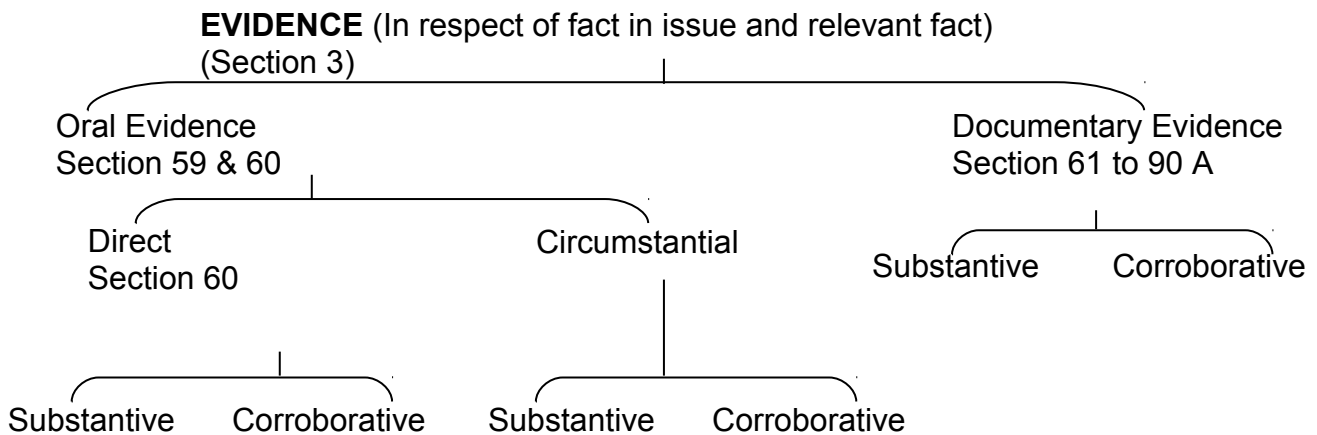


EVIDENCE – KINDS OF

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It is necessary to know kinds of evidence and how they are to be appreciated. Section 3 of the Evidence Act reveals when a fact is “Proved”, “Disproved” and “Not Proved”. Facts judicially noticeable need not be proved (Section 56). Facts which are admitted need not be proved (Section 58). After advertent to such judicially noticeable facts and admitted facts, a reference is required to be made to as to how disputed facts are to be proved on the basis of produced evidence. Kinds of evidence are as under :



The word “evidence” is used in the Evidence Act in different phrases, i.e. best evidence, direct evidence, circumstantial evidence, documentary evidence, substantive evidence, corroborative evidence, derivative evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, real evidence, primary evidence and secondary evidence. However, oral evidence and documentary evidence are the main two kinds of evidence and they comprise direct evidence (which includes substantive and corroborative evidence and documentary evidence (which includes substantive and corroborative evidence).

(a) **Substantive evidence** is the evidence on the basis of which a fact is proved and which requires no corroboration. **Substantive evidence** is either direct or circumstantial or both.

(b) **Corroborative evidence** is the evidence used to corroborate substantive evidence. If there is no substantive evidence, corroborative evidence loses its significance. In other words in absence of substantive evidence, corroborative evidence is no evidence. [Section 7, 27, 156, 157 of the Evidence Act, FIR, injury certificate, panchnamas, etc.] Corroborative evidence is either direct or circumstantial or both.

(c) **Hearsay evidence**, which is indirect and derivative, is not received as relevant evidence. It is inadmissible. However, hearsay evidence falling under second part of Sec. 60 of the Evidence Act is not always inadmissible. In **Balram Prasad Agrawal v. State of Bihar & others (AIR 1997 SC 1830)**, the Apex Court referred to the observations of the Privy Council, in the following words:

Evidence of a statement made to a witness who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement but the fact that it was made. The fact that it was made quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter, of the witness or some other person in whose presence these statements are made.

This can be best explained with reference to evidence of a victim i.e. a married woman in a case u/s. 498-A of I.P.C. When she is subjected to cruelty by her husband and/or in laws in her marital house, members in her parental house residing there do not actually witness the cruel treatment, but they come to know about the cruelty from the married woman later on. The evidence of members in her parental house in respect of the **truthfulness** of the cruelty is hearsay and hence, is inadmissible, but the evidence of the members in her parental house is **admissible it being substantive but relevant** in view of second part of Sec. 60 read with Sec. 8 of the Evidence Act to establish the **subsequent conduct** of the married woman to inform members in her parental house about the cruelty. Thus, the evidence of the members in the parental house of the married woman is **direct** in view of Sec. 60 so far as subsequent conduct of the married woman to narrate the cruelty is concerned and **such hearsay evidence is direct and relevant and corroborates** the evidence of maker of the statement i.e. the married woman, whose evidence in respect of cruelty is direct and substantive.

