



Print View

The Evidence Act, 1872

(ACT NO. I OF 1872)



[15th March, 1872]

WHEREAS it is expedient to consolidate, define and amend the law of Evidence; It is enacted as follows:-

PART I RELEVANCY OF FACTS

CHAPTER I PRELIMINARY

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 ³ [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 of Act	And it shall come into force on the first day of September, 1872.
---------------------	---

[Repealed]	2. [<i>Repealed by the Repealing Act, 1938 (Act No. I of 1938), section 2 and Schedule.</i>]
------------	--

Interpretation-clause	<p>3. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:-</p> <p>"Court" includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence.</p> <p>"Fact" means and includes-</p> <p>(1) anything, state of things, or relation of things capable of being perceived by the senses;</p> <p>(2) any mental condition of which any person is conscious.</p>
-----------------------	---

Illustrations

- (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (b) That a man heard or saw something, is a fact.
- (c) That a man said certain words, is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
- (e) That a man has a certain reputation, is a fact.

One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

The expression "facts in issue" means and includes 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.-Whenever, under the provisions of the law for the time being in force relating to Civil Procedure, any Court records an issue of fact, the fact to be asserted or denied in the answer to such issue is a fact in issue.

Illustrations

A is accused of the murder of B.

At his trial the following facts may be in issue:-

- that A caused B's death;
- that A intended to cause B's death;
- that A had received grave and sudden provocation from B;

that A, at the time of doing the act which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

"Document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter "[and includes any digital record].

Illustrations

A writing is a document:

Words printed, lithographed or photographed are documents:

A map or plan is a document:

An inscription on a metal plate or stone is a document:

A caricature is a document.

⁵["Digital record" or "electronic record" means any record, data or information generated, prepared, sent, received or stored in magnetic or electro-magnetic, optical, computer memory, micro film, computer generated micro fiche including audio, video, Digital Versatile Disc or Digital Video Disc (DVD), records of Closed Circuit Television (CCTV), drone data, records from cell phone, hardware, software or any other digital device as defined in Digital Security Act, 2018 (Act No. 46 of 2018)];

"Evidence" means and includes-

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry:

such statements are called oral evidence;

(2) all documents produced for the inspection of the Court;

such documents are called documentary evidence.

⁶[(3) all materials or objects relating to blood, semen, hair, all body material, organ or part of organ, Deoxyribo Nucleic Acid (DNA), finger impression, palm impression, iris impression and foot print or any other similar material or object which may-

(i) establish that an offence has been committed or establish a link or relation between an offence and its victim or an offence and its offender; and

(ii) prove or disprove a fact:

such materials or objects are called physical or forensic evidence.]

⁷["Digital Signature" or "electronic Signature" means any electronic signature as defined in Information and Communication Technology Act, 2006 (Act No. 39 of 2006).

"Digital Signature Certificate" means any electronic signature certificate as defined in Information and Communication Technology Act, 2006 (Act No. 39 of 2006).

"Certifying Authority" means Certificate Issuing Authority as defined in Information and Communication Technology Act, 2006 (Act No. 39 of 2006).]

A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

A fact is said to be disproved when, after considering the matters before it, the Court either believes that it does not exist, or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist.

A fact is said not to be proved when it is neither proved nor disproved

"May presume"

4. Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it:

"Shall presume"

Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved:

"Conclusive proof"

When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II OF THE RELEVANCY OF FACTS

Evidence may be given of facts in issue and relevant facts

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other fact as are hereinafter declared to be relevant, and of no others.

Explanation.-This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death.

At A's trial the following facts are in issue:-

A's beating B with the club;

A's causing B's death by such beating;

A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure.

Relevancy of facts forming part of same transaction

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Illustrations

(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

(b) A is accused of waging war against Bangladesh by taking part in an armed insurrection in which property is destroyed, troops are attacked, and goals are broken open. The occurrence of these facts is relevant, as forming part of the general transaction, though A may not have been present at all of them.

(c) A sues B for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose, and forming part of the correspondence in which it is contained are relevant facts, though they do not contain the libel itself.

(d) The question is, whether certain goods ordered from B were delivered to A. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

Facts which are the occasion cause or effect of facts in issue

7. Facts which are the occasions, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

Illustrations

(a) The question is, whether A robbed B.

The facts that, shortly before the robbery, B went to a fair with money in his possession, and that he showed it or mentioned the fact that he had it, to third persons, are relevant.

(b) The question is, whether A murdered B.

Marks on the ground, produced by a struggle at or near the place where the murder was committed, are relevant facts.

(c) The question is, whether A poisoned B.

The state of B's health before the symptoms ascribed to poison, and habits of B, known to A, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct

8. Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact, in issue or relevant fact, and whether it was previous subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this explanation is not to effect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Illustrations

(a) A is tried for the murder of B.

The facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

(b) A sues B upon a bond for the payment of money. B denies the making of the bond.

The fact that, at the time when the bond was alleged to be made, B required money for a particular purpose, is relevant.

(c) A is tried for the murder of B by poison.

The fact that, before the death of B, A procured poison similar to that which was administered to B, is relevant.

(d) The question is whether a certain document is the will of A.

The facts, that not long before the date of the alleged will A made inquiry into matters to which the provisions of the alleged will relate, that he consulted [Advocate] in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve, are relevant.

