

SET NO- 01

Explain the relevance of facts

- ✓ ***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.

SET NO- 02

Who is competent to give evidence in court?

Based on the sections provided, here's an easy explanation:

1. **Section 118 – General Competence to Testify:**

- **All persons** are competent to give evidence in court unless they cannot:
 - **Understand the questions** due to their **age, disease**, or any other cause.
 - **Give rational answers** because of similar reasons.
- **Lunatics** are also competent to testify, but only if their condition allows them to understand questions and give logical answers.

2. **Section 119 – Witnesses Who Cannot Speak:**

- A witness who is **unable to speak** can give evidence by:
 - **Writing** or making **signs** in court.
- This will be treated as **oral evidence**.

3. **Section 120 – Parties in Civil and Criminal Proceedings:**

- In **civil cases**, the parties involved and their **husband or wife** are competent to testify.
- In **criminal cases**, the accused person's **husband or wife** is also a competent witness.

Conclusion:

Under **Section 118, 119, and 120**, all persons, including those with disabilities or relations to the parties involved, are considered **competent witnesses** unless they are unable to understand questions or provide rational answers due to certain conditions.

Is it Lawful to punish on the basis of uncorroborated evidence?

Yes, it is **lawful** to punish someone based on **uncorroborated evidence**, but it comes with caution.

Explanation:

According to **Section 133 of the Indian Evidence Act**, an **accomplice** is allowed to be a witness against an accused person. A court can even convict someone based only on the testimony of that accomplice, **without any additional or supporting evidence** (uncorroborated evidence).

However, **Section 114(b)** adds a caution. It says the court should be careful when relying on the testimony of an accomplice. The court may assume that an accomplice might not be trustworthy unless there is **some other supporting evidence** (corroboration).

To summarize:

- **Yes, it's lawful:** A conviction based on the **sole testimony** of an accomplice is legally allowed (Section 133).
- **But courts should be cautious:** Courts are advised to be careful and prefer supporting evidence when deciding based on an accomplice's testimony (Section 114(b)).

In practice, while it's lawful, most courts prefer to have some supporting evidence to make sure the conviction is fair.

Another

Let's dive deeper into the legal principles from **Section 133** and **Section 114(b)** of the Indian Evidence Act and how they work together regarding the use of **uncorroborated evidence** (evidence without independent confirmation).

1. Section 133 – Competency of an Accomplice as a Witness:

- **What it says:** An accomplice is a competent witness and can give testimony against the accused. A conviction is not automatically illegal just because it is based on the uncorroborated testimony of that accomplice.
 - **Key Point:** This section means that courts **can** legally convict a person solely on the testimony of an accomplice, even if there is no other evidence to support it.
- **Example:** Suppose two people commit a robbery together, and one of them testifies against the other in court. If the accomplice's testimony is convincing, the court can convict the other person **even if no other evidence** (like witness statements or physical proof) supports the testimony.

2. Section 114(b) – Court's Discretion in Presuming Facts:

- **What it says:** The court may assume that an accomplice's testimony is not reliable unless corroborated by other evidence. This is not a strict rule but a guideline. It means the court should be **careful** when considering the testimony of an accomplice and should **prefer** to have additional evidence to support it.
- **Key Point:** Section 114(b) suggests that while **legally valid**, the court should be cautious about convicting based solely on an accomplice's testimony. The reason is that accomplices may have personal motives, like getting a lighter sentence or avoiding punishment by blaming someone else.

Practical Application – How These Sections Work Together:

- **Legal Authority (Section 133):** The court can lawfully convict someone based on the uncorroborated testimony of an accomplice.
- **Caution (Section 114(b)):** The court should, however, look for additional evidence before relying solely on an accomplice's testimony. It's a **guideline**, not a requirement, so if there is no corroboration but the testimony seems trustworthy, the court can still convict.

Why the Law Allows This:

- **Accomplices are often crucial witnesses:** In many crimes (like conspiracy, robbery, or organized crime), accomplices are the ones who know the full story because they participated. Without their testimony, many cases might never result in a conviction.
- **Judicial discretion:** While the law gives the court the power to convict on uncorroborated evidence, it also gives the court the **discretion** to decide whether the accomplice is trustworthy. Courts can consider the behavior, circumstances, and motivations of the accomplice.

