sections 27-30 Limited exceptions and safeguards:

- ☛ There are a few narrow exceptions where certain parts of a confession may be admissible.
- ☛ However, even in these cases, the courts apply strict standards to ensure the voluntariness and reliability of the confession.

In summary, Sections 24 to 30 of the Evidence Act establish robust safeguards against the admissibility of confessions obtained through improper means. The overarching principle is to prevent the use of coerced or involuntary confessions as evidence, in order to protect the rights of the accused and ensure the fairness of the judicial process.

Question 6: Discuss the role of expert opinions in legal proceedings as per Sections 45 and 46 of the Evidence Act, 1872. In what types of cases are expert opinions particularly crucial, and how do these sections guide their admissibility.

Sections 45 and 46 of the Evidence Act, 1872 deal with the admissibility and role of expert opinions in legal proceedings. Let's go through the key points:

Section 45 Opinion of experts:

1. Expert Witnesses:

- ☛ This section allows the court to consider the opinions of persons who are "specially skilled" in areas like foreign law, science, art, handwriting analysis, etc.
- ☛ Such persons are called "experts" and their opinions are considered relevant facts in the case.

2. Types of Expertise:

- ☛ Experts can provide opinions on a wide range of specialized topics, such as the cause of a person's death, the mental state of the accused, the authenticity of a document, and so on.
- ☛ Their expertise helps the court understand technical or complex issues that are beyond the normal knowledge of a layperson.

3. Admissibility of Expert Opinions:

- ☛ The court has the discretion to admit expert opinions as relevant evidence in the proceedings.
- ☛ However, the expert must have the necessary qualifications and the opinion must be within their area of expertise.

Section 46 Facts supporting or contradicting expert opinions:

1. Corroborating or Contradicting Experts:

- 🕒 This section allows the court to consider other facts that either support or contradict the opinions given by the expert witnesses.
- 🕒 These supporting or contradictory facts can also be treated as relevant evidence.

2. Importance in Technical Cases:

- 🕒 Expert opinions are particularly crucial in cases involving complex technical, scientific or specialized issues, such as medical, forensic, or financial matters.
- 🕒 The expert's knowledge and analysis can be vital in helping the court understand and evaluate the evidence properly.

In summary, Sections 45 and 46 empower the court to rely on the specialized knowledge and opinions of expert witnesses to aid in the adjudication of technical or complex issues in legal proceedings. These provisions ensure that the court has access to relevant expert input to arrive at a well informed and just decision.

Question 7: Analyze the rules governing the examination of witnesses under Sections 132 to 134 of the Evidence Act, 1872. How do these sections address issues related to selfincrimination, the examination of hostile witnesses, and the evaluation of the testimony of accomplices?

Sections 132 to 134 of the Evidence Act, 1872 address some important rules and principles governing the examination of witnesses in legal proceedings. Let's go through the key points:

1. Section 132 Witness not excused from answering on ground of self-incrimination:

- 🕒 This section states that a witness cannot refuse to answer a question on the grounds that the answer will incriminate or expose them to a penalty.
- 🕒 However, the witness's answer cannot be used against them in any criminal proceeding, except for a prosecution for giving false evidence.
- 🕒 This provision ensures that relevant evidence is not withheld due to concerns over self-incrimination.

2. Section 133 Accomplice as a competent witness:

- 🕒 This section establishes that an accomplice, i.e. a person involved in the commission of a crime, is a competent witness against the accused.
- 🕒 A conviction can be based solely on the uncorroborated testimony of an accomplice.
- 🕒 This allows the court to consider the testimony of accomplices, which can be crucial evidence in many criminal cases.

3. Section 134 No particular number of witnesses required:

- 🕒 This section clarifies that the court does not need any specific number of witnesses to prove a fact.

- ☉ The quality and credibility of the evidence, rather than the quantity of witnesses, is the key factor.
- ☉ This provides flexibility in the evaluation of witness testimony.