(e) A is accused of a crime.

The facts that, either before or at the time of, or after the alleged crime, A provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence, or prevented the presence or procured the absence of person who might have been witnesses, or suborned persons to give false evidence respecting it, are relevant.

(f) The question is whether A robbed B.

The facts that, after B was robbed, C said in A's presence- "the police are coming to look for the man who robbed B," and that immediately afterwards A ran away, are relevant.

(g) The question is whether A owes B Taka 10,000.

The facts that A asked C to lend him money, and that D said to C in A's presence and hearing- "I advise you not to trust A, for he owes B Taka 10,000" and that A went away without making any answer are relevant facts.

(h) The question is, whether A committed a crime.

The fact that A absconded after receiving a letter warning him that inquiry was being made for the criminal, and the contents of the letter are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

(j) The question is whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that, without making a complaint, she said that she had been ravished is not relevant as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

(k) The question is, whether A was robbed.

The fact that, soon after the alleged robbery, he made a complaint relating to the offence, the circumstances under which, and the terms in which, the complaint was made, are relevant.

The fact that he said he had been robbed without making any complaint, is not relevant, as conduct under this section, though it may be relevant as a dying declaration under section 32, clause (1), or as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

Illustrations

(a) The question is, whether a given document is the will of A.

The State of A's property and of his family at the date of the alleged will may be relevant facts.

(b) A sues B for a libel imputing disgraceful conduct to A; B affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between A and B about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between A and B.

(c) A is accused of a crime.

The fact that, soon after the commission of the crime, A absconded from his house, is relevant under section 8, as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is relevant, as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) A sues B for inducing C to break a contract of service made by him with A. C, on leaving A's service, says to A- "I am leaving you because B has made me a better offer." This statement is a relevant fact as explanatory of C's conduct, which is relevant as a fact in issue.

(e) A, accused of theft, is seen to give the stolen property to B, who is seen to give it to A's wife. B says as he delivers it- "A says you are to hide this." B's statement is relevant as explanatory of a fact which is part of the transaction.

(f) A is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design

10. Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

Illustrations

Reasonable ground exists for believing that A has joined in a conspiracy to wage war against Bangladesh.

The facts that B procured arms in Europe for the purpose of the conspiracy, C collected money in Chittagong for a like object, D persuaded persons to join the conspiracy in ⁸[Khulna], E published writings advocating the object in view at

¹⁰[Pabna], and F transmitted from ¹¹[Dhaka] to G at Cabul the money which C had collected at Chittagong, and the contents of a letter written by H giving an account

of the conspiracy, are each relevant, both to prove the existence of the conspiracy, and to prove A's complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant

11. Facts not otherwise relevant are relevant—

(1) If they are inconsistent with any fact in issue or relevant fact;

(2) If by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations

(a) The question is whether A committed a crime at Chittagong on a certain day.

The fact that, on that day, A was at ¹²[Dhaka] is relevant.

The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) The question is, whether A committed a crime.

The circumstances are such that the crime must have been committed either by A, B, C or D. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either B, C or D, is relevant.

In suits for damages, facts tending to enable Court to determine amount are relevant

12. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded, is relevant.

Facts relevant when right or custom is in question

13. Where the question is as to the existence of any right of custom, the following facts are relevant:—

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.

Illustration

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of the fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

Facts showing existence of state of mind, or of body, or bodily feeling

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will, or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

Explanation 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.

Illustrations

(a) A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that, at the same time, he was in possession of many other stolen articles is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b) A is accused of fraudulently delivering to another person a counterfeit coin which, at the time when he delivered it, he knew to be counterfeit.

The fact that, at the time of its delivery, A was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that A had been previously convicted of delivering to another person as genuine a counterfeit coin knowing it to be counterfeit is relevant.

(c) A sues B for damage done by a dog of B's, which B knew to be ferocious.

The facts that the dog had previously bitten X, Y and Z, and that they had made complaints to B, are relevant.

(d) The question is, whether A, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that A had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee if the payee had been a real person, is relevant as showing that A knew that the payee was a fictitious person.

(e) A is accused of defaming B by publishing an imputation intended to harm the reputation of B.

The fact of previous publications by A respecting B, showing ill-will on the part of A towards B is relevant, as proving A's intention to harm B's reputation by the particular publication in question.

The facts that there was no previous quarrel between A and B, and that A repeated the matter complained of as he heard it, are relevant, as showing that A did not intend to harm the reputation of B.

(f) A is sued by B for fraudulently representing to B that C was solvent, whereby B, being induced to trust C, who was insolvent, suffered loss.

The fact that at the time when A represented C to be solvent, C was supposed to be solvent by his neighbours and by persons dealing with him, is relevant, as showing that A made the representation in good faith.

(g) A is sued by B for the price of work done by B, upon a house of which A is owner, by the order of C, a contractor.

A's defence is that B's contract was with C.

The fact that A paid C for the work in question is relevant, as proving that A did, in good faith, make over to C the management of the work in question, so that C was in a position to contract with B on C's own account, and not as agent for A.

(h) A is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where A was, is relevant, as showing that A did not in good faith believe that the real owner of the property could not be found.