However, there are four exceptions to the rule of in-admissibility of hearsay evidence relating to **truthfulness** of such statement and they are (a) Res Gestae (Section 6); (b) admission (Section 17 to 23); (c) confession; & (d) statements of witnesses who cannot be called as witnesses (Section 32).

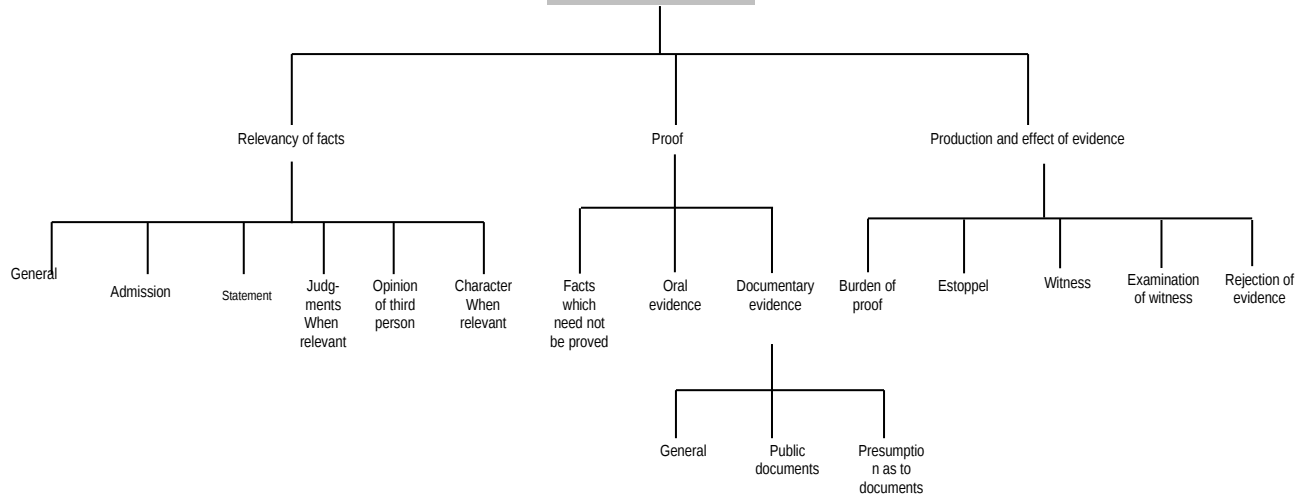
(e) The direct evidence, circumstantial evidence, corroborative evidence and hearsay evidence can very well be explained by an illustration.

'A' is charged of commission of murder of 'B' by stabbing him. 'C', 'D', 'E', 'F', 'G', 'H', 'I', 'J' & 'K' are witnesses called by the prosecution.

- i. 'C' says that he **saw** 'A' stab 'B'. His evidence is purely **direct and substantive** (Section 60 first part) he being **an eye witness**.
- ii. 'D' says that he **heard** 'B' cry out that 'A' was stabbing him. His evidence is **direct, but circumstantial and substantive** in respect of **relevant fact** and not hearsay (Section 6 & 60 second part) even though he actually did not witness the incident of stabbing.
- iii. 'E' says that he **saw** 'A' running away with a blood stained knife and blood stained clothes. His evidence is **direct** as he saw A while running away, vide section 60(first part), **but circumstantial** (Section 7 & 8) in respect of **relevant fact**, it being **effect of stabbing** u/s. 7, and **subsequent conduct** of the accused u/s. 8 **to run away**.(See illustration (c) u/s. 9)
- iv. 'F' says that he **saw** A washing his blood-stained clothes. Evidence of F accordingly given is **direct, but circumstantial** (Section 7,8 & 60 first part) in respect of relevant fact, it being **effect** u/s 7 & **subsequent conduct** u/s 8.(See illustration (e))