Example Case:

Suppose two people (A and B) are involved in a murder. B turns on A and agrees to testify in court. B's testimony alone (even without physical evidence or other witnesses) can be enough to convict A. But, under **Section 114(b)**, the judge might look for other signs—like whether B's testimony matches known facts or if B had a reason to lie. Even without this, the court can still convict A based on B's testimony alone.

Case Law:

Indian courts have recognized the possibility of convicting based solely on an accomplice's testimony but prefer corroboration to ensure fairness. Courts often look for corroborative evidence in **material particulars**—key facts that support the accomplice's story.

Conclusion:

- **Yes, it's lawful** to punish based on uncorroborated evidence under **Section 133**, but courts are generally cautious and prefer corroborating evidence, as suggested in **Section 114(b)**.
- Courts need to balance the legal allowance with the risk of wrongful conviction by critically assessing the reliability of the accomplice's testimony.

In practice, many convictions based purely on uncorroborated accomplice testimony are rare, as courts typically look for some supporting evidence.

Is the evidence of an accomplice admissible against a co-accused?

Yes, the evidence of an accomplice is admissible against a **co-accused**, but it should be used with caution.

Explanation:

1. **Section 30 – Confession by One Accused Affecting Another:**
 - If **more than one person** is being tried together for the **same offence**, and **one person confesses** to the crime, that confession can be considered by the court **not**

only against the person making the confession but also against the co-accused.

- **Example:** If two people are on trial for robbery, and one of them confesses, the court can take that confession into account against both the person who confessed and the other person involved.

However, courts are careful about using such confessions against a co-accused. The confession **alone** is not enough to convict the co-accused and should be treated as supporting evidence, not direct proof.

2. Section 114(b) – Caution on Accomplice’s Testimony:

- This section advises the court to assume that an accomplice is **unworthy of credit** unless their testimony is corroborated by other evidence. This is particularly important when an accomplice's testimony is used against a co-accused.
- **Key Point:** While the court can consider the confession or testimony of one accused person (or accomplice) against another, it should **prefer supporting evidence** to ensure fairness.

3. Section 133 – Accomplice as a Competent Witness:

- An accomplice is a **competent witness** against an accused person. A conviction can be based on the accomplice’s testimony, **even if there is no corroborating evidence** (uncorroborated testimony).
- **However**, when combined with Section 114(b), courts usually prefer to have **some supporting evidence** before convicting based on an accomplice’s testimony, especially when that testimony is being used against a co-accused.

Conclusion:

- **Yes**, the evidence of an accomplice (including a confession or testimony) is admissible against a **co-accused** under **Section 30** of the Indian Evidence Act. However, the court generally treats such evidence with caution and prefers corroboration, as suggested by **Section 114(b)**.
- **Section 133** allows for a conviction based solely on an accomplice's testimony, but courts are careful in using this evidence, especially against a co-accused, to avoid wrongful convictions.

In practice, courts rarely rely solely on an accomplice’s uncorroborated evidence to convict a co-accused without additional supporting facts.

SET NO-03

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.
- ✓ **Distinguish between English & Bangladesh law regarding dying declaration. Section 32(1)**
- ✓ Here's a comparison of the laws regarding dying declarations under English law and the Bangladesh Evidence Act of 1872, specifically focusing on Section 32(1):

Aspect	Bangladesh Law (Evidence Act, 1872)	English Law
Definition	A statement made by a person about the cause or circumstances of their death when they believe death is imminent.	A statement made by a person under the belief of impending death concerning the cause of death.
Section	Section 32(1) of the Bangladesh Evidence Act, 1872.	Common law principles and statutory provisions such as the Criminal Justice Act 2003.
Admissibility	Admissible without corroboration if the declarer dies.	Generally admissible, but the credibility and circumstances are critically assessed.
Hearsay Rule	Considered an exception to the hearsay rule when the declarer is deceased.	Historically an exception to hearsay; modern rules allow more flexibility in admitting hearsay.
Corroboration	No requirement for corroboration, but courts prefer corroborative evidence to support reliability.	Corroboration is preferred; judges often advise juries to seek supporting evidence.
Belief of Impending Death	Declarer must believe death is imminent, though not required to have lost all hope of recovery.	Declarer must believe death is imminent and inevitable.
Use as Sole Evidence	Can be used as the sole basis for conviction if found credible and voluntary.	Can be significant but typically requires additional supporting evidence to be reliable.
Evaluation Criteria	Courts evaluate the mental state, consistency, and voluntariness of the statement.	Courts assess the circumstances, declarer's state of mind, and any potential influence on the statement.

