

Section 1 of the Evidence Act, 1872:

- **Extent:** Applies to the **whole of Bangladesh**.
- **Applicable to all judicial proceedings** in or before any court, including Courts-martial.
- **Exclusions:**
 - **Courts-martial** under the Army Act, 1952, Naval Discipline Ordinance, 1961, or Air Force Act, 1953.
 - **Affidavits** presented to any court or officer.
 - **Proceedings before an arbitrator**.

Fact in Issue (Section 3)

The term "**fact in issue**" means any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature, or extent of any right, liability, or disability asserted or denied in any suit or proceeding necessarily follows.

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

Section 4 - Presumptions:

- **"May Presume":**
 - The court **may** presume a fact exists, but it is not required to do so. The court has the discretion to call for proof or treat the fact as established unless disproved.
- **"Shall Presume":**
 - The court **must** presume the fact as proved unless and until it is disproved. The presumption is stronger, placing a burden on the opposing party to disprove it.
- **"Conclusive Proof":**
 - When one fact is deemed **conclusive proof** of another, the court must regard the other fact as proved and will not allow evidence to be presented to disprove it. This leaves no room for rebuttal.

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

Explanation:

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

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

Concept of Res Gestae:

- **Res Gestae** refers to facts so closely connected with a fact in issue that they form part of the **same transaction**.
- These facts are considered **relevant** even if they occurred at different times or places, as long as they are part of the same sequence of events.

Influence on Determination of Relevant Facts:

- **Section 6** allows the admission of facts that are part of the **same transaction** as the fact in issue, even if those facts would otherwise be considered irrelevant.
- This concept broadens the scope of what can be considered relevant, allowing the court to consider the **entire context** of the event, rather than isolating individual facts.

Scenario-Based Explanation:

- Suppose **A** is accused of murdering **B**. During the incident, **A** was seen arguing with **B** right before the crime, and witnesses heard **A** threaten **B**. These events, even though separate from the actual act of murder, are part of the **same transaction** and can be admitted as evidence under **Section 6**. This helps the court understand the full sequence of events leading to the crime, thus influencing the determination of relevant facts.

Section 45 - Experts under the Evidence Act, 1872

Definition (Section 45): Experts are individuals with specialized skills in fields such as:

- Foreign law.
- Science, physical, forensic evidence, or digital records.
- Art.
- Identity verification (e.g., handwriting, fingerprints, palm impressions, typewriting, etc.).
- Usage of trade or technical terms.
- Animal identification.

Role of Experts: Their opinions assist courts in resolving complex technical or professional issues. Such opinions are considered **relevant facts**.

Key Provisions and Applications

1. **Section 45 - Expert Opinions:**
 - Relevant in matters like foreign law, science, forensic analysis, handwriting, or technical expertise.
 - Expert testimony is admissible as evidence.
2. **Section 45A - Forensic Experts:**
 - Restrictions: Experts need court approval and must share their reports with all parties.
 - Duty: Reports must be addressed to the court, not any party involved.
3. **Section 46 - Supporting or Contradicting Expert Opinions:**
 - Facts that corroborate or oppose expert opinions are also relevant as evidence.

Illustrations of Expert Opinions

1. **Cause of Death:** Opinions on symptoms caused by poison.
2. **Mental State:** Insights into unsoundness of mind and its legal implications.
3. **Handwriting/Document Verification:** Expert comparisons to establish authorship.

Section 47 - Handwriting Identification

1. **Relevance:** Opinions of individuals familiar with another's handwriting help establish authenticity.
2. **Acquaintance with Handwriting:** Witnesses who have seen the person write or dealt with their documents in business can provide opinions.
3. **Illustration:** Example: Merchants (B, C, D) familiar with A's handwriting can offer reliable testimony on whether a letter was written by A.

Cases Requiring Expert Opinions

- **Medical Cases:** Determining injury or death causes, negligence, or poisoning.
- **Forensic Evidence:** DNA, fingerprints, ballistics linking the accused to a crime.
- **Handwriting Analysis:** Disputed documents requiring verification.
- **Technical Cases:** Engineering, IT, or accounting disputes needing expertise.

This merged and concise explanation should streamline your understanding! Let me know if further refinements are needed.

