



FACULTY OF JURIDICAL SCIENCES

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Lecture-26



Opinions of third persons when Relevant

The general principle of law of evidence is that every witness is a witness of a fact not of an opinion. It means that every person who appears before the court has to tell the court only the facts of which he has the first hand knowledge and not his opinion. He has to tell what he has seen or heard or perceived about a fact. Not his beliefs which are irrelevant. The forming of opinion is a judicial function and not of a witness

Exception: Sections 45 to 50 lays down the exceptions as to when the opinions of the third persons become relevant.

Section 45: Experts Opinion.

This section provides that, “ When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, are relevant facts”. Such persons are called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(b) The question 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. The opinions of experts upon the question whether the two documents were written by the same person or by different persons, are relevant. The courts seeking opinion of experts has been a long standing practice. The reason is obvious that there are many matters which require technical and professional

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. The courts seeking opinion of experts has been a long standing practice. The reason is obvious that there are many matters which require technical and professional

knowledge, which the court may not possess and it has to rely upon the person who are experts in such fields. Example, the court has to know the reasons of air crash, cause of a ship wreck, cause of a death, effect of poison, nature of art, value of articles, meaning of terms and foreign law etc..

Who is an Expert: The IEA does not define who is expert simply lays down that any person who is specially skilled i.e. has acquired a special knowledge shall be called as expert. A gold smith without any formal education has been considered as an Expert to find out the purity of the gold (*Abdul Rahman v. State of Mysore*).

When Experts opinion becomes relevant: In the following matters the opinions of Experts become relevant:

1. Foreign Law
2. Matters of Science
3. Question of Art
4. Identity of Hand writing
5. Finger Impressions

1. Foreign Law : Foreign Law means which is not in force in India. The courts may not be conversant with them. When the court has to form an opinion on any point of foreign law, the opinions of the persons who are experts in such law becomes relevant and the courts can seek their opinions. The law in force in India is not a foreign law. Ex. Shia Law is not a foreign Law in India (*Aziz Bhanu v. Mohammad Ibrahim Hussain*). Who is an expert in foreign law.? He should be a practitioner in law (*Bristow v Sequeville*)

2. Matters of Science of Art: The expression science or art includes all subjects on which a course of special knowledge is necessary for the formation of an opinion. The words science and art are broadly construed. The word science not limited to physical or biological sciences and an area which requires a special knowledge. The word arts does not just include a fine arts. To determine the particular matter of science or art the test to be applied is to see whether a common man could answer or it requires an expert in such fields

3. Identity of Hand Writing & Finger Impressions : When the court has to decide the identity of hand writing of a person or the identity of certain person's finger impression, it may receive the opinion of the persons who have expertise in such matters. Apart from the persons of

professional knowledge even the person who is acquainted with the hand writing of a person, his opinion is also relevant (*R v Silverlock*).

As far as the reliability of such opinion is concerned, the supreme court in number of cases has held that they are not conclusive by themselves. They required to be corroborated with a clear or direct or circumstantial evidence. However, finger impression expert's opinion is given more value because such opinions are based upon exact science and correctness. Because fingerprints of any person remain the same from their birth till death and no two individuals finger impression have been found to have the same pattern.

4. Other technical Matters: The opinion of experts is relevant only on the matters mentioned above.

Evidentiary Value of Experts Opinion

The evidence of expert is not conclusive. The opinion of expert is not binding upon the judge and that is why the court can refuse to rely on such opinion. It is necessary that there are some corroborating or supporting evidences in relation to the matter. It is necessary to show that the expert has some special knowledge and experience and is competent to form an opinion.

Credibility and competency of an expert is material question. The reasons in support of the opinion, if convincing makes the opinion admissible and relevant.

Section 45A – Opinion of examiner of electronic evidence- This section provides that opinion of examiner is relevant when the court has to form an opinion on matter or information transmitted or stored in any computer resource or digital form.

Section 46 – Facts bearing upon opinions of experts – This section provides that facts are relevant if they support or are inconsistent with the opinions of experts when such opinions are relevant.

Section 47 – Opinions as to handwriting – the opinion of person acquainted with the handwriting of person in question is a relevant under this section. When the court has to form an opinion as to the person by whom document was written or signed, the opinion of such person is relevant. In the case of *State of Maharashtra v. Sukhdeo Singh*, the Supreme Court held that two things must be proved beyond any doubt for expert evidence – 1) The genuineness of the specimen or admitted handwriting as that of the suspect must be established. 2) The handwriting expert is a competent, reliable witness whose evidence inspires confidence.

Section 47A – Opinion as to digital signature when relevant – the opinion of certifying authority which issued the digital signature certificate is admissible when the court has to form an opinion on digital signature.

Section 48 – Opinion as to existence of right or custom when relevant – the opinion of persons

who would be likely to know about the existence of any right or custom is relevant.

Section 49 – Opinion as to usage's, tenants, etc., are relevant – the opinions of persons having special means of knowledge about the usage's and tenants of any body of men or family, the

Section 50 – Opinion on relationship, when relevant – the opinion of persons having special to whom B habitually submitted the letters purporting to be written by A for the purpose of advising 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 nor D ever saw A write.

Modes of proving the handwriting

Sections 45 and 47 put together, the following modes of proving the handwriting

1. By the writer himself
2. By the expert opinion
3. By the evidence of the person who is acquainted with the handwriting of the person in question
4. Under section 73 by the court itself by comparing the handwriting in question with the proven handwriting. means of knowledge about the relationship of one person to another or as a member of family is relevant.

Section 51 – Grounds of opinion are relevant –This section provides that the grounds on which

the opinion of living person is based are also relevant.

Modes of Proving Handwriting and Finger Impressions

Section 47 of Indian Evidence Act, 1872 deals with 'Opinion as to handwriting, when relevant'

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.

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

Illustration The question is, whether a given letter is in the underwriting of A, a merchant in London. B is a merchant in Calcutta, 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