- ✓ In both Bangladesh and English law, dying declarations are significant pieces of evidence due to the assumption of truthfulness attributed to a person's last words. However, the specific requirements and considerations, such as the belief in imminent death and the need for corroboration, vary slightly between the two legal systems. Bangladesh law

allows for a more straightforward admission of such declarations without the strict need for corroboration, while English law places a greater emphasis on additional supporting evidence.

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.

If the declarer survived what will be the impact of this declaration.

Under the Bangladesh Evidence Act of 1872, if the person who made a dying declaration survives, the statement does not retain the special status of a dying declaration. Instead, it becomes a regular statement, subject to the rules of hearsay and the need for cross-examination.

Impact of Survival on the Declaration

Loss of Special Status:

A dying declaration is only considered as such when the person making it has passed away. If the declarer survives, it is no longer treated with the presumption of truthfulness that applies to a dying declaration.

Hearsay Rule:

If the declarer survives, the statement is treated as hearsay, which means it cannot be used as evidence in court unless it falls under another exception to the hearsay rule. Hearsay is generally inadmissible because the person who made the statement is available to testify and can be cross-examined.

Witness Testimony:

If the declarer survives, they can be called as a witness in court. They can then provide direct testimony about the events they described in the statement, allowing for cross-examination and evaluation of their credibility.

Impact on the Case:

The statement made by the survivor may still be useful for investigation or as prior consistent or inconsistent statements to challenge or support the declarer's credibility during their testimony.

The declarer's oral testimony can be more thoroughly scrutinized and tested in court compared to a dying declaration, which cannot be cross-examined.

Conclusion

If the person who made a dying declaration survives, the statement loses its status as a dying declaration and must be evaluated like any other testimony. This allows the legal process to properly examine the credibility and accuracy of the statement through direct testimony and cross-examination in court.

SET NO-04

01. What is judicial, extra-judicial and retracted confession?

. What is judicial, extra Judicial & retracted confession?

Under the Bangladesh Evidence Act of 1872, confessions are important in criminal proceedings and can be classified into different types based on where and how they are made. Here is an explanation of judicial, extra-judicial, and retracted confessions:

Judicial Confession

Definition: A judicial confession is a statement made by an accused person admitting guilt in front of a magistrate or in court during legal proceedings.

Key Features:

- ✓ **Made in Court:** Judicial confessions are made in a court setting, ensuring that they are recorded as part of the legal proceedings.
- ✓ **Formality and Record:** These confessions are formal and are documented by the court or magistrate.
- ✓ **Voluntariness:** The court ensures that the confession is made voluntarily, without coercion or undue influence.
- ✓ **Admissibility:** Judicial confessions are admissible as evidence against the accused because they are made under legal supervision.

Extra-Judicial Confession

Definition: An extra-judicial confession is a statement made by an accused person admitting guilt to someone other than a magistrate or judge, such as a friend, family member, or police officer.

Key Features:

- ✓ Made Outside Court: These confessions are made outside the formal court setting, often informally.
- ✓ Admissibility: While admissible, extra-judicial confessions are less reliable than judicial confessions and require careful scrutiny by the court.
- ✓ Corroboration: Courts often look for corroborative evidence to support the credibility of extra-judicial confessions.

Retracted Confession

Definition: A retracted confession is a statement where an accused person initially confesses to a crime but later withdraws or denies the confession.

Key Features:

- ✓ Initial Admission: The accused first admits to the crime.
- ✓ Subsequent Denial: The accused later denies the confession, claiming it was made involuntarily or under duress.
- ✓ Admissibility and Weight: Retracted confessions are admissible but treated with caution. Courts assess the circumstances and reasons for retraction and seek corroboration before relying on such confessions for conviction.