Section 59 - Admissibility of Oral Evidence:

- **Provisions:**
 - **Section 59** states that **all facts**, except the contents of documents or electronic records, **may be proved by oral evidence**.
 - This means that oral evidence is admissible to prove facts that are not documented or recorded in a written or electronic form.
- **Types of Facts:**
 - **Oral evidence** must be used to prove any facts that are **not documented**, such as:
 - Actions, events, or occurrences that took place but were not recorded.
 - Verbal agreements or conversations that have no written record.

Sections 67 and 68 - Proof of Execution of Documents:

- **Section 67 - Proof of Signature and Handwriting of Person Alleged to Have Signed or Written Document Produced:**
 - **Execution of a document** must be proved by showing that the document was signed or written by the person alleged to have done so.
 - If a party wishes to use a document as evidence, they must provide proof that it was indeed executed by the person whose signature it bears.
- **Section 68 - Proof of Execution of Document Required by Law to Be Attested:**
 - For documents that **must be attested by law** (e.g., wills), it is not enough to prove the signature alone.
 - The document must be **proved by at least one attesting witness** if they are alive and subject to the process of the court.
 - If no attesting witness is available, other forms of proof must be considered, as the document cannot be admitted based solely on the signature.

Scenario-Based Explanation:

- **Section 59:** If **A** verbally agrees to sell a piece of land to **B**, and there is no written contract, this agreement must be proved by oral evidence, as there is no document to rely on.
- **Section 67:** If **C** presents a promissory note claiming that **D** owes money, **C** must prove that **D** signed the note.
- **Section 68:** If **E** presents a will in court, **E** must call an attesting witness to prove the will was duly executed by the deceased. If no such witness is available, other legal methods of proof must be considered.

Sections 61 to 66 - Primary and Secondary Evidence

Definitions:

- **Primary Evidence** (Section 62):
 - **Primary evidence** is the **original document** itself that is presented for inspection in court. It is the best and most reliable form of evidence since it directly represents the original content without any alterations.
 - Example: The actual signed contract between two parties.

- **Secondary Evidence** (Section 63):
 - **Secondary evidence** refers to copies or substitutes of the original document. This includes certified copies, photocopies, or even oral accounts of the contents of a document.
 - Example: A photocopy of a signed contract or a witness describing the content of a document they have seen.

Difference Between Primary and Secondary Evidence:

- **Primary Evidence:**
 - **Direct** and **original**.
 - Preferred in court as it directly reflects the original content.
 - Always admissible when available.
- **Secondary Evidence:**
 - **Indirect** and used as a substitute for the original.
 - Less reliable than primary evidence and only admissible under certain conditions.
 - Requires justification for why primary evidence cannot be produced.

Conditions for Admissibility of Secondary Evidence (Section 65):

Secondary evidence is admissible in the following situations:

1. **When the original is lost or destroyed:**
 - If the original document is lost or destroyed and not due to the fault of the party, secondary evidence can be used.
2. **When the original is in possession of the opposing party:**
 - If the original is in possession of the party against whom the document is to be proved, and they do not produce it despite notice, secondary evidence can be used.
3. **When the original is in a foreign country:**
 - If the original document is situated in a location outside of the jurisdiction of the court, and it is not possible to produce it, secondary evidence may be used.
4. **When the document is public or a certified copy is allowed:**
 - If the document is a public document, or the law allows a certified copy to be given, secondary evidence is admissible.
5. **When the original consists of numerous accounts or other documents:**
 - If the original document consists of numerous records, and it would be inconvenient to produce them, secondary evidence in the form of summaries or copies may be used.

Scenario-Based Explanation:

- **Primary Evidence:** In a case involving a disputed property sale, the original deed is presented in court as primary evidence.
- **Secondary Evidence:** If the original deed is lost in a fire, the party may present a certified copy or a reliable photocopy as secondary evidence, provided they can prove the original's unavailability.

Sections 91 and 92 - Exclusion of Oral Evidence by Documentary Evidence

- **Section 91 - Evidence of Terms of Contracts, Grants, and Other Dispositions of Property Reduced to Form of Document:**
 - When the terms of a contract, grant, or any other disposition of property are **required by law** to be in writing, no evidence can be given of those terms except the document itself (or secondary evidence of its contents).
 - This means that if a written document exists that records the terms of an agreement, oral evidence cannot be used to contradict, vary, add to, or subtract from the written terms.
- **Section 92 - Exclusion of Evidence of Oral Agreement:**
 - When the terms of any contract, grant, or other disposition of property have been reduced to the form of a document, and the document itself is not ambiguous, no evidence of any oral agreement or statement shall be admitted to contradict, vary, add to, or subtract from its terms.
 - However, there are exceptions where oral evidence may be admitted:
 1. **Subsequent oral agreements** that modify the written terms.
 2. **Collateral agreements** that do not contradict or alter the written document.
 3. **Condition precedent** to the formation of the contract.
 4. **Void or voidable documents** where oral evidence can show the document is invalid.
 5. **Incoherent or ambiguous language** in the document that requires clarification.

