



FACULTY OF JURIDICAL SCIENCES

NAME OF FACULTY: Dr. Ravi Kant Gupta

COURSE: B.B.A.LL.B. VI Semester

SUBJECT: Law of Evidence

SUBJECT CODE: BBL 604

Lecture-29



ORAL EVIDENCE AND HEARSAY EVIDENCE

Definition:

Evidence means and includes:

i) all statements which the court permits or requires to be made before it by witness in relation to a matter of fact under inquiry such statements are called **oral evidence**.

ii) all documents including electronic records produced for the inspection of the court

Evidence may be oral or documentary. Evidence is defined as any matter of fact the effect or tendency of which is to produce in the mind a persuasion of the existence (or otherwise) of some other matter or fact,.

The textual definition refers only to oral and documentary evidence and hence incomplete. The judge may rest his judgment on various other media of proof as well. Inspection report, facts which the court may take judicial notice etc. are not covered by the definition.

An affidavit is not 'evidence' under this section. Similarly confessions of Co-accused, Mahajar report, finding of the tracker dogs or tape recordings etc; are not evidence. These are to be proved and then the court may decide their admissibility and evidentiary value.

Principle of Evidence

One of the major objectives of the Evidence Act is that the courts should admit only the best evidence, and, nothing short of it. This is further emphasised by making detailed provisions, as, to when the evidence is admissible.

i) Evidence may be given only on facts in issue or relevant facts and no other.

ii) Opinion evidence should not be entertained: Exception: Expert witnesses.

i) Primary evidence of a document is the best evidence. Exception: Secondary evidence of the documents.

ii) Oral evidence is excluded to prove documents.(This is subject to certain exceptions)

iii) Oral evidence must be direct. Hence Hearsay evidence is prohibited, subject to certain exceptions.

Oral Evidence: Section 59 & 60

One cardinal rule of evidence is that where written documents exist they must be produced as being the best evidence. If there is oral evidence, which is conflicting with the document, then greater credence (value) is given to the document than to oral testimony.

Hence it is provided in the **Section 59** of the Indian Evidence Act that all facts, except the contents of the documents are to be proved, by oral evidence.

While **Section 60** of the Indian Evidence Act provided that oral evidence in all cases must be direct. That is to say-

i) If it refers to a fact which could be seen, it must be by a witness who says he has seen it.

- ii) If it refers to a fact which could be heard, it must be the evidence of a person who has heard it.
- iii) If it refers to a fact which could be perceived by any other sense, the evidence must be by a witness who says he has perceived through that sense.
- vi) If he refers to an opinion, the evidence must be by a person who holds that opinion on those grounds or reasons. Here an expert may produce the treatises (e.g. Modi's: medical Jurisprudence etc.) and furnish his reasons for the opinion.
- iv) If the Oral evidence refers to any material thing, the Court may ask the very thing to be produced as evidence (Exhibit).

Hearsay evidence:

Every evidence must be on the personal responsibility of the witness. But, if the evidence is based on the veracity or competence of some other person, it is called Hearsay and this is inadmissible. After all Hearsay evidence is a second-hand proof.

Exceptions to Hearsay Evidence Rule:

The general rule of Evidence Act is that any oral evidence must be direct i.e, Hearsay evidence is not admissible. It must be given on oath and must be subject to cross-examination by the opposite party. Otherwise, the evidence is not admissible.

There are following exception to this rule.

- (i) Res gestae(section 6)
- (ii) Admission and Confession
- (iii) Under Section. 32 & 33, there are four types of persons who are neither called before the court as witnesses, nor, are they subject to cross-examination. They are:
 - i) those who are dead
 - ii) those who cannot be found
 - iii) those who have become incapable of giving evidence
 - iv) those whose presence cannot be procured except after reasonable delay or expense.

The reason for allowing such an evidence is one of necessity and it may be impossible, to apply the test of cross-examination to them. But the circumstances show that their statements are true and trustworthy.

- iv) Entries in books of account and entry in public document (section 34 & 35)
- v) If the author is dead, cannot be found or is incapable of giving evidence or his bringing may result in delay or expenditure in such a case the opinion in the treatise is admissible.(Proviso of section 60).