Conclusion

- ✓ Judicial Confession: Made in court, formal, and admissible with high reliability.
- ✓ Extra-Judicial Confession: Made outside court, requires corroboration and careful scrutiny.
- ✓ Retracted Confession: Initially admitted then denied, admissible but treated with caution and requires corroboration for conviction.

Understanding these types of confessions helps in assessing their admissibility and reliability in legal proceedings under the Bangladesh Evidence Act of 1872.

02. When is a confession relevant or irrelevant?

From the sections you've shared, here's an easy breakdown of when a confession is **relevant** and when it is **irrelevant**:

1. Section 24 – Confession Irrelevant if Induced by Threat, Promise, or Inducement:

- **Confession is irrelevant if:**
 - It was made under **inducement, threat, or promise** from a person in authority.
 - The confession is influenced by the accused believing that making the confession will **give them an advantage** or help them **avoid punishment**.

Example: If a police officer promises that confessing will lead to a lighter sentence, that confession cannot be used in court because it wasn't made freely.

2. Section 25 – Confession Made to a Police Officer is Irrelevant:

- **Confession is irrelevant if:**
 - It is made to a **police officer**.

Example: If an accused person confesses to the police, that confession cannot be used in court against them.

3. Section 26 – Confession While in Police Custody is Irrelevant:

- **Confession is irrelevant if:**
 - It is made while the person is in **police custody**, unless it is made in the **presence of a Magistrate**.

Explanation: Even if the accused confesses while being held by the police, this confession can't be used unless a Magistrate is present when the confession is made.

4. Section 27 – Confession in Custody Can Be Relevant for Facts Discovered:

- **Confession is relevant if:**
 - The confession leads to the discovery of **new facts**, like the location of stolen goods or a weapon.

Example: If an accused confesses to the location of a murder weapon while in police custody, that specific part of the confession (about the location) can be used, even though the whole confession cannot.

5. Section 28 – Confession Becomes Relevant if Threat or Inducement is Removed:

- **Confession is relevant if:**
 - The initial **threat, promise, or inducement** that made the confession irrelevant has been **fully removed**, and the court believes the confession is now voluntary.

Example: If the police had earlier promised a lighter sentence, but later the accused confesses freely after realizing the promise was not valid, the new confession can be used in court.

6. Section 29 – Confession Still Relevant Even if Certain Conditions Exist:

- **Confession remains relevant even if:**
 - It was made under a **promise of secrecy**.
 - It was obtained by **deception**.
 - The accused was **drunk**.

- The confession was made in response to **questions** that the accused didn't have to answer.
- The accused was not **warned** that the confession could be used against them.

Example: If an accused person confesses because they thought it was secret or they were deceived into confessing, the confession is still relevant.

7. Section 30 – Confession of One Accused Can Be Considered Against Co-Accused:

- **Confession is relevant** if:
 - Multiple persons are being tried for the **same offence**, and one person confesses. The court can consider that confession not only against the person who made it but also against the **co-accused**.

Example: If two people are on trial for theft, and one confesses, that confession can be used against both people, but the court will treat it cautiously.

Summary:

- **Confession is irrelevant** if:
 - It is induced by a **threat, promise, or inducement** (Section 24).
 - It is made to a **police officer** (Section 25).
 - It is made while in **police custody** unless in front of a Magistrate (Section 26).
- **Confession is relevant** if:
 - It leads to **new facts being discovered** (Section 27).
 - The influence of threat, promise, or inducement is **removed** (Section 28).
 - It was made under certain conditions (secrecy, deception, etc.) but was still voluntary (Section 29).
 - It affects **co-accused** during a joint trial (Section 30).

In practice, courts are careful about confessions and often require them to be made freely and voluntarily to ensure fairness.

