



FACULTY OF JURIDICAL SCIENCES

NAME OF FACULTY: Dr. Ravi Kant Gupta

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Lecture-30



PRIMARY AND SECONDARY EVIDENCE

Meaning of Documentary Evidence

According to Section 3 of the Indian Evidence Act, 1872 Documentary Evidence means, All Documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.

The expression "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.

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.

2) Kinds of Documentary evidence :

There are two kinds of Documentary Evidence, Primary Evidence and Secondary Evidence. Primary evidence is that which is the law requires to be given first and the **Secondary Evidence** is that such can be given in the absence of the **Primary Evidence**.

I) Primary Evidence -

According to Section 62 of the Indian Evidence Act, "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 counterparts, 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 from 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.

Primary Evidence is original document which is presented to the Court. **Primary Evidence** is the best Evidence in all circumstances, No notice is required before giving primary evidence, in case of Secondary evidence notice is required. The value of **Primary evidence** is highest.

II) Secondary Evidence -

Section 63 of Indian Evidence Act, 1872 deals with Secondary Evidence, 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

- 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.
- b) A copy compared with a copy of a letter made by 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.
- 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.

d) Neither an oral account of a copy compared with the original, nor an oral account of a photo graph or machine copy of the original, is secondary evidence of the original.

Secondary Document is the document which is not original document. Giving Secondary Evidence is exception to the general rule. Notice is required to be given before giving secondary evidence. The value of Secondary evidence is not as that of **Primary Evidence**

When Secondary Evidence is Admissible ?

According to Section 65. of the Indian Evidence Act, 1872 Secondary evidence may be given of the existence, condition or contents of a document in the following cases:

- 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;
- 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;
- 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;
- d) When the original is of such a nature as not to be easily movable;
- e) When the original is a public document within the meaning of Section 74;
- f) When the original is a document of which a certified copy is permitted by Evidence Act, or by any other law in force in India to be given in evidence;
- 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 collections. In cases (a), (c) and (d), any secondary evidence of the contents of the documents is admissible. In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. 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.

Secondary Document is the document which is not original document. Giving **Secondary Evidence** is exception to the general rule. Notice is required to be given before giving secondary evidence. The value of **Secondary evidence** is not as that of **primary Evidence**

Difference between Primary and Secondary document:

following are the notable points distinction between the Primary and Secondary Evidence.

No	Primary Evidence	Secondary Evidence
1)	Primary Evidence is original document which is presented to the court for its inspection.	Secondary Evidence is the document which is not original document but those documents which are mentioned in Section.63.
2)	It is the main source of Evidence.	It is an alternative source of Evidence.
3)	Section 62 of the Evidence Act defines Primary Evidence	Section 63 of the Indian Evidence Act defines Secondary Evidence
4)	Primary Evidence is the best Evidence	Secondary Evidence is not best evidence but is evidence of secondary nature and is admitted in exceptional circumstances mentioned in Section 65.

5)	Giving Primary Evidence is general rule.	Giving Secondary Evidence is exception to the general rule.
6)	Primary Evidence itself is admissible.	Secondary Evidence is admissible in the absence of the Primary Evidence.
7)	No notice required before giving Primary Evidence.	Notice is required to be given before giving Secondary Evidence.
8)	The value of Primary Evidence is highest.	The value of Secondary Evidence is not that of Primary Evidence