Limitation on the Admissibility of Oral Evidence:

- **Primary Rule:** Sections 91 and 92 establish that when a written document exists to represent the terms of a legal agreement, **oral evidence** cannot be introduced to change or dispute the written terms.
- **Limitation:** These sections **limit the admissibility** of oral evidence to prevent parties from contradicting or modifying a written agreement with oral statements, thus upholding the integrity and finality of written documents.

Scenario-Based Explanation:

- If **A** and **B** enter into a written contract where **A** agrees to sell a house to **B** for a specified amount, and both parties sign the document, **Section 91** prevents either party from introducing oral evidence to say that the agreed price was different from what is written. Under **Section 92**, **B** cannot later claim that there was an oral agreement to include the furniture in the sale if the written contract does not mention it, unless one of the exceptions (e.g., a collateral agreement) applies.

Section 101 - Burden of Proof

1. 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?
2. 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?

Definition:

Section 101 states that the **burden of proof** lies on the party who asserts the existence of a fact. This means that the person who desires the court to give judgment based on a fact they claim must provide evidence to prove that fact.

Determination of Burden of Proof in Civil and Criminal Cases:

- **Civil Cases:**
 - The **plaintiff** (the person bringing the case) generally holds the burden of proof.
 - The plaintiff must prove their case by a **preponderance of the evidence** (i.e., it is more likely than not that their claims are true).

- If the plaintiff fails to meet this burden, the case is decided in favor of the defendant.
- **Criminal Cases:**
 - The **prosecution** (the state or the party bringing the charge) holds the burden of proof.
 - The prosecution must prove the defendant's guilt **beyond a reasonable doubt**. This is a much higher standard than in civil cases because of the severe consequences of a criminal conviction.
 - If the prosecution fails to meet this burden, the defendant must be acquitted.

Impact on the Outcome of a Trial:

- The **burden of proof** directly affects the outcome of a trial. In civil cases, if the plaintiff cannot prove their case by a preponderance of the evidence, they lose. In criminal cases, if the prosecution cannot prove the defendant's guilt beyond a reasonable doubt, the defendant is acquitted. This ensures that only well-supported claims lead to legal consequences, protecting the rights of the parties involved.

Sections 102 to 104 - Shifting of the Burden of Proof

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

Analysis of Shifting Burden of Proof:

- **Section 102 - On Whom the Burden of Proof Lies:**
 - This section establishes that the burden of proof lies on the party that would fail if no evidence were given by either side. Typically, this is the party making the claim.
- **Section 103 - Burden of Proof as to Particular Fact:**
 - If a party asserts a specific fact that is not presumed by law, the burden to prove that fact lies on the party making the assertion.
- **Section 104 - Burden of Proof as to Proving Facts to be Proved to Make Evidence Admissible:**
 - When a party seeks to introduce evidence that requires the proof of some preliminary facts, the burden of proving those preliminary facts lies on that party.

Situations Where the Burden of Proof May Shift:

1. Initial Burden on Plaintiff or Prosecution:

- In a civil case, the **plaintiff** initially bears the burden of proving their claim.
- In a criminal case, the **prosecution** initially bears the burden of proving the defendant's guilt beyond a reasonable doubt.

2. Shifting to the Defendant:

○ Civil Case Example:

- If the plaintiff in a contract dispute proves the existence of a contract and a breach by the defendant, the burden may then shift to the **defendant** to prove a defense, such as **fraud** or **duress**.

○ Criminal Case Example:

- If the prosecution presents evidence showing that the defendant was present at the crime scene, the burden may shift to the **defendant** to provide an **alibi** or to prove **insanity** as a defense.

3. Specific Situations - Section 103:

- If the **defendant** in a criminal case claims **self-defense**, the burden shifts to them to prove that they were justified in using force under the circumstances.

