PARBHANI

DISTRICT AND SESSIONS COURT

PARBHANI

2nd WORK-SHOP OF JUDICIAL OFFICER
IN PARBHANI DISTRICT
2015-2016

SUMMARY/GIST OF PAPERS OF SECOND WORKSHOP HELD ON 13th DECEMBER, 2015

Under the guidance of the Hon'ble Justice
Shri Tanaji Vishwasrao Nalawade, Judge Bombay High Court and Guardian Judge of Parbhani Judicial District.

LIST OF JUDICIAL OFFICERS IN PARBHANI JUDICIAL DISTRICT

Sr. No.	*Name of Judicial Officer*	*Designation*
1.	Hon'ble Smt. M.S.Jawalkar	The Principal District & Sessions Judge,Parbhani.
2.	Shri.R.M.Sadrani	District Judge-1& Addl.Sessions Judge, Parbhani.
3.	Shri. C.W. Saindani	District Judge-1& Addl.Sessions Judge, Hingoli.
4.	Shri. D.N. Argade	District Judge-1& Addl.Sessions Judge, Vasmat.
5.	Shri.A.A. Sayeed	District Judge-1& Addl.Sessions Judge, Gangakhed.
6.	Shri.M.P.Divate	District JudgeAddl.Sessions Judge,Hingoli.
7.	Shri.V.K.Kadam	Ad-hoc District Judge1-, Parbhani
8.	Shri.P.S.Ghate	Ad-hoc District Judge2-, Parbhani
9.	Shri.S.G.Thube	Ad-hoc District Judge3-, Parbhani
10.	Shri.S.N.Sonwane	Civil Judge Senior Division, Parbhani
11.	Shri.R.D.Bodhane	Chief Judicial Magistrate, Parbhani
12.	Shri.S.K.Tikile	Civil Judge Senior Division, Hingoli
13.	Shri.P.S.Vithalni	Civil Judge Senior Division, Vasmat
14.	Shri.A.A.Ghaniwale	Jt. Civil Judge Senior Division, Parbhani
15.	Shri.S.B.Dige	Civil Judge Senior Division, Gangakhed
16.	Shri.A.S.Lanjewar	Jt. Civil Judge Jr.Div.&

		JMFC., Parbhani
17.	Shri.Satish B.Hiwale	2nd Jt. Civil Judge Jr.Div.& JMFC., Parbhani
18.	Shri.V.G.Choukhande	3rd Jt. Civil Judge Jr.Div.& JMFC., Parbhani
19.	Sow.T.M.Deshmukh-Naik	4th Jt. Civil Judge Jr.Div.& JMFC., Parbhani
20.	Sow.B.S.Pal	5th Jt. Civil Judge Jr.Div.& JMFC., Parbhani
21.	Shri.M.E.Pawar	6th Jt. Civil Judge Jr.Div.& JMFC., Parbhani
22.	Shri.S.S.Kadam	Jt. Civil Judge Jr.Div.& JMFC., Gangakhed
23.	Shri.A.S.Alewar	2nd Jt. Civil Judge Jr.Div.& JMFC., Gangakhed
24.	Shri.A.M.Joshi	Jt. Civil Judge Jr.Div.& JMFC., Vasmat
25.	Shri.K.U.Telgaonkar	2nd Jt. Civil Judge Jr.Div.& JMFC., Vasmat
26.	Shri.P.P.Deshmane	3rd Jt. Civil Judge Jr.Div.& JMFC., Vasmat
27.	Shri.P.R.Shinde	Jt. Civil Judge Jr.Div.& JMFC., Hingoli
28.	Shri.G.B.Deshmukh	2nd Jt. Civil Judge Jr.Div.& JMFC., Hingoli
29.	Shri.S.S.Gaikwad	3rd Jt. Civil Judge Jr.Div.& JMFC., Hingoli
30.	Shri.A.B.Shendge	Civil Judge Jr.Div.& JMFC., Aundha
31.	Shri.P.P.Modi	Civil Judge Jr.Div.& JMFC., Kalamnuri
32.	Shri.M.Z.A.A.Q.Qurashi	Civil Judge Jr.Div.& JMFC., Sengaon
33.	Shri.S.Y.Kadam	Civil Judge Jr.Div.& JMFC., Sonpeth
34.	Shri.V.N.Girwalkar	Civil Judge Jr.Div.& JMFC., Palam
35.	Shri.R.U.Nagargoje	Civil Judge Jr.Div.& JMFC.,