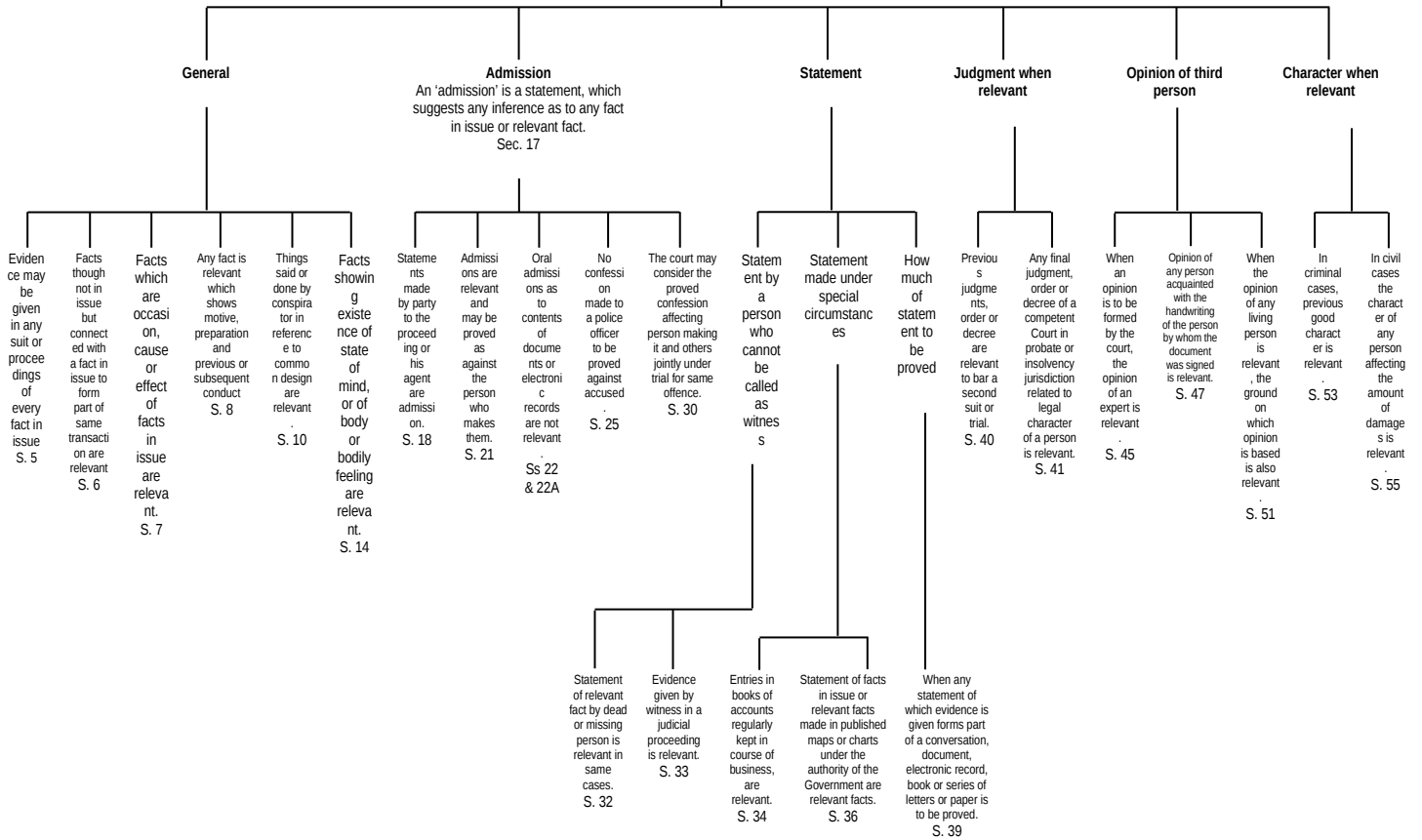
- v. 'G' is a medical officer, who **says** that the knife found in 'A's possession might have caused wounds found on 'B'. His evidence **being opinion is circumstantial, but direct and corroborative** (Section 60 fourth part) in respect of relevant fact.
- vi. 'H' says that he **heard** from 'C', that 'C' **saw** 'A' stabbing 'B'. His evidence is **hearsay & not admissible so far as proof of truthfulness of what 'C' said to him** is concerned, but **evidence of 'H' will be admissible to prove conduct of 'C' (Section 8) saying to 'H' & if 'C' said to 'H' at or about the time when the incident occurred, evidence of 'H' will be used to corroborate say of 'C'** (Section 157) [*Ramratan Vs. State of Rajasthan (AIR 1962 SC 424)* & *Balram Prasad Agrawal v. State of Bihar & others (AIR 1997 SC 1830)*].
- vii. 'I' says that he **saw** A **procuring the knife** before the incident occurred, is **relevant** it being, prepare on by and **conduct** of, B **previous** to the incident u/s 8, (See illustration (c)) B's **state of mind** u/s 14, **direct evidence** u/s 60(first part).
- viii. 'J' says that he **heard** A saying to him or second person shortly before the incident **expressing his ill-will against B**. J's evidence is **relevant**, but **circumstantial and direct** u/s 14 (See illustration (e)) r/w section 60(second part).
- ix. 'K' says that he as a panch witness along with a second panch witness & investigation officer visited scene of offence & found blood stains and/or marks of struggle at & near the place. His evidence is corroborated by the spot panchnama. K's evidence in respect of as to what he actually saw at the place is **direct u/s 60 (first part)**, but **circumstantial and corroborative** ,it being **effect** of the incident, being relevant u/s 7.