In summary, these sections:

- ☉ Allow the court to compel witnesses to provide relevant testimony, even if it may incriminate them.
- ☉ Permit the use of accomplice testimony, recognizing its potential importance as evidence.
- ☉ Avoid rigid requirements on the number of witnesses, focusing instead on the overall quality and credibility of the evidence.

These provisions aim to ensure that the court has access to all relevant testimony and evidence, while also maintaining safeguards against abuse, in order to reach a fair and just determination.

Question 8: Explain the general principles regarding the burden of proof as outlined in Sections 101 to 103 of the Evidence Act, 1872. Who bears the burden of proof in a legal proceeding, and how is this determined?

Sections 101 to 103 of the Evidence Act, 1872 establish the general principles regarding the burden of proof in legal proceedings. Let's go through the key points:

1. Section 101 Burden of proof:

- ☉ This section states that the burden of proof lies on the person who desires the court to give a judgment on any legal right or liability.
- ☉ The party asserting a fact must prove that the facts exist, in order to establish their legal claim or defense.

2. Section 102 Incidence of burden of proof:

- ☉ This section provides the general rule for determining who bears the burden of proof.
- ☉ The burden of proof lies on the party who would fail if no evidence was given on either side.
- ☉ In other words, the burden is on the party who asserts the affirmative of the issue.

3. Section 103 Burden as to particular fact:

- ☉ This section clarifies that the burden of proving any particular fact lies on the person who wishes the court to believe in its existence.
- ☉ The burden does not automatically shift just because a fact is peculiarly within the knowledge of one party.

In summary, the key principles are:

- ☉ The burden of proof is on the party who asserts a fact or claims a legal right.
- ☉ The burden lies on the party who would lose if no evidence was provided on either side.
- ☉ The burden of proving a particular fact is on the person who wants the court to believe that fact exists.

These provisions ensure that the burden of proof is allocated fairly between the parties, based on the nature of the case and the facts in issue. This helps maintain the balance and fairness of the judicial process.

Question 9: Discuss the principle of exclusion of oral evidence by documentary evidence as per Sections 91 and 92 of the Evidence Act, 1872. How do these sections limit the admissibility of oral evidence in the presence of written documents?

Sections 91 and 92 of the Evidence Act, 1872 establish the principle of exclusion of oral evidence by documentary evidence. These sections place significant restrictions on the admissibility of oral evidence in the presence of written documents. Let's go through the key points:

1. Section 91 Proof of terms of contracts, grants, and other dispositions of property:

- ☉ This section states that when the terms of a contract, grant, or other disposition of property have been reduced to a written document, no evidence shall be given to prove the terms of such transaction, except the document itself.
- ☉ The written document is considered the primary and best evidence of the transaction.

2. Exceptions:

- ☉ There are a few limited exceptions, such as when the writing is not required by law, or in cases of wills admitted to probate.
- ☉ But the general rule is that the written document prevails over any oral evidence of the terms.

3. Section 92 Exclusion of evidence of oral agreements:

- ☉ This section further reinforces the principle by prohibiting the admission of any oral agreement or statement to contradict, vary, add to, or subtract from the terms of a written document.
- ☉ The only exceptions are for proving the invalidity of the document, or the existence of a separate oral agreement that is not inconsistent with the written terms.

4. Purpose and Rationale:

- ☉ The underlying purpose is to ensure the reliability and finality of written transactions and agreements.
- ☉ Oral evidence is seen as less reliable and prone to error or manipulation, compared to the formality and permanence of a written document.

In summary, Sections 91 and 92 establish a strong presumption in favor of written evidence over oral testimony when it comes to the terms of legal transactions and agreements. This helps maintain the integrity of written records and prevents the distortion of contractual obligations through unreliable oral evidence.