The fact that A knew, or had reason to believe, that the notice was given fraudulently by C, who had heard of the loss of the property and wished to set up a false claim to it, is relevant, as showing that the fact that A knew of the notice did not disprove A's good faith.

(i) A is charged with shooting at B with intent to kill him. In order to show A's intent the fact of A's having previously shot at B may be proved.

(j) A is charged with sending threatening letters to B. Threatening letters previously sent by A to B may be proved, as showing the intention of the letters.

(k) The question is, whether A has been guilty of cruelty towards B, his wife.

Expressions of their feeling towards each other shortly before or after the alleged cruelty are relevant facts.

(l) The question is, whether A's death was caused by poison.

Statements made by A during his illness as to his symptoms are relevant facts.

(m) The question is, what was the state of A's health at the time an assurance on his life was effected.

Statements made by A as to the state of his health at or near the time in question are relevant facts.

(n) A sues B for negligence in providing him with a carriage for hire not reasonably fit for use, whereby A was injured.

The fact that B's attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that B was habitually negligent about the carriages which he let to hire is irrelevant.

(o) A is tried for the murder of B by intentionally shooting him dead.

The fact that A on other occasions shot at B is relevant as showing his intention to shoot B.

The fact that A was in the habit of shooting at people with intent to murder them is irrelevant.

(p) A is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is irrelevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Facts bearing on question whether act was accidental or intentional

15. When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations

(a) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant, as tending to show that the fires were not accidental.

(b) A is, employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is, whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) A is accused of fraudulently delivering to B a counterfeit Taka.

The question is, whether the delivery of the Taka was accidental.

	<p>The facts that, soon before or soon after the delivery to B, A delivered counterfeit Taka to C, D and E are relevant, as showing that the delivery to B was not accidental.</p>
Existence of course of business when relevant	<p>16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.</p> <p style="text-align: center;">Illustrations</p> <p>(a) The question is, whether a particular letter was dispatched.</p> <p>The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that that particular letter was put in that place are relevant.</p> <p>(b) The question is, whether particular letter reached A.</p> <p>The facts that it was posted in due course, and was not returned through the Dead Letter office, are relevant.</p>
CHAPTER II	
ADMISSIONS	
Admission defined	<p>17. An admission is a statement, oral or documentary ¹³[or contained in digital record], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.</p>
Admission -by party to proceeding or his agent;	<p>18. Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions.</p>
by suit or in representative character;	<p>Statements made by parties to suits suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.</p>
by party interested in subject-matter;	<p>Statements made by—</p> <p>(1) persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or</p>
by person from whom interest derived	<p>(2) persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements.</p>
Admissions by persons whose position must be proved as against party to suit	<p>19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.</p> <p style="text-align: center;">Illustrations</p> <p>A undertakes to collect rents for B.</p> <p>B sues A for not collecting rent due from C to B.</p> <p>A denies that rent was due from C to B.</p> <p>A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.</p>
Admissions by persons expressly referred to by party to suit	<p>20. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.</p> <p style="text-align: center;">Illustrations</p> <p>The question is whether a horse sold by A to B is sound.</p> <p>A says to B—"Go and ask C; C knows all about it." C's statement is an admission.</p>
Proof of admissions, against persons making them, and by or on their behalf	<p>21. Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they can not be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—</p> <p>(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.</p> <p>(2) An admission may be proved by or on behalf of the person making it, when it consists of statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.</p> <p>(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.</p> <p style="text-align: center;">Illustrations</p> <p>(a) The question between A and B is, whether a certain deed is or is not forged. A affirms that it is genuine, B that it is forged.</p> <p>A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.</p>

(b) A, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c) A is accused of a crime committed by him at Chittagong.

He produces a letter written by himself and dated at ¹⁴[Dhaka] on that day and bearing the ¹⁵[Dhaka] post-mark of that day.

The statement in the date of the letter is admissible, because, if A were dead it would be admissible under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in the last preceding illustration.

When oral admissions as to contents of documents are relevant

22. Oral admissions as to the contents of a document are not relevant, unless and until that the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

When oral admissions as to contents of digital records are relevant

¹⁶[22A. Oral admissions as to the contents of digital records are not relevant, unless the genuineness of the digital record produced is in question.]

Admissions in civil cases when relevant

23. In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any ¹⁷[Advocate] from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding

24. A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

Confession to police-officer not to be proved

25. No confession made to a police-officer shall be proved as against a person accused of any offence.

Confession by accused while in custody of police not to be proved against him

26. No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation.— In this section "Magistrate" does not include the head of a village discharging magisterial functions unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, ¹⁸[1898].

How much of information received from accused may be proved

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession made after removal of impression caused by inducement, threat or promise, relevant

28. If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the Court, been fully removed, it is relevant.

Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

29. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

Consideration of proved confession affecting person

30. When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other persons as well as against the person who makes such confession.

making it and others jointly under trial for same offence

Explanation.—"Offence", as used in this section, includes the abatement of, or attempt to commit, the offence.

Illustrations

(a) A and B are jointly tried for the murder of C. It is proved that A said—"B and I murdered C." The Court may consider the effect of this confession as against B.

(b) A is on his trial for the murder of C. There is evidence to show that C was murdered by A and B, and that B said- "A and I murdered C".