4. Admissibility of Evidence - Section 104:

- If a party wishes to introduce a piece of evidence that is contingent on proving a preliminary fact (e.g., establishing the chain of custody for a piece of evidence), the burden lies on that party to prove the preliminary fact to make the evidence admissible.

Scenario-Based Explanation:

- **Example 1 - Civil Case:** **A** sues **B** for breach of contract. **A** proves the existence of the contract and the breach. The burden then shifts to **B** to prove that the contract was void due to fraud or another reason.
- **Example 2 - Criminal Case:** **C** is charged with theft. The prosecution proves that **C** was at the scene of the crime. The burden then shifts to **C** to prove an alibi, showing that **C** was elsewhere at the time.

Section 118 - Who May Testify

1. 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?
2. Who is competent to give evidence to court?

Competency to Give Evidence (Section 118)

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

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

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

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

Section 119: Competency of Witnesses Who Cannot Speak

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

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

Sections 122 to 129 - Privileged Communications

Q. 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?

Types of Privileged Communications:

1. **Section 122 - Communications During Marriage:**

- **Communications between spouses** during marriage are privileged and cannot be disclosed in court without the consent of the person who made the communication.
- **Exceptions:**
 - This privilege does not apply in cases where one spouse is prosecuted for a crime committed against the other or their children.

2. **Section 123 - Evidence as to Affairs of State:**

- Communications relating to the **affairs of state** are protected, and a public officer cannot be compelled to disclose such information.
- **Exceptions:**
 - Disclosure may occur if the head of the department consents or if the court determines that the evidence is necessary for the justice of the case.

3. **Section 124 - Official Communications:**

- Public officers are not compelled to disclose official communications if it would be against the public interest.
- **Exceptions:**
 - The court has the authority to decide whether the disclosure is necessary for the administration of justice.

4. **Section 125 - Information as to Commission of Offences:**

- No magistrate or police officer is bound to disclose the source of information about the commission of an offense if revealing the source would jeopardize the informant's safety or public interest.
- **Exceptions:**
 - The court may require disclosure if it is necessary to prevent a miscarriage of justice.

5. **Section 126 - Professional Communications:**

- Communications between a **client and their legal advisor** are privileged and cannot be disclosed without the client's express consent.
- **Exceptions:**
 - This privilege does not apply to communications made in furtherance of an illegal purpose or when the legal advisor becomes a witness against the client.

6. **Section 127 - Privilege Extends to Interpreters and Clerks:**

- The privilege under **Section 126** extends to interpreters, clerks, and other staff employed by the legal advisor who might have access to privileged communications.
- 7. **Section 128 - Waiver of Privilege:**
 - If a client voluntarily discloses a privileged communication, they **waive** the privilege, allowing the legal advisor to be compelled to disclose the remaining related communications.
- 8. **Section 129 - Confidential Communications with Legal Advisors:**
 - A client cannot be compelled to disclose confidential communications with their legal advisor unless the client voluntarily opens the subject matter of the communication during the trial.

Circumstances for Waiving Privileges:

- **Voluntary Disclosure:**
 - Privileges can be **waived** if the person entitled to the privilege voluntarily discloses the communication or consents to its disclosure.
- **Furtherance of Illegal Purpose:**
 - Privileges under **Section 126** (Professional Communications) do not apply if the communication is made in furtherance of a crime or fraud.
- **Court's Discretion:**
 - In certain cases, such as under **Sections 123 and 124**, the court may compel disclosure if it deems the information crucial for the administration of justice.

Sections 132 to 134 - Examination of Witnesses

Section 154 - Question by Party to His Own Witness

Analysis of Rules Governing the Examination of Witnesses:

- **Section 132 - Witness Not Excused from Answering on Ground that Answer Will Criminate:**
 - A witness is **not excused** from answering questions that might incriminate them. However, **protection** is provided:
 - No witness is liable to be prosecuted or subjected to any penalty for any answer given, except for perjury.

- This section compels witnesses to testify fully, balancing this with protection against self-incrimination.
- **Section 133 - Accomplice:**
 - The testimony of an **accomplice** is **admissible** but typically requires caution:
 - An accomplice's testimony can lead to conviction, but it is generally viewed with suspicion unless corroborated by additional evidence.
- **Section 134 - Number of Witnesses:**
 - There is **no minimum number** of witnesses required to prove a fact:
 - The court may rely on a single witness if their testimony is credible, emphasizing the quality of evidence over quantity.
- **Section 154 - Hostile Witness:**
 - The court may, at its discretion, permit the party calling a witness to cross-examine them if they become **hostile** (i.e., they provide testimony unfavorable to the party who called them):
 - This allows the party to challenge the credibility of their own witness and seek the truth through rigorous examination.