		Jintur
36.	Shri.D.M.Mata	Civil Judge Jr.Div.& JMFC., Selu
37.	Shri.S.M.Patil	Civil Judge Jr.Div.& JMFC., Manwat
38.	Shri.T.N.Quadri	Civil Judge Jr.Div.& JMFC., Pathri
39	Shri.A.D.Pundlik	Civil Judge Jr.Div.& JMFC., Purna

TOPICS OF WORKSHOP :

CIVIL:

1 Error within Jurisdiction and outside Jurisdiction of the Court in Civil Side

2 Procedure for recording evidence including by Video Conferencing Appreciation of Electronic Evidence in Civil Matters.

CRIMINAL:

1 Error within Jurisdiction and outside Jurisdiction of the Court in Criminal Side

2 Procedure for recording evidence including by Video Conferencing Appreciation of Electronic Evidence in Criminal Matters.

-: S U B J E C T - I N D E X :-

I N D E X

Civil Group

I N D E X

Criminal Group

Questionary

" Error within Jurisdiction and Outside the Jurisdiction of the Court & Procedure for Recording Evidence including by Video Conferencing. Appreciation of Electronic Evidence

A

Error within Jurisdiction and Outside the Jurisdiction of the Court

Introduction:

1- Jurisdiction is the authority to decide and a jurisdictional error occurs when the extent of that authority is misconceived. "Jurisdiction" literally means a power and extent of authority of the Court to try the cases. Jurisdiction is a process by which the statute confers on the court to exercise its authority. It is the power which a court possess to entertain suits, appeals and applications. Jurisdiction is key question for the Court which goes to the root of the case and decide the fate of matter either at preliminary stage or on merit. Jurisdiction can also be defined as, "The authority, which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision". It is the authority with which the court is vested to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. Jurisdiction is the 'authority to decide' and a jurisdictional error occurs when the extent of that authority is misconceived. Decisions affected by jurisdictional error can be quashed by judicial review.

2- **Kinds of Jurisdiction**:-

Jurisdiction of a Civil Court may be classified as follows:-

a) **Territorial or Local Jurisdiction;**

b)**Pecuniary Jurisdiction**;

c) **Jurisdiction over the subject matter**;

d)**Original and Appellate jurisdiction**;

e) **Exclusive and concurrent jurisdiction**;

a) **Territorial or Local Jurisdiction**;

2- Every Court has the power to hear and decide the case within its local or territorial limits. Beyond that limit, it cannot be exercised its power. This limit with regard to area is called as territorial jurisdiction. This local or territorial jurisdiction is conferred on the courts by the Government. Thus, Parbhani District Court has a jurisdiction to try cases falling within its territorial limits and it cannot exercise powers beyond that district. Similarly, the Hon'ble Bombay High Court has the powers to exercise its jurisdiction within the entire territory of State of Maharashtra and Goa within which it is situated.

b) **Pecuniary Jurisdiction**:

3- The word 'pecuniary' refers to money or relating to money. Every Civil Court has its pecuniary limit. The value of the subject matter in any Court, must not exceed the pecuniary limit that has been conferred on that Court. A Court has no jurisdiction to hear and decide a suit, value of the subject matter of which exceeds the pecuniary limits of that Court. In Maharashtra, the Hon'ble High Court and Civil Judge (Sr Division) Courts have unlimited pecuniary jurisdiction. Other Courts have only a limited pecuniary jurisdiction.