EVIDENCE ACT

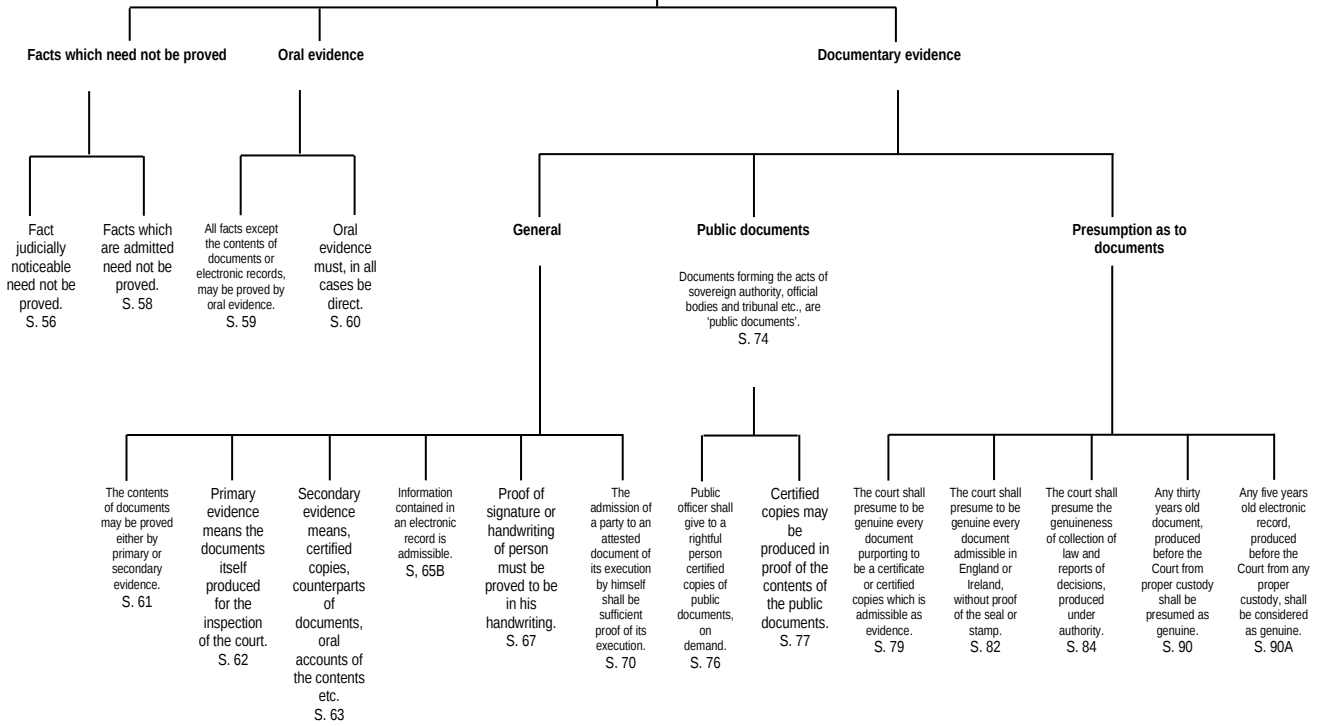


RELEVANCY OF FACTS

connected with other



PROOF



PRODUCTION AND EFFECT OF EVIDENCE