Addressing Issues:

- **Self-Incrimination:**
 - **Section 132** mandates that witnesses answer all questions, even if incriminating, while providing immunity from prosecution for those specific answers (except for perjury).
- **Hostile Witnesses:**
 - **Section 154** addresses situations where a witness becomes hostile. The party who called the witness may cross-examine them to challenge inconsistencies or unfavorable testimony, ensuring the witness's credibility is thoroughly tested.
- **Testimony of Accomplices:**
 - **Section 133** permits the testimony of an accomplice but advises courts to seek corroboration due to the potential unreliability of such testimony, ensuring that convictions are not based solely on uncorroborated accomplice evidence.

Sections 138, 140, 146, 148, and 155 - Challenging the Credibility of a Witness

Q. 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.

Methods for Challenging the Credibility of a Witness:

1. Cross-Examination (Section 138):

- After a witness has been examined by the party who called them (examination-in-chief), the opposing party has the right to **cross-examine** the witness.
- Cross-examination is the primary method for challenging a witness's credibility, allowing the opposing party to question the witness on matters that may discredit their testimony or show inconsistencies.

2. Questioning the Witness's Character (Sections 140, 146, 148):

- **Section 140** allows for the cross-examination of witnesses who are parties to the suit or proceeding to challenge their credibility.
- **Section 146** permits questions during cross-examination that:
 1. Test the witness's **veracity**.
 2. Discover the witness's **position in life**.
 3. Shake the witness's **credit** by exposing potential biases, prejudices, or other relevant factors.
- **Section 148** allows the court to decide whether questions intended to challenge the witness's character are proper, especially if they aim to test the witness's credibility on matters that are not directly related to the facts in issue.

3. Contradicting the Witness (Section 155):

- **Section 155** provides specific methods for impeaching a witness's credibility:
 1. **Contradictory Statements**: Proving that the witness has made **prior statements** that contradict their current testimony.
 2. **Bad Character**: Proving that the witness is of **bad character** generally or has committed a crime, provided that character is directly relevant to the credibility of the testimony (e.g., a history of dishonesty).
 3. **Biased Witness**: Showing that the witness has a **bias** or relationship with the parties involved, which could influence their testimony.

4. Producing Evidence of Prior Inconsistent Statements (Section 145):

- Under **Section 145**, a witness can be confronted with their **previous statements** to highlight inconsistencies with their current testimony. If the witness denies making such statements, the opposing party can introduce evidence to prove the contradiction.

Scenario-Based Explanation:

- **Example 1:** **A** testifies in court, claiming that they saw **B** commit a crime. During cross-examination under **Section 138**, **B**'s lawyer questions **A** about a prior statement where **A** said they were unsure of the perpetrator's identity. This contradiction can significantly undermine **A**'s credibility.
- **Example 2:** **C** is a witness in a fraud case. During cross-examination, **C** is asked under **Section 146** about a previous conviction for perjury, which directly impacts **C**'s credibility by suggesting a tendency to lie under oath.
- **Example 3:** **D** testifies on behalf of **E** in a lawsuit. The opposing party brings evidence under **Section 155** showing that **D** and **E** are close friends, suggesting a possible bias in **D**'s testimony.

Sections 159 and 160 - Refreshing Memory

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

Use of Documents or Notes to Refresh Memory:

1. **Section 159 - Refreshing Memory:**
 - A witness can **refresh their memory** by referring to any writing or document while giving testimony.
 - The document can be one that the witness made or verified at the time of the event or shortly after when the facts were still fresh.
 - The witness can use these documents to help ensure the accuracy of their testimony.
2. **Section 160 - Testimony Based on Recollection After Referring to Documents:**
 - After refreshing their memory, if the witness can recall the facts, they may testify without further reference to the document.
 - If the witness still cannot recall the details, they may read directly from the document, which must then be produced as evidence.

Scenario-Based Explanation:

- **Example:** **A**, a clerk, is testifying about financial transactions from two years ago. **A** can use the ledger book from that time to refresh their memory. If **A** recalls the details after looking at the ledger, they can testify from memory. If not, **A** can read from the ledger, and the ledger will need to be submitted as evidence.