

303 : Law of Evidence

Objectives of the course:

The law of evidence, is an indispensable part of both substantive and procedural laws. It imparts credibility to the adjudicatory process by indicating the degree of veracity to be attributed to 'facts' before the forum. This paper enables the student to appreciate the concepts and principles underlying the law of evidence and identify the recognized forms of evidence and its sources. The subject seeks to impart to the student the skills of examination and appreciation of oral and documentary evidence in order to find out the both. The art of examination and cross-examination and cross-examination and the shifting nature of burden of proof are crucial topics. The concepts brought in by amendments to the law of evidence are significant parts of study in this course.

1. Introduction, Definitions and Relevancy of Facts:

- 1.1 Main features of the Evidence Act and its applicability
- 1.2 Definitions: 'Proved', 'Disproved' and 'Not Proved', 'May Presume' and 'Shall Presume', 'Conclusive Proof'
- 1.3 Relevancy of Facts, Facts in Issue, Distinction between them
 - 1.3.1 Facts necessary to explain/introduce relevant facts
 - 1.3.2 When Facts not otherwise relevant become relevant
- 1.4 Admission: definition,
 - 1.4.1 Admission by different persons,
 - 1.4.2 Oral admission, relevant provisions
- 1.5 Confession: Definition, Distinction between Admission and Confession
 - 1.5.1 Confession made before different persons/authorities and its relevancy and evidential importance, relevant provisions
- 1.6 Distinction between Oral and Documentary Evidence
- 1.7 Statement by persons who cannot be called as witnesses
- 1.8 Statements made under special circumstances
- 1.9 Judgments of courts of justice, when relevant
- 1.10 Opinion of third persons : Its relevancy :
 - 1.10.1 Opinion of Experts
 - 1.10.2 Opinion as to handwriting experts
 - 1.10.3 Opinion as to digital signature other relevant provisions as to expert opinion
 - 1.10.4 Relevancy of opinion as to character

2. Types of evidence:

- 2.1 Judicial Notice
- 2.2 Oral Evidence : General Provisions
- 2.3 Documentary Evidence : General Provisions
 - 2.3.1 Primary and Secondary Evidence and its related provisions
 - 2.3.2 Special provisions as to evidence relating to electronic record and its Admissibility, proof as to digital Signature & its Verification
 - 2.3.3 Public documents and private documents
- 2.4 Presumptions as to documents including Gazettes in electronic forms
- 2.5 Statement by persons who cannot be called as witnesses
- 2.6 Presumption in case of Dowry Death and cases involving violation of women's rights

3. Dying Declaration, Stages of Examination of Witnesses:

- 3.1 Dying Declaration: Definition, Principle for relying upon Dying Declaration
 - 3.1.1 Evidential Value of Dying Declaration
 - 3.1.2 Essentials for recording Dying Declaration
 - 3.1.3 Judicial Approach for appreciation of the contents of Dying Declaration
- 3.2 Stages of Examination of Witnesses:
 - 3.2.1 Examination in Chief
 - 3.2.2 Cross Examination:
 - Essentials
 - Art of Cross Examination
 - 3.2.3 Re-examination
- 3.3 General Principles of examination and cross examination
- 3.4 Lawful questions in cross – examination
- 3.5 Leading questions
- 3.6 Hostile witness, Impeaching of the standing or credit of witness

4. Burden of Proof and Estoppel:

- 4.1 Burden of Proof: Meaning
 - 4.1.1 The general conception of *onus probandi*
 - 4.1.2 General and special exceptions to *onus probandi*
- 4.2 The Justification of presumption and of the doctrine of judicial notice
- 4.3 Justification as to presumptions as to certain offences
 - 4.3.1 Presumption as to abetment of suicide by a married woman (Sec. 113-A) and dowry death (Section 113-B)
 - 4.3.2 Presumption as to absence of consent in certain prosecution for rape (Sec. 114-A)
- 4.4 The Scope of the doctrine of judicial notice (Section 114)
- 4.5 Estoppel: Meaning, importance
 - 4.5.1 Distinction: Estoppel, res judicata, Waiver and presumption
 - 4.5.2 Kinds of Estoppel:
 - Estoppel by deed
 - Estoppel by conduct
 - Equitable and Promissory Estoppel
 - Tenancy Estoppel
- 4.6 Questions of corroboration (Section 156-157)

Suggested Readings:

1. Sarkar and manohar , Sarkar and Evidence, Wadha & Co. Nagpur
2. Sir John Wood Roffe & Syed S. Amir Ali's Law of Evidence Vol. 1-4
3. Indian Evidence Act, (Amendment up to date)
4. Rattan Lal & Dhiraj Lal Law of Evidence, LexisNexis – Butterworths Wadhwa, Nagpur
5. Pole in Murphy, Evidence) Universal Delhi.
6. Albert S. Osborn, The Problem of Proof, Universal Publication, Delhi.
7. Avtar Singh, Principles of the Law of Evidence, Central Law Agency, New Delhi
8. Batuk Lal, The Law of Evidence, Central Law Agency