This statement may not be taken into consideration by the Court against A, as B is not being jointly tried.

Admissions not conclusive proof, but may be stop

31. Admissions are not conclusive proof of the matters admitted but they may operate as estoppels under the provisions hereinafter contained.

CHAPTER II

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant

32. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:—

When it relates to cause of death;

(1) When the statement is made by person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

or is made in course of business;

(2) When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledge-ment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

or against interest of maker;

(3) When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

or gives opinion as to public right or custom, or matters of general interest;

(4) When the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter has arisen.

or relates to existence of relationship;

(5) When the statement relates to the existence of any relationship by blood, marriage or adoption between person as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

or is made in will or deed relating to family affairs;

(6) When the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

or in document relating to transaction mentioned in section 13, clause (a);

(7) When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in section 13, clause (a).

or is made by several persons, and expresses feelings relevant to matter in question

(8) When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations

(a) The question is, whether A was murdered by B; or

A dies of injuries received in a transaction in the course of which she was ravished. The question is whether she was ravished by B; or

The question is whether A was killed by B under such circumstances that a suit would lie against B by A's widow.

Statements made by A as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration are relevant facts.

(b) The question is as to the date of A's birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that, on a given day he attended A's mother and delivered her of a son, is a relevant fact.

(c) The question is, whether A was in Chittagong on a given day.

A statement in the diary of a deceased solicitor, regularly kept in the course of business, that on a given day the solicitor attended A at a place mentioned, in ¹⁹[Chittagong], for the purpose of conferring with him upon specified business, is a relevant fact.

(d) The question is, whether a ship sailed from ²⁰[Chittagong] harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from ²¹[Chittagong] harbour, is a relevant fact.

(e) The question is, whether rent was paid to A for certain land.

A letter from A's deceased agent to A saying that he had received the rent on A's account and held it at A's orders, is a relevant fact.

(f) The question is, whether A and B were legally married.

The statement of a deceased clergyman that he married them under such circumstances that the celebration would be a crime, is relevant.

(g) The question is, whether A, a person who cannot be found, wrote a letter on a certain day. The fact that a letter written by him is dated on that day is relevant.

(h) The question is, what was the cause of the wreck of a ship.

A protest made by the Captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is, whether a given road is a public way.

A statement by A, a deceased headman of the village, that the road was public, is a relevant fact.

(j) The question is, what was the price of grain on a certain day in a particular market. A statement of the price, made by a deceased banya in the ordinary course of his business, is a relevant fact.

(k) The question is, whether A, who is dead, was the father of B.

A statement by A that B was his son, is a relevant fact.

(l) The question is, what was the date of the birth of A.

A letter from A's deceased father to a friend, announcing the birth of A on a given day, is a relevant fact.

(m) The question is, whether, and when, A and B were married.

An entry in a memorandum-book by C, the deceased father of B, of his daughter's marriage with A on a given date, is a relevant fact.

(n) A sues B for a libel expressed in a painted caricature exposed in a shop window. The question is as to the similarity of the caricature and its libellous character. The remarks of a crowd of spectators on these points may be proved.

Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided-

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

CHAPTER II

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

Entries in books of account ²²[or digital record] when relevant

34. Entries in books of account ²³[or digital record], regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration

A sues B for Taka 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

Relevancy of entry in public record ²⁴[or digital record], made in performance of duty

35. An entry in any public or other official book, register or record ²⁵[or digital record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register ²⁶[record or digital record] is kept, is itself a relevant fact.

Relevancy of statements in maps, charts ²⁷[, plans and digital record]

36. Statements of facts in issue or relevant facts, made in published ²⁸[maps, charts or digital record] generally offered for public sale, or in ²⁹[maps, plans or digital record] made under the authority of the Government, as to matters usually represented or stated in such ³⁰[maps, charts, plans or digital record], are themselves relevant facts.

Relevancy of statement as to fact of public nature

37. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act of Parliament of the United Kingdom, or in any ³¹[Act of Parliament] or in a Government notification ³²[* * *] is a relevant fact.

contained in certain
Acts or notifications

**Relevancy of
statements as to any
law contained in law-
books**

38. When the Court has to form an opinion as to a law of any country, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country and to contain any such law, and any report of a ruling of the Courts of such country contained in a book purporting to be a report of such rulings, is relevant.

CHAPTER II

HOW MUCH OF A STATEMENT IS TO BE PROVED

**What evidence to be
given when statement
forms part of a
conversation,
document, ³³[book,
digital record] or
series of letters or
papers.**

39. When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which ³⁴[forms part of a book, or of part of a digital record] or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances under which it was made.

CHAPTER II

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT

**Previous judgments
relevant to bar a
second suit or trial**

40. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

**Relevancy of certain
judgments in probate,
etc., jurisdiction**

41. A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant.

Such judgment, order or decree is conclusive proof-

that any legal character which it confers accrued at the time when such judgment, order or decree come into operation;

that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

**Relevancy and effect
of judgments, orders
or decrees, other than
those mentioned in
section 41**

42. Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land, in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.

**Judgments, etc.,
other than those
mentioned in sections
40 to 42, when
relevant**

43. Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Illustrations

(a) A and B separately sue C for a libel which reflects upon each of them. C in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case, or in neither.