1) **Jurisdiction over the subject matter**:

4- The Civil Courts of different nature have been assigned with different types of cases to be tried by them. Thus, certain courts are precluded by the statute from entertaining suits of particular classes and some are expressly allowed to try suits of a particular class. For example, the Administrative Tribunals deal only with the cases relating to service matters of the Government servants. Small Causes Courts in Maharashtra have authority to try the cases under Maharashtra Rent Control Act, the Sales-Tax Tribunals deal with the cases relating to disputes of sales tax,

family courts deal with the cases relating to divorce, matrimonial matters etc.

d) **Original and Appellate Jurisdiction**:

5- When a suit or petition is to be filed, it has to be filed in the appropriate Court competent to try it. In original jurisdiction, the Court entertains, hears or adjudicates the cases that are filed before it. Courts of Civil Judges and Judges of Small Causes Courts have the original jurisdiction. In Appellate jurisdiction, the Court entertains or arbitrates an Appeal. The District Courts and the Hon'ble High Courts have both original as well as Appellate jurisdiction.

e) **Exclusive and concurrent jurisdiction:**

6- Exclusive jurisdiction is that jurisdiction in which power is conferred on one Court or Tribunal for trying, dealing and deciding a case or a class of cases. In this case there is a single court that has right to hear and decide a given issue. No other Court or Authority can render a judgment or give a decision in the Class or Class of cases. Concurrent jurisdiction is that jurisdiction which can be exercised by different courts of Authorities between the same parties and at the same time over the subject matter. Thus it is upon the litigant to decide as which court's jurisdiction it wants to invoke.

3) **Error within jurisdiction of the Court**:

7- In the case of **Official Trustee, West Bengal vs. Sachindra Nath Chatterjee** reported **in AIR 1969 SC 823** the Hon'ble Supreme Court observed that, before a court could be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It was not sufficient that, it had some jurisdiction in relation to the subject matter of the

suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that had arisen between the parties. This aspect of the matter was reviewed by the Hon'ble Supreme Court in the case of **M.L. Sethi Vs. R.P. Kapur AIR 1972 SC 2379**.

It is observed, " The dicta of the majority of the House of Lords in the case R. Vs. Boltol would show the extent to which 'lack' and 'excess' of jurisdiction have been assimilated or, in other words the extent to which we have moved away from the traditional concept of 'jurisdiction'. The effect of the dicta in that case is to reduce the difference between jurisdictional error and error of law within jurisdiction almost to vanishing point. The practical effect of the decision is that, any error of law can be reckoned as jurisdictional. This comes perilously close to saying that there is jurisdiction if the decision is right in law but none if it is wrong. Almost any misconstruction of a statute can be represented as, ' basing their decision on a matter with which they have no right to deal', 'imposing an unwarranted condition' or 'addressing themselves to a wrong question'. The majority opinion in the case leaves a court for Tribunal with virtually no margin of legal error. Whether there is excess of jurisdiction or merely error within jurisdiction can be determined only by construing the empowering statute, which will give little guidance. Why is it that a wrong decision on a question of limitation or res-judicata was treated as a jurisdictional error and liable to be interfered with in revision. It is a bit difficult to understand how an erroneous decision on a question of limitation or res-judicata oust jurisdiction of the court in the primitive sense of the term and render the decision or a decree embodying the decision a nullity liable to collateral attack. The reason can only be that the error of law was considered as vital by the Court and there is no yardstick to determine the magnitude of the error other than the opinion of the Court."

8- In the case **R.N. Mitra vs. Angurbala AIR 1976 Cal 217** it is

observed in paragraph No.8, " In a case of this nature, in my opinion, even though there has been much refinement on the concept of jurisdiction, a common sense point of view has to be approached. Judged from that point of view, in my opinion, in a case where a suitor has contended that the claim was beyond Rs.50,000/- in such a situation unless it can be said that the claim ex facie was illegal, this court would have jurisdiction to try that contention. An erroneous finding in deciding that contention or finding contrary to any provisions of law would not, in my opinion, amount to excess of jurisdiction. In the instant case, the issue of jurisdiction was specifically raised before the learned Judge and was negatived. In the aforesaid view of the matter, I am of the opinion that the decree was not a nullity.