Question 10: Explain the provisions of Section 59 of the Evidence Act, 1872 regarding the admissibility of oral evidence. What types of facts must be proved by oral evidence according to this section? Discuss the requirements for the proof of execution of documents as per Sections 67 and 68 of the Evidence Act, 1872.

Section 59 of the Evidence Act, 1872 deals with the admissibility of oral evidence, while Sections 67 and 68 address the requirements for proving the execution of documents.

1. Section 59 Proof of facts by oral evidence:

- ☛ This section states that all facts, except the contents of documents, may be proved by oral evidence.
- ☛ Oral evidence refers to the testimony of witnesses who have personal knowledge or perception of the facts.
- ☛ This provision allows for a wide range of facts to be proved through the direct testimony of witnesses.

2. Requirements for oral evidence:

- ☛ The oral evidence must be "direct", meaning the witness must testify about facts they have personally seen, heard, or perceived.
- ☛ Indirect or hearsay evidence is generally not admissible, unless it falls under certain exceptions.
- ☛ The court also has the discretion to require the production of physical evidence, if the oral testimony refers to the existence or condition of a material thing.

3. Sections 67 and 68 Proof of execution of documents:

- ☛ Section 67 requires that the signature or handwriting of the person alleged to have signed or written a document must be proved.
- ☛ Section 68 states that if a document is required by law to be attested, at least one attesting witness must be called to prove its execution, unless the document has been registered.
- ☛ These provisions ensure that the authenticity of important written documents is established through reliable evidence, either by proving the signature/handwriting or the attestation.

In summary, Section 59 allows for a wide range of facts to be proved through oral testimony, subject to the requirement of direct evidence. Sections 67 and 68 set specific standards for proving the execution of documents, emphasizing the need for reliable evidence to establish the authenticity of written instruments. These provisions help maintain the integrity of the judicial process by ensuring that both oral and documentary evidence meet the necessary evidentiary requirements.

Question 11: Define and discuss the difference between primary and secondary evidence as per the Evidence Act, 1872. What conditions must be met for secondary evidence to be admissible in court?

The Evidence Act, 1872 makes a clear distinction between primary and secondary evidence, as outlined in Sections 62 and 63.

Here's a more detailed comparison between primary and secondary evidence, highlighting 10 key differences as outlined in the Evidence Act, 1872:

Aspect	Primary Evidence (Section 62)	Secondary Evidence (Section 63)
Definition	The original document itself.	Copies or substitutes of the original document.
Form	The firsthand, original, and authentic version of the document.	Derivative or indirect forms, such as copies, extracts, or oral accounts.
Reliability	Considered the most reliable and trustworthy evidence.	Less reliable and considered inferior to primary evidence.
Requirement for Proof	No additional proof is needed as it is the best form of evidence.	Requires additional proof or explanation for its admissibility.
Admissibility	Always admissible in court without any conditions.	Admissible only under specific conditions, like the unavailability of primary evidence.
Examples	Original documents like a signed contract, original will, or original photograph.	Photocopies, certified copies, translations, or oral accounts of a document's content.
Use in Court	Preferred in court because it provides direct proof.	Used when primary evidence is not available, and the absence of the primary evidence is explained.
Requirement of Original	Required when it is possible to produce it.	Allowed when the original is lost, destroyed, or cannot be obtained by reasonable means.
Legal Presumption	Courts presume the accuracy and truthfulness of primary evidence.	Courts do not presume the accuracy of secondary evidence; it needs corroboration.
Section Reference	Defined under Section 62 of the Evidence Act, 1872.	Defined under Section 63 of the Evidence Act, 1872.

This table provides a comprehensive comparison, highlighting the differences between primary and secondary evidence in a straightforward manner.

1. Primary Evidence (Section 62):

- ☛ Primary evidence refers to the original document itself, produced for the inspection of the court.
- ☛ It is the best and most direct form of evidence of the contents of a document.
- ☛ Examples of primary evidence include the original contract, deed, or other written instrument.