A obtains a decree against C for damages on the ground that C failed to make out his justification. The fact is irrelevant as between B and C.

(b) A prosecutes B for adultery with C, A's wife.

B denies that C is A's wife, but the Court convicts B of adultery.

Afterwards, C is prosecuted for bigamy in marrying B during A's lifetime. C says that she never was A's wife.

The judgment against B is irrelevant as against C.

(c) A prosecutes B for stealing a cow from him. B is convicted.

A afterwards sues C for the cow, which B had sold to him before his conviction. As between A and C, the judgment against B is irrelevant.

(d) A has obtained a decree for the possession of land against B. C, B's son, murders A in consequence.

The existence of the judgment is relevant, as showing motive for a crime.

(e) A is charged with theft and with having been previously convicted of theft. The previous conviction is relevant as a fact in issue.

(f) A is tried for the murder of B. The fact that B prosecuted A for libel and that A was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

Fraud or collusion in obtaining judgment, or in-competency of Court, may be proved

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

CHAPTER II

OPINIONS OF THIRD PERSONS WHEN RELEVANT

Opinion of Experts

³⁵[45. When the Court has to form an opinion upon a point of foreign law, or of science, physical or forensic evidence or digital record, or art, or as to identity of hand writing or finger impression or footprint or palm impression or iris impression or typewriting or usage of trade or technical terms or identity of person or animal, the opinion upon that point of person specially skilled in such foreign law, science, physical or forensic evidence or digital record or art, or in questions as to identity of handwriting or finger impression, footprint, palm impression, typewriting, usage of trade, technical term or identity of person or animal, as the case may be, are relevant facts.

Such persons are called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison.

The opinion of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The questions is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.]

Opinion of experts on physical or forensic evidence

³⁶[45A. (1) Except by leave of the Court a witness shall not testify as an expert on physical or forensic unless a copy of his report has, pursuant to sub-section (2), been given to all the parties.

(2) An expert's report shall be addressed to the Court and not to the party on whose behalf he is examined and he shall owe a duty to help the Court.]

Facts bearing upon opinions of experts

46. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations

(a) The question is, whether A was poisoned by a certain poison.

The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

(b) The question is, whether an obstruction to a harbour is caused by a certain sea-wall.

The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

Opinion as to handwriting, when relevant

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustration

The question is, whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Chittagong, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising with him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C or D ever saw A write.

Opinion as to digital signature where relevant

³⁷[47A. When the Court has to form an opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate is a relevant fact.]

Opinion as to existence of right or custom, when relevant

48. When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Illustration

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinion as to usages, tenets, etc., when relevant

49. When the Court has to form an opinion as to—
the usages and tenets of any body of men or family,
the constitution and government of any religious or charitable foundation or,
the meaning of words or terms used in particular districts or by particular classes of people,
the opinions of persons having special means of knowledge thereon, are relevant facts.

Opinion on relationship, when relevant

50. When the Court has to form an opinion as to the relationship of one person to another the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Divorce Act, or in prosecutions under section 494, 495, 497 or 498 of the ³⁸[* * *] Penal Code.

Illustrations

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Grounds of opinion, when relevant

51. Whenever the opinion of any living person is relevant the grounds on which such opinion is based are also relevant.

Illustration

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHAPTER II CHARACTER WHEN RELEVANT

In civil cases, character to prove conduct imputed, irrelevant

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant

In criminal cases, previous good character relevant

53. In criminal proceedings the fact that the person accused is of a good character is relevant.

Previous bad character not relevant, except in reply

54. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.—A previous conviction is relevant as evidence of bad character.

Character as affecting damages

55. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.

Explanation.—In sections 52, 53, 54 and 55, the word "character" includes both reputation and disposition; but, except as provided in section 54, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART II ON PROOF

CHAPTER III FACTS WHICH NEED NOT BE PROVED

Fact judicially noticeable need not be proved

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

Facts of which Court must take judicial notice

57. The Court shall take judicial notice of the following facts:—

³⁹[(1) All Bangladesh Laws:]

(2) [Omitted by section 3 and 2nd Schedule of the [Bangladesh Laws \(Revision And Declaration\) Act, 1973](#) (Act No. VIII of 1973).]

(3) Articles of War for the Armed Forces:

(4) The course of proceeding of Parliament and of ⁴⁰[any Legislature which had Power to legislate in respect of territories now comprised in Bangladesh].

Explanation.— [Omitted by section 3 and 2nd Schedule of the [Bangladesh Laws \(Revision And Declaration\) Act, 1973](#) (Act No. VIII of 1973).]

(5) [Omitted by section 3 and 2nd Schedule of the [Bangladesh Laws \(Revision And Declaration\) Act, 1973](#) (Act No. VIII of 1973).]

⁴¹[(6) The seals of all the Courts in Bangladesh: the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorized to use by any law in force in Bangladesh:]

(7) The accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in Bangladesh, if the fact of their appointment to such office is notified in any official Gazette:

(8) The existence, title and national flag of every State or Sovereign recognized by the Government:

(9) The divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the official Gazette:

(10) The territories ⁴²[* * *] of Bangladesh:

(11) The commencement, continuance and termination of hostilities between Bangladesh and any other State or body of persons:

(12) The names of the members and officers of the Court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates ⁴³[* * *] and other persons authorized by law to appear or act before it:

(13) The rule of the road on land or at sea.