03. An admission maybe prove but not in favor of its maker. Is there any exceptions?

Yes, admissions generally cannot be used in favor of the person who made them, but there are exceptions under **Sections 32(2)** and **21**:

1. **Section 32(2):** A statement made by a person can be proved even if it benefits them when it is made in the ordinary course of business. For example, if the statement is an entry or record in business books, an acknowledgment of receiving money, goods, or other property, or a document used in commerce, it can be admissible.
2. **Section 21:** An admission may be proved by or on behalf of the person making it in the following cases:

- **21(1):** If the person making the admission has died, and if the admission would be relevant under Section 32 (such as in the ordinary course of business), it can be used as evidence.
- **21(2):** If the admission is about the existence of a state of mind or body (such as intentions or health), made at the time when that state existed, and if their behavior makes it unlikely that the statement is false.
- **21(3):** If the admission is relevant for reasons other than just being an admission, it can be proved by or on behalf of the person who made it.

In essence, under **Section 32(2)** and **Section 21**, admissions may be used in favor of the person who made them in specific circumstances, such as when related to business, a state of mind or body, or if the person is deceased.

SET NO-05

1. Define direct, primary and circumstantial evidence according to evidence act 1872

1. Direct Evidence

Direct evidence is the kind of evidence that directly proves a fact without the need for inference or assumption. It is the most straightforward form of evidence, where a witness directly testifies to something they saw, heard, or experienced.

- **Example:** A person who witnessed a crime testifying in court about what they saw.
- **Relevant Section:** Although the term "direct evidence" is not specifically defined in the Act, **Section 60** of the Evidence Act refers to oral evidence and states that it must be direct—i.e., a witness must testify to what they directly observed.

2. Primary Evidence

Primary evidence is the best and original form of evidence. It is the actual document or material that needs to be presented in its original form, rather than copies or secondary versions.

- **Example:** The original contract or agreement in a dispute being presented to the court.
- **Relevant Section:** **Section 62** of the Indian Evidence Act defines primary evidence as the original document or material itself, and states that it must be produced before the court whenever possible.

3. Circumstantial Evidence

Circumstantial evidence is evidence that does not directly prove a fact but helps in arriving at a conclusion by drawing inferences from the circumstances. The court connects the dots from the facts presented to reach a conclusion.

- **Example:** Finding the accused's fingerprints on a weapon used in a crime, which suggests their involvement, though no one saw them commit the crime.
- **Relevant Section:** The Indian Evidence Act does not explicitly define circumstantial evidence, but it is understood through various court rulings and is admissible under general provisions like **Section 3**, which defines "evidence" to include both direct and indirect (circumstantial) evidence.

In summary:

- **Direct evidence** proves a fact directly.
- **Primary evidence** is the original and best form of evidence.
- **Circumstantial evidence** requires inferences to reach a conclusion.

All these types of evidence are crucial in helping courts make informed decisions under the Evidence Act, 1872.

02) 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.

03) 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.

04) 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.

SET NO-06

What is "Character"?

According to the **Explanation in Sections 52-55:**

- **Character** includes both:
 - **Reputation:** How a person is generally viewed by others.
 - **Disposition:** A person's general nature or tendencies.

When is Character Relevant in Civil Suits?

- **Section 52:** In **civil cases**, a person's **character** is generally **irrelevant** for determining whether they did or did not do something.
 - **Exception:** If a person's character appears through **other relevant facts**, it may be considered.

Example: In a breach of contract case, whether the person is generally honest or dishonest is not relevant unless related to other facts in the case.

- **Section 55:** However, in civil cases, **character** can be relevant if it affects the **amount of damages** to be awarded.
 - **Example:** In a defamation case, if the person has a bad reputation, it may reduce the amount of damages they can claim.

When is Character Relevant in Criminal Cases?

- **Section 53:** In criminal cases, the **good character** of the **accused** is **relevant**.
 - **Example:** If someone accused of theft has a good reputation for honesty, this can be used to support their defense.
- **Section 54:** The **bad character** of the **accused** is generally **irrelevant** in criminal cases.
 - **Exception:** If the accused presents evidence of their **good character**, then their **bad character** can become relevant.
 - **Explanation 1:** This section does not apply when the **bad character** is itself a fact in issue (e.g., in cases where character is directly related to the crime, like habitual offender cases).
 - **Explanation 2:** A **previous conviction** is relevant as evidence of **bad character**.

Is a Previous Conviction Relevant as Evidence of Bad Character?