2. Secondary Evidence (Section 63):

- ☛ Secondary evidence includes various forms of copies or reproductions of the original document.
- ☛ This includes certified copies, copies made by mechanical processes, copies compared with the original and oral accounts of the document's contents.

- ☛ Secondary evidence is generally considered less reliable than the original document.

Conditions for Admissibility of Secondary Evidence (Section 65):

Secondary evidence may be admitted in certain circumstances, such as:

- a) When the original is shown to be in the possession of the opposing party or out of reach of the court.
- b) When the existence, condition, or contents of the original have been admitted in writing by the opposing party.
- c) When the original has been destroyed, lost, or is not easily movable.
- d) When the original is a public document or one for which a certified copy is permitted.

In these cases, the court may allow secondary evidence to be presented, provided that proper notice has been given to the opposing party **(as per Section 66)**.

In summary, primary evidence is the original document, while secondary evidence consists of copies, reproductions, or oral accounts of the document's contents. The law places strict conditions on the admissibility of secondary evidence, recognizing that it is generally less reliable than the original. This ensures that the court has the best available evidence to consider in its deliberations.

Question 12: Define the term 'burden of proof' as per Section 101 of the Evidence Act, 1872. Who holds the burden of proof in a civil and a criminal case, and how does it affect the outcome of a trial?

Section 101 of the Evidence Act, 1872 defines the concept of 'burden of proof':

1. Burden of Proof (Section 101):

- ☛ The burden of proof lies on the person who desires the court to give a judgment on any legal right or liability.
- ☛ Whoever asserts a fact must prove that those facts exist in order to establish their legal claim or defense.
- ☛ If the party fails to prove the facts they have asserted, they will not succeed in their case.

2. Burden of Proof in Civil Cases:

- ☛ In civil cases, the burden of proof lies on the party who would fail if no evidence was given on either side.
- ☛ This is generally the party who is asserting a claim or making an allegation.
- ☛ For example, in a civil suit for breach of contract, the plaintiff bears the burden of proving the existence of the contract and its breach by the defendant.

3. Burden of Proof in Criminal Cases:

- ☛ In criminal cases, the burden of proof is on the prosecution to prove the guilt of the accused beyond a reasonable doubt.

- ☹ The accused does not have the burden to prove their innocence, as they are presumed innocent until proven guilty.
- ☹ The prosecution must establish all the essential elements of the offense through reliable and convincing evidence.

4. Impact on Trial Outcomes:

- ☹ The allocation of the burden of proof is crucial, as it determines which party must produce the evidence to establish their case.
- ☹ If the party with the burden of proof fails to meet the required standard of proof, they will lose the case, even if the opposing party presents no evidence at all.
- ☹ This ensures that the party making the assertion bears the risk of failing to prove their case.

In summary, the burden of proof is a fundamental principle that determines which party must establish the facts necessary to succeed in a civil or criminal trial. It plays a vital role in maintaining the fairness and integrity of the judicial process.

Question 13: Analyze the shifting of the burden of proof as described in Sections 102 to 104 of the Evidence Act, 1872. Provide examples of situations where the burden of proof may shift from one party to another during legal proceedings.

Sections 102 to 104 of the Evidence Act, 1872 address the concept of the shifting burden of proof during legal proceedings.

1. Section 102 General Rule on Burden of Proof:

- ☹ The burden of proof in a suit or proceeding lies on the party who would fail if no evidence was given on either side.
- ☹ This is the party who is making an assertion or claim.

2. Shifting of Burden of Proof (Sections 103 and 104):

- ☹ The burden of proof may shift from one party to another during the course of the proceedings.
- ☹ Section 103 states that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless a law provides otherwise.
- ☹ Section 104 explains that the burden of proving any fact necessary to make evidence admissible lies on the party who wishes to give such evidence.