In all these cases and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved

58. No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

**CHAPTER IV
OF ORAL EVIDENCE**

Proof of facts by oral evidence

59. All facts, except the contents of documents, may be proved by oral evidence.

Oral evidence must be direct

60. Oral evidence must, in all cases whatever, be direct; that is to say-

if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:

Provided also that, if oral evidence refers to existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

**CHAPTER V
OF DOCUMENTARY EVIDENCE**

Proof of contents of documents

61. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence

62. Primary evidence means the document itself produced for the inspection of the Court.

Explanation 1.-Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.-Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.

Illustration

A person is shown to have been in possession of a number of placards, all printed at one time prove one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence

63. Secondary evidence means and includes-

(1) certified copies given under the provisions hereinafter contained;

(2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies;

(3) copies made from or compared with the original;

(4) counterparts of documents as against the parties who did not execute them;

(5) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations

	<p>(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.</p> <p>(b) A copy, compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.</p> <p>(c) A copy transcribed from a copy, but afterwards compared with the original is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.</p> <p>(d) Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original.</p>
Proof of documents by primary evidence	64. Documents must be proved by primary evidence except in the cases hereinafter mentioned.
Cases in which secondary evidence relating to documents may be given	<p>65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—</p> <p>(a) when the original is shown or appears to be in the possession or power- of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;</p> <p>(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;</p> <p>(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;</p> <p>(d) when the original is of such a nature as not to be easily moveable;</p> <p>(e) when the original is a public document within the meaning of section 74;</p> <p>(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in Bangladesh to be given in evidence;</p> <p>(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.</p> <p>In cases (a), (c), and (d), any secondary evidence of the contents of the document is admissible.</p> <p>In case (b), the written admission is admissible.</p> <p>In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.</p> <p>In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.</p>
Special provisions as to evidence relating to digital record	⁴⁴ [65A. The contents of digital records may be proved in accordance with the provisions of section 65B.]
Admissibility of Digital Records	<p>⁴⁵[65B. (1) Notwithstanding anything contained in this Act, any information contained in a digital record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.</p> <p>(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely :-</p> <p>(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes or any activities regularly carried on over that period by the person having lawful control over the use of the computer;</p> <p>(b) during the said period, information of the kind contained in the digital record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;</p> <p>(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the digital record or the accuracy of its contents; and</p> <p>(d) the information contained in digital record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.</p> <p>(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section(2) was regularly performed by computers, whether-</p> <p>(a) by a combination of computers operating over that period; or</p> <p>(b) by different computers operating in succession over that period; or</p> <p>(c) by different combinations of computers operating in succession over that period; or</p> <p>(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,</p> <p>all the computers used for that purpose during that period shall be treated for the purposes of that section as constituting a single computer; and references in this section to a computer shall be construed accordingly.</p> <p>(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate containing any of the following things, that is to say,-</p> <p>(a) identifying the digital record containing the statement and describing the manner in which it was produced;</p>

	<p>(b) giving such particulars of any device involved in production of that digital record as may be appropriate for the purpose of showing that the digital record was produced by a computer;</p> <p>(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,</p> <p>and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.</p> <p>(5) For the purposes of this section,-</p> <p>(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;</p> <p>(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to the computer, shall be taken to be supplied to it in the course of those activities;</p> <p>(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.</p> <p>Explanation:-For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]</p>
Rules as to notice to produce	<p>66. Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his Advocate, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:</p> <p>Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:-</p> <p>(1) when the document to be proved is itself a notice;</p> <p>(2) when, from the nature of the case, the adverse party must know that he will be required to produce it;</p> <p>(3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;</p> <p>(4) when the adverse party or his agent has the original in Court;</p> <p>(5) when the adverse party or his agent has admitted the loss of the document;</p> <p>(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.</p>
Proof of signature and handwriting of person alleged to have signed or written document produced	<p>67. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.</p>
Proof as to digital signature	<p>⁴⁶[67A. Except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to a digital record the fact that such digital signature is the digital signature of the subscriber must be proved.]</p>
Proof of execution of document required by law to be attested	<p>68. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:</p> <p>Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Registration Act, 1908, unless its execution by the person by whom it purports to have been executed is specifically denied.</p>
Proof where no attesting witness found	<p>69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.</p>
Admission of execution by party to attested document	<p>70. The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.</p>
Proof when attesting witness denies the execution	<p>71. If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.</p>
Proof of document not required by law to be attested	<p>72. An attested document not required by law to be attested may be proved as if it was unattested.</p>
Comparison of signature, writing or seal with others, admitted or proved	<p>73. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.</p> <p>The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.</p> <p>This section applies also, with any necessary modifications, to finger-impressions.</p>
Proof as to verification of digital	<p>⁴⁷[73A. In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the Court may direct-</p>