Error outside the jurisdiction of the Court:

9- If a Court has no jurisdiction of the subject of an action, a judgment rendered therein does not adjudicate anything. It does not bind the parties, nor can it thereafter be made the foundation of any right. It is a mere nullity without life or vigour. The infirmity appearing upon its face, its validity can be assailed on appeal or by motion to set it aside in the court which rendered it, or by objection to it when an effort is made to use it as evidence in any other proceeding to establish a right. If a trial court does not have subject matter jurisdiction and, therefore, has no power to entertain the proceedings or decide a question, an appellate Court lacks jurisdiction to review or evaluate an evidentiary determination for an act outside the jurisdiction of the court whose judgment or order is appealed.

10- There is distinction between want of jurisdiction and irregular exercise thereof. Every court has inherent power to decide the question of its own jurisdiction. Jurisdiction of a court depends upon the averments made in the plaint and not upon the defence in a written statement. For deciding jurisdiction of a court, the substance of a matter and its form is

important. Every presumption should be made in favour of jurisdiction of a civil court. A statute ousting the jurisdiction of a civil court is barred, it can still decide whether the provisions of an Act, have been complied with or whether an order was passed dehors the provisions of law.

11- A jurisdictional error arises where a decision maker has accept the authority or power conferred upon him. A violation of power or jurisdiction may arise in different way including ignoring of relevant material, relying on irrelevant material, breaching natural justice of fraud. A fact finding error can be a jurisdictional error. There is a jurisdictional error if a decision maker makes the decision outside the limits of the functions and powers conferred, or does something which he/she lacks power to do.

12- An error within the jurisdiction does not cause decision for proceeding to be void or nullity. The decision is liable to be set aside by appeal, if the statue has creating right to appeal against the decision or by certiorari writ for error of law on the face of record, if there is another court which jurisdiction to issue that writ. An error out of jurisdiction causes proceeding or order to be invalid. Such error can be corrected by statutory appeal, or by judicial review.

Jurisdiction of Civil Courts under C.P.C.

13- Section 9 of Civil Procedure Code deals with the jurisdiction of Civil Courts in India. It says that the Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.
Explanation I- a suit in which the right to property or to an offence is contested is a suit or a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II- for the purpose of this section, it is immaterial whether or not any fees are attached to the office referred to in explanation I or whether or not such office is attached to a particular place.

A civil Court has jurisdiction to try a suit if two conditions are fulfilled: The suit must be of a civil nature; and the cognizance of such a suit should not have been expressly or impliedly barred.

Lack of jurisdiction and irregular exercise of jurisdiction.

14- There is always a distinction between want of jurisdiction and irregular exercise of it. In the case **Amrit Bhikaji Kale Vs. Kashinath Janardhan Tarade AIR 1983 SC 643,** it is held that "if there is inherent lack of jurisdiction, the decree passed by a Civil Court is a nullity, and that nullity can be set up in any collateral proceedings." However, if a Court has jurisdiction but it is irregularly exercised, the defect does not go to the root of the matter, and the error, if any, in exercising the jurisdiction can be remedied in appeal or revision and when there is no such remedy or is not availed of, the decision is final.

Basis to determine jurisdiction.

15- It is well settled that for deciding the jurisdiction of a Civil Court, the averments made in the plaint are material. To put it differently, the jurisdiction of a Court should normally be decided on the basis of the case put forward by the plaintiff in his plaint and not by the defendant in his written statement. In the case of **Abdulla Bin Ali Vs. Golappa AIR 1985 SC 577,** the plaintiff had filed a suit in Civil Court for declaration of title and for possession and mesne profits treating the defendant as trespasser. The defendant contended that Civil Court has no jurisdiction since he was a tenant. The Hon'ble Supreme Court observed that, the allegations made in

the plaint decide the forum. The jurisdiction does not depend upon the defence taken by the defendant in the written statement. On a reading of the plaint as a whole it is evident that the plaintiff had filed the suit giving rise to the present appeal treating the defendant as trespassers as they denied the title of the plaintiff, and a suit against the trespasser would lie only in the Civil Court and not in the revenue Court.

16- Whether a Court has jurisdiction or not has to be decided with reference to the initial assumption of jurisdiction of that Court. Whenever the jurisdiction of a Court is challenged, that Court has inherent jurisdiction to decide the said question. It is well settled that it is for the party who seeks to oust the jurisdiction of a Civil Court to establish it.