3. Examples of Shifting Burden of Proof:

- ☹ In a criminal case, the prosecution bears the initial burden of proving the accused's guilt beyond a reasonable doubt. However, if the accused claims a defense, such as insanity or provocation, the burden may shift to the accused to prove the existence of those circumstances.
- ☹ In a civil case, if the plaintiff establishes a prima facie case, the burden may shift to the defendant to rebut the plaintiff's evidence or prove an affirmative defense.

- ☉ In a case where a party seeks to introduce secondary evidence of a lost document, the burden is on that party to first prove the loss or destruction of the original document before the secondary evidence can be admitted.
- ☉ If a party claims that a witness is incompetent to testify due to mental incapacity, the burden is on that party to prove the witness's incompetence.

The shifting of the burden of proof helps ensure a fair and balanced judicial process, as it allocates the responsibility for producing evidence to the party that is in the best position to do so. This dynamic approach to the burden of proof prevents one party from unfairly escaping their obligation to establish the facts necessary to support their case.

Question 14: Explain the competency of witnesses as outlined in Section 118 of the Evidence Act, 1872. Who is considered competent to testify, and what are the key considerations for determining a witness's competency?

Section 118 of the Evidence Act, 1872 outlines the competency of witnesses to testify in legal proceedings.

1. Competency of Witnesses (Section 118):

- ☉ As a general rule, all persons are considered competent to testify as witnesses, unless the court determines that they are prevented from understanding the questions or giving rational answers.

2. Factors Affecting Competency:

The court may find a witness incompetent due to factors such as:

- a) Tender years (young age)
- b) Extreme old age
- c) Disease, whether of body or mind
- d) Any other cause that prevents the witness from understanding or responding rationally to the questions

3. Explanation on Lunacy:

- ☉ The Act clarifies that a lunatic (person with mental illness) is not automatically incompetent to testify.
- ☉ The key consideration is whether the lunacy prevents the witness from understanding the questions and giving rational answers.

4. Competency of Testimony:

- ☉ If the court determines that a witness is competent, their testimony is considered admissible and can be considered as evidence.

- 🕒 The court will assess the weight and credibility of the witness's testimony based on various factors, such as their ability to perceive and recall events, their impartiality, and the consistency of their statements.

In summary, Section 118 establishes a broad presumption of competency for all witnesses, but allows the court to exclude testimony from those who, due to factors like age, mental state, or physical condition, are unable to understand the questions or provide rational answers. This ensures that the court has the best available evidence to consider in its decision-making process.

Question 15: Discuss the provisions under Sections 122 to 129 of the Evidence Act, 1872, regarding privileged communications. What types of communications are protected from being disclosed in court, and under what circumstances can these privileges be waived?

Sections 122 to 129 of the Evidence Act, 1872 deal with the concept of privileged communications, which are certain types of statements or information that are protected from being disclosed in legal proceedings.

1. Privileged Communications:

- 🕒 Section 122: Communications made during marriage A person who is or has been married cannot be compelled to disclose any communication made to them by their spouse during the marriage, unless the spouse consents or the communication is relevant in a proceeding between the spouses.
- 🕒 Section 123: Unpublished official records relating to affairs of state No one can give evidence derived from unpublished official records relating to affairs of state, except with the permission of the head of the relevant department.
- 🕒 Section 124: Official communications made in confidence A public officer cannot be compelled to disclose communications made to them in official confidence, if the public interest would suffer from the disclosure.
- 🕒 Section 125: Information about the commission of offences A magistrate, police officer, or revenue officer cannot be compelled to disclose the source of information about the commission of an offence.
- 🕒 Section 126: Communications with legal advisors (lawyers) Lawyers cannot disclose any communications made to them by their clients in the course of their professional employment, unless the communication was made in furtherance of an illegal purpose.
- 🕒 Section 127: Privilege extends to interpreters and clerks of lawyers.

2. Waiver of Privilege:

- 🕒 The privilege attached to these communications can be waived in certain circumstances:
- 🕒 For communications with lawyers (Section 128), the privilege is waived if the client gives evidence on their own behalf or calls the lawyer as a witness.
- 🕒 For communications during marriage (Section 122), the privilege is waived if both spouses consent to the disclosure.