- **Yes**, according to **Section 54, Explanation 2**, a **previous conviction** can be used as evidence of **bad character**.

Example: If the accused has a previous conviction for a similar crime, it may be introduced to show a pattern of bad behavior.

- **When is it Not Relevant?**
 - A previous conviction is **not relevant** if no evidence of **good character** has been presented, or if the **bad character** is not directly related to the facts in issue.

Summary:

- **Character** means both **reputation** and **disposition**.
- In **civil cases**, character is generally **irrelevant** unless it affects **damages**.
- In **criminal cases**, **good character** is **relevant**, while **bad character** is usually **irrelevant**, unless the accused shows evidence of good character.
- A **previous conviction** can be used as evidence of **bad character** in criminal cases.

SET NO- 07

Sections 101 to 112 of the Indian Evidence Act, 1872: Burden of Proof

Burden of Proof

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.

These sections explain the rules related to the **burden of proof** in civil and criminal cases. Each section covers different aspects of who carries the responsibility of proving certain facts in a legal proceeding.

Section 101: Definition of Burden of Proof

- **Rule:** The burden of proof lies on the party that asserts a fact. If you want the court to decide in your favor, you must prove the facts that support your case.
- **Illustration:**
 - A claims that B should be punished for a crime. A must prove that B committed the crime.
 - A claims ownership of land in B's possession. A must prove that the facts entitle him to that land.

Section 102: On Whom the Burden of Proof Lies

- **Rule:** The burden of proof lies on the party who would lose if no evidence were given by either side.
- **Illustration:**
 - A sues B for possession of land. If no evidence is presented, B would keep the land. Therefore, A must prove his claim to the land.
 - A sues B for money on a bond. If no evidence is presented, A would win because B's defense of fraud is not proven. So, the burden of proof shifts to B to prove the fraud.

Section 103: Burden of Proof for Specific Facts

- **Rule:** The party that wants the court to believe in the existence of a particular fact must prove that fact.
 - **Illustration:**
 - A prosecutes B for theft and wants to prove that B confessed to C. A must prove the confession.
 - B, in his defense, claims that he was somewhere else at the time. B must prove this alibi.
-

Section 104: Burden of Proof for Proving Preliminary Facts

- **Rule:** If a party wants to introduce a particular fact that depends on the existence of another fact, they must first prove the preliminary fact.
 - **Illustration:**
 - A wants to introduce B's dying declaration. A must first prove that B is dead.
 - A wants to use secondary evidence of a lost document. A must first prove that the document is indeed lost.
-

Section 105: Burden of Proof for Exceptions

- **Rule:** If an accused person claims that their case falls under a legal exception (like self-defense or insanity), the burden of proving those circumstances is on the accused.
 - **Illustration:**
 - A is charged with murder but claims that he was insane at the time of the crime. A must prove his insanity.
 - A, accused of grievous hurt, claims it was caused by sudden provocation. A must prove this provocation.
-

Section 106: Special Knowledge of Facts

- **Rule:** When a fact is within the exclusive knowledge of a person, the burden of proving that fact lies on them.
 - **Illustration:**
 - A is charged with traveling without a railway ticket. The burden is on A to prove that he had a valid ticket, as this fact is only known to A.
-

Section 107: Proof of Life or Death

- **Rule:** If a person was last known to be alive within the last 30 years, the burden of proving that they are now dead lies on the party claiming death.
 - **Illustration:**
 - If A was alive within the last 30 years, B must prove that A is now dead.
-

Section 108: Presumption of Death

- **Rule:** If a person has not been heard from for seven years by those who would naturally have heard from them, the burden of proving that they are alive lies on the party asserting it.
 - **Illustration:**
 - If B has not been heard from for seven years, A (who claims B is dead) does not need to prove death. It is presumed. If someone claims B is alive, they must prove it.
-

Section 109: Relationships of Partners, Landlords, or Agents

- **Rule:** If a relationship such as partnership, landlord-tenant, or principal-agent is proven, the burden of proving that the relationship has ceased lies on the person who claims that it no longer exists.
 - **Illustration:**
 - A and B have been acting as partners. If A claims that the partnership has ended, A must prove it.
-