signature	<p>(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;</p> <p>(b) any other person to apply the public key listed in the Digital Signature Certificate and verify the digital signature purported to have been affixed by that person.</p> <p>Explanation.- For the purpose of this section, "Controller" means the Controller appointed under sub-section (1) of section 18 of the Information and Communication Technology Act, 2006 (Act No. 39 of 2006).]</p>
Comparison of physical or forensic evidence with others, admitted or proved	<p>⁴⁸[73B. (1) In order to ascertain whether a sample of blood, semen, hair, DNA sample, any other biological substance, limbs or any part of limb, finger impression, palm impression or iris impression or foot impression belongs to or is created by that person from whom it purports to have been collected, the Court may order that it be compared with any sample which is admitted or proved to the satisfaction of the Court to have come from or been made by the person, although that sample of blood, semen, hair, DNA sample, biological substance, limbs or any part of limb, finger impression, palm impression, iris impression, foot impression or any other substance has not been produced or proved for any other purpose.</p> <p>(2) If there is any claim that the sample of blood, semen, hair, DNA sample, any other biological substance, limbs or any part of limb, finger impression, palm impression, iris impression, foot impression belongs to or is created by any person, the Court may direct that person to be present in Court for the purpose of enabling the Court to make that comparison.</p> <p>(3) In relation to proving the authenticity of physical or forensic evidence, nothing in sections 60 and 165 of this Act, should prevent the Court from seeking its production in Court as an exhibit, along with any other necessary evidence concerning its identification.]</p>
<p style="text-align: center;">CHAPTER V</p> <p style="text-align: center;">PUBLIC DOCUMENTS</p>	
Public documents	<p>74. The following documents are public documents:—</p> <p>(1) documents forming the acts or records of the acts—</p> <p>(i) of the sovereign authority,</p> <p>(ii) of official bodies and tribunals, and</p> <p>(iii) of public officers, legislative, judicial and executive of any part of Bangladesh or of the Commonwealth, or of a foreign country;</p> <p>(2) public records kept in Bangladesh of private documents.</p>
Private documents	<p>75. All other documents are private.</p>
Certified copies of public documents	<p>76. Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.</p> <p>Explanation.-Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.</p>
Proof of documents by production of certified copies	<p>77. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.</p>
Proof of other official documents	<p>78. The following public documents may be proved as follows:—</p> <p>⁴⁹[(1) Acts, orders or notifications of the Government or any other Government that functioned within the territories now comprised in Bangladesh or any departments thereof by the records of the departments, certified by the heads of those departments, or by any document purporting to be printed by order of any such Government:]</p> <p>(2) the proceeding of the ⁵⁰[Parliament and of any legislature which had power to legislate in respect of territories now comprised in Bangladesh,] by the journals of those bodies respectively, or by published Acts or abstracts, or by copies purporting to be printed by order of the Government ⁵¹[* * *];</p> <p>(3) [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).]</p> <p>(4) the Acts of the Executive or the proceedings of the Legislature of a foreign country, - by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some ⁵²[Act of Parliament]:</p> <p>(5) the proceedings, of a municipal body in Bangladesh,</p> <p>by a copy of such proceedings, certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body:</p> <p>(6) public documents of any other class in a foreign country,—</p> <p>by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public, or of a Bangladesh Consul or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.</p>
<p style="text-align: center;">CHAPTER V</p> <p style="text-align: center;">PRESUMPTION AS TO DOCUMENTS</p>	
Presumption as to genuineness of	<p>79. The Court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact and which purports to be duly certified by any officer of</p>

certified copies	<p>the ⁵³[Government] to be genuine:</p> <p>Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.</p> <p>The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.</p>
Presumption as to documents produced as record of evidence	80. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume- that the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken.
[Omitted]	81. [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).]
Presumption as to Gazettes in digital forms	<p>⁵⁴[81A. The Court shall presume the genuineness of every digital record purporting to be the Official Gazette, or purporting to be digital record directed by any law to be kept by any person, if such digital record is kept substantially in the form required by law and is produced from proper custody.</p> <p>Explanation.-Digital records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.]</p>
Presumption as to document admissible in England without proof of seal or signature	82. When any document is produced before any Court, purporting to be a document which, by the law in force for the time being in England and Ireland, would be admissible in proof of any particular in any Court of Justice in England or Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the Court shall presume that such seal, stamp or signature is genuine, and that the person signing it held, at the time when he signed it, the judicial or official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in England or Ireland.
Presumption as to maps or plans made by authority of Government	83. The Court shall presume that maps or plans purporting to be made by the authority of the Government were so made, and are accurate; but maps or plans made for the purposes of any cause must be proved to be accurate.
Presumption as to collections of laws and reports of decisions	84. The Court shall presume the genuineness of ⁵⁵ [every book or Gazette] purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of ⁵⁶ [every book or Gazette] purporting to contain reports of decisions of the Courts of such country.
Presumption as to powers-of-attorney	85. The Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a notary public, or any Court, Judge, Magistrate, Bangladesh Consul or Vice-Consul, or representative of the Government, was so executed and authenticated.
Presumption as to agreements in digital forms	⁵⁷ [85A. The Court shall presume that every digital record purporting to be an agreement containing the digital signatures of the parties was so concluded by affixing the digital signature of the parties.]
Presumption as to digital record and digital signatures	<p>⁵⁸[85B. (1) In any proceedings involving a secure digital record, the Court shall presume unless contrary is proved, that the secure digital record has not been altered since the point of time to which the secure status relates.</p> <p>(2) In any proceedings, involving secure digital signature, the Court shall presume unless the contrary is proved that-</p> <p>(a) the secure digital signature is affixed by subscriber with the intention of signing or approving the digital record;</p> <p>(b) except in the case of a secure digital record or a secure digital signature, nothing in this section shall create any presumption relating to authenticity and integrity of the digital record or any digital signature.]</p>
Presumption as to Digital Signature Certificates	⁵⁹ [85C. The Court shall presume, unless contrary is proved, that the information listed in a Digital Signature Certificate is correct, except for information specified as subscriber information which has not been verified, if the certificate was accepted by the subscriber.]
Presumption as to certified copies of foreign judicial records	<p>86. The Court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of Bangladesh is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of the Government in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.</p> <p>Second Paragraph.— [Omitted by the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973), section 3 and 2nd Schedule.]</p>
Presumption as to books, maps and charts	87. The Court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published.
Presumption as to telegraphic messages	88. The Court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message

	purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.
Presumption as to digital communication	<p>⁶⁰[88A. The Court may presume that a digital communication forwarded by the originator through a digital communication or message server to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer or fed into other forms of digital device for transmission; but the Court shall not make any presumption as to the persons by whom such message was sent.</p> <p>Explanation.-For the purposes of this section, the expressions "addressee" and "originator" shall have the same meanings respectively assigned to them in clauses (22) and (24) of section 2 of the Information and Communication Technology Act, 2006 (Act No. 39 of 2006).]</p>
Presumption as to due execution, etc., of documents not produced	89. The Court shall presume that every document, called for and not produced after notice to produce, was attested, stamped and executed in the manner required by law.
Presumption as to physical or forensic evidence	⁶¹ [89A. The Court may presume unless contrary is proved that the physical or forensic evidence belongs to or is created by that person from whom it purports to have been collected.]
Presumption as to documents thirty years old	<p>90. Where any document, purporting or proved to be thirty years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.</p> <p>Explanation.-Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.</p> <p>This explanation applies also to section 81.</p> <p style="text-align: center;">Illustrations</p> <p>(a) A has been in possession of landed property for a long time. He produces from his custody deeds relating to the land, showing his titles to it. The custody is proper.</p> <p>(b) A produces deeds relating to landed property of which he is the mortgagee. The mortgagor is in possession. The custody is proper.</p> <p>(c) A, a connection of B, produces deeds relating to lands in B's possession which were deposited with him by B for safe custody. The custody is proper.</p>
Presumption as to digital records five years old	<p>⁶²[90A. Where any digital record, purporting or proved to be five years old, is produced from any custody which the Court in the particular case considers proper, the Court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorized by him in this behalf.</p> <p>Explanation.- Digital records are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they naturally be; but no custody is improper if it is proved to have had a legitimate origin, or the circumstances of the particular case are such as to render such an origin probable.]</p>
CHAPTER VI	
OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE	
Evidence of terms of contracts, grants and other dispositions of property reduced to form of document	<p>91. When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained. Exception 1.— When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.</p> <p>Exception 2.— Wills admitted to probate in Bangladesh may be proved by the probate.</p> <p>Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.</p> <p>Explanation 2.—Where there are more originals than one, one original only need be proved.</p> <p>Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.</p> <p style="text-align: center;">Illustrations</p> <p>(a) If a contract be contained in several letters all the letters in which it is contained must be proved.</p> <p>(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.</p> <p>(c) If a bill of exchange is drawn in a set of three, one only need be proved.</p> <p>(d) A contracts, in writing, with B, for the delivery of indigo upon certain terms. The contract mentions the fact that B had paid A the price of other indigo contracted for verbally on another occasion.</p> <p>Oral evidence is offered that no payment was made for the other indigo. The evidence is admissible.</p>

(e) A gives B a receipt for money paid by B.

Oral evidence is offered of the payment.

The evidence is admissible.

Exclusion of evidence of oral agreement

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

Proviso (1).—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law.

Proviso (2).—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso (3).—The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso (4).—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso (5).—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved:

Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts.

Illustrations

(a) A policy of insurance is effected on goods "in ships from Chittagong to London". The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b) A agrees absolutely in writing to pay B Taka 1,000 on the first March, 1873. The fact that, at the same time an oral agreement was made that the money should not be paid till the thirty-first March cannot be proved.

(c) An estate called "the Rampore tea estate" is sold by a deed which contains a map of the property sold. The fact that land not

included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.

(d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.

(e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions, as that provision was inserted in it by mistake. A may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) A orders goods of B by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. B sues A for the price. A may show that the goods were supplied on credit for a term still unexpired.

(g) A sells B a horse and verbally warrants him sound. A gives B a paper in these words: "Bought of A a horse for Taka 500". B may prove the verbal warranty.

(h) A hires lodgings of B, and gives a card on which is written—"Rooms Taka 200 a month". A may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of B for a year, and a regularly stamped agreement, drawn up by an attorney, is made between them. It is silent on the subject of board. A may not prove that board was included in the term verbally.

(i) A applies to B for a debt due to A by sending a receipt for the money. B keeps the receipt and does not send the money. In a suit for the amount A may prove this.

(j) A and B make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with B, who sues A upon it. A may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document

93. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Illustrations

(a) A agrees, in writing, to sell a horse to B for Taka 1,000 or Taka 1,500. Evidence cannot be given to show which price was to be given.

(b) A deed contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of

94. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.