The rationale behind these privileged communication rules is to encourage open and honest communication in certain relationships, such as between spouses, public officials, and lawyers and their clients. This promotes the proper administration of justice by ensuring that relevant information is not withheld from the court, while also protecting the confidentiality of sensitive communications.

Question 16: How can the credibility of a witness be challenged under the Evidence Act, 1872? Explain the methods allowed for impeaching a witness's reliability according to the Sections of the Evidence Act.

The Evidence Act, 1872 provides several methods for challenging the credibility or reliability of a witness's testimony. This process of impeaching a witness's credibility is outlined in Sections 155 and 146 of the Act.

1. Impeaching Witness Credibility (Section 155):

According to Section 155, the credit (credibility) of a witness can be impeached in the following ways:

- a) By evidence of persons who testify that they believe the witness to be unworthy of credit.
- b) By proof that the witness has been bribed or has accepted a corrupt inducement to give their evidence.
- c) By proof of previous statements made by the witness that are inconsistent with their current testimony.

2. Cross Examination to Impeach Credibility (Section 146):

Section 146 allows for questions to be asked during cross examination that tend:

- a) To test the witness's veracity (truthfulness)
- b) To discover the witness's identity and position in life
- c) To shake the witness's credit by injuring their character

3. Limitations on Impeachment:

- ☛ The court has discretion to decide whether a question aimed at impeaching credibility is proper and should be allowed.
- ☛ The court will consider factors such as the relevance of the impeaching evidence and whether it would seriously affect the witness's credibility on the matter they are testifying about.
- ☛ The court may also prevent questions that are indecent, scandalous, or intended merely to insult or annoy the witness.

4. Contradicting Witness Testimony:

- ☛ Section 153 generally prohibits the introduction of evidence to contradict a witness on collateral or irrelevant matters.

- ☹ However, there are exceptions, such as when a witness denies a previous conviction or makes a statement that is inconsistent with their impartiality.

By allowing for the impeachment of witness credibility, the Evidence Act ensures that the court can properly evaluate the reliability and truthfulness of testimony presented during legal proceedings. This helps the court reach fair and well informed decisions based on the most credible evidence available.

Question 17: How can a witness use documents or notes to help remember details during their testimony according to the Evidence Act, 1872?

The Evidence Act, 1872 allows witnesses to use documents or notes to refresh their memory during their testimony. The relevant provisions are contained in Sections 159 and 160 of the Act.

1. Refreshing Memory by Referring to Documents (Section 159):

- ☹ A witness may refresh their memory by referring to any writing made by them at the time of the transaction they are being questioned about or soon after, if the court considers it likely that the event was fresh in their memory at that time.
- ☹ The witness may also refer to a writing made by another person, if the witness read it and knew it to be correct when they read it.
- ☹ If the witness is allowed to refer to a document, the court may permit them to use a copy of the document, if the court is satisfied that there is a sufficient reason for not producing the original.
- ☹ Experts may also refresh their memory by referring to professional treatises.

2. Testifying Based on Recorded Facts (Section 160):

- ☹ A witness may testify to facts recorded in a document, even if they do not have a specific recollection of those facts, as long as they are sure the facts were correctly recorded in the document.
- ☹ This allows witnesses, such as bookkeepers, to testify about facts recorded in the regular course of business, without requiring them to have a personal memory of each transaction.

3. Right of Adverse Party:

- ☹ Section 161 provides that any document referred to by a witness for the purpose of refreshing their memory must be produced and shown to the adverse party, who may then cross-examine the witness on it.

The provisions allowing witnesses to refresh their memory and testify based on recorded facts help ensure that the court receives the most accurate and reliable testimony possible, even if the witness's personal recollection is not perfect. This supports the overall fairness and effectiveness of the judicial process.