Section 110: Ownership of Property

- **Rule:** If a person is in possession of something, the burden of proving that they are not the owner lies on the person who disputes the ownership.
 - **Illustration:**
 - A is in possession of land. B claims that A is not the owner. B must prove that A is not the owner.
-

Section 111: Good Faith in Transactions

- **Rule:** In cases where one party stands in a position of trust over another (like a trustee or guardian), the burden of proving good faith in a transaction lies on the person in the position of trust.
 - **Illustration:**
 - A, a trustee, engages in a transaction with B, who relies on A's judgment. A must prove that the transaction was made in good faith.
-

Section 112: Legitimacy of a Child

- **Rule:** A child born during a valid marriage, or within 280 days after its dissolution, is presumed legitimate unless proven otherwise.
 - **Illustration:**
 - A child born during the marriage of A and B is presumed to be A's legitimate child unless it is proven that A and B had no opportunity to be together when the child was conceived.
-

Summary:

- **Burden of proof** refers to the obligation to prove the truth of a fact in court.
- Sections 101-112 cover various rules on how and when the burden of proof applies to both civil and criminal cases, based on the nature of the claim and the relationships involved.

SET NO- 08

What is presumption? What kind of presumptions is discussed in evidence act? When the court shall presume certain facts in respect of certain document?

What is Presumption?

Presumption is a legal assumption the court makes about a fact. This assumption can either be mandatory or optional, depending on whether it is **conclusive** (irrefutable) or **disputable** (rebuttable by evidence).

Kinds of Presumptions in the Evidence Act:

1. **May Presume (Discretionary Presumption):**
 - Under this type of presumption, the court has the discretion to presume a fact as true unless it is disproved, but it is not bound to do so.

- **Example (Section 4):** The court **may presume** a fact unless disproved or ask for further evidence to establish it.
- 2. **Shall Presume (Mandatory Presumption):**
 - In this case, the court is bound to presume the fact as true unless it is disproved by contrary evidence.
 - **Example (Section 4):** The court **shall presume** certain facts, meaning the fact is considered proven unless disproved.
- 3. **Conclusive Proof:**
 - When a fact is declared as "conclusive proof" of another, the court must accept that fact as true, and no evidence to disprove it will be allowed.
 - **Example (Section 4):** If one fact is proven, the other fact is automatically assumed to be true without the possibility of rebuttal.

When the Court Shall Presume Certain Facts in Respect of Documents:

1. **Documents Declared Admissible (Section 79):**
 - The court **shall presume** the genuineness of documents that are certified by government officials (e.g., certificates, certified copies). These are accepted as genuine unless disproved.
2. **Confessions and Statements (Section 80):**
 - If a document is presented as a record of evidence, or a confession signed by a Judge or Magistrate, the court **shall presume** it was taken in accordance with the law and is genuine unless proven otherwise.
3. **Government Maps or Plans (Section 83):**
 - The court **shall presume** that maps or plans made by the authority of the government are accurate, but private maps or plans must be proven to be accurate.
4. **Government Publications (Section 84):**
 - The court **shall presume** the genuineness of government books or gazettes containing laws or court decisions.
5. **Power of Attorney (Section 85):**
 - The court **shall presume** the genuineness of any document purporting to be a power of attorney executed before a notary public, judge, magistrate, or other government official.
6. **Digital Records and Digital Signatures:**
 - **Section 85A:** The court **shall presume** digital records with digital signatures are valid unless proven otherwise.
 - **Section 85B:** The court **shall presume** secure digital records and signatures are genuine unless proven otherwise.
 - **Section 85C:** The court **shall presume** the accuracy of the information in a digital signature certificate unless disproved.
7. **Documents Not Produced After Notice (Section 89):**
 - If a document is called for and not produced, the court **shall presume** it was executed correctly in the manner required by law.

Summary:

In essence, **presumption** allows the court to accept certain facts as true without requiring direct proof, unless evidence is provided to rebut them. The **Evidence Act** outlines specific instances where the court must either **may presume** (discretionary), **shall presume** (mandatory), or accept something as **conclusive proof**.

For example, certified government documents, maps, confessions taken by a judge, and certain digital records are presumed genuine by the court unless proven otherwise.