Exclusion of jurisdiction of Civil Court; Principles.

17- In the case of **Dhulabhai Vs. State of M.P. AIR 1969 SC 78** the Hon'ble Supreme Court summarized the following principles relating to the exclusion of jurisdiction of a Civil Court.

(a) Where a statute gives finality to orders of special tribunals, the civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such a provision, however, does not exclude those cases where the provisions of a particular Act have not been complied with or the statutory tribunal has not acted in conformity with fundamental principles of judicial procedure.

(b) Where there is an express bar of jurisdiction of a Court, an examination of the scheme of a particular Act to find the adequacy or sufficiency of the remedies provided may be relevant but this is not decisive for sustaining the jurisdiction of a civil Court.

Where there is no express exclusion, the examination of the remedies and the scheme of a particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the

later case, it is necessary to see if a statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by tribunal so constituted, and whether remedies normally associated with actions in civil Courts are prescribed by the said statute or not.

(c) Challenge to the provisions of a particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from decisions of tribunals.

(d) When a provision of already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(e) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or is illegally collected, a suit lies.

(f) Questions of the correctness of an assessment, apart from its constitutionality, are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in a particular Act. In either case, the scheme of a particular Act must be examined because it is a relevant enquiry.

(g) An exclusion of jurisdiction of a civil Court is not readily to be inferred unless the conditions above set down apply.

General Principles relating to jurisdiction of a Civil Court:

18- From various decisions of the Hon'ble Supreme Court, the following general principles relating to jurisdiction of a civil Court emerge:

1) A civil Court has jurisdiction to try all suits of a civil nature unless their cognizance is barred either expressly or impliedly.

2) Consent can neither confer nor take away jurisdiction of a court.

3) A decree passed by a court without jurisdiction is a nullity and the validity thereof can be challenged at any stage of the proceedings, in execution proceedings or even in collateral proceedings.

4) There is a distinction between want of jurisdiction and irregular exercise thereof.

5) Every court has inherent power to decide the question of its own jurisdiction.

6) Jurisdiction of a court depends upon the averments made in a plaint and not upon the defence in a written statement.

7) For deciding jurisdiction of a court, the substance of a matter and not its form is important.

8) Every assumption should be made in favour of jurisdiction of a civil court.

9) A statute ousting jurisdiction of a court must be strictly construed.

10) Burden of proof of exclusion of jurisdiction of a court is on the party who asserts it.

11) Even where jurisdiction of a civil court is barred, it can still decide whether the provisions of an Act have been complied with or whether an order was passed dehors the provisions of law.

Conclusion

19- A civil Court has jurisdiction to try all suits of civil nature unless their cognizance is barred either expressly or impliedly. A suit in which the right to property or to an office is contested, is a suit of a civil nature, notwithstanding that such a right may depend entirely on the decision of a question as to religious rights or ceremonies. Consent can neither confer nor take way jurisdiction of a Court. Agreements conferring jurisdiction, are however, valid and does not exclude jurisdiction of a Court, but right of a party to file a suit before such Court as decided upon. A decree passed by a Court within jurisdiction is nullity and the validity thereof can be challenged at any stage of the proceedings, in execution proceedings or

even in collateral proceedings. Thus, facet of jurisdiction in civil matters is very intrinsic and it is key question for the Court which goes to the root of the case and decide the fate of matter either at preliminary stage or on merit.

Procedure for Recording Evidence Including by Video Conferencing & Appreciation of Electronic Evidence in Civil Matters.

Introduction:

1- Video conferencing is an advancement of science and technology which permits one to see, hear and talk with someone who is far away with the same facility as if that person is present before you. Normally, a commission would involve recording of evidence at the place where the witness is. However, advancement in science and technology has not made it possible to record such evidence by way of video conferencing in the city where the court is. Indian Courts have held that physical presence of persons can be dispensed with.

2- Chapter X para 252 to 260 of Civil Manual deals with examination of witnesses and para 254 (3) provides that the evidence of witness shall be recorded in the language of the Court i.e. in Marathi beyond the limits of Greater Bombay and in English within the limits of Greater Bombay. Radical changes have been made by the C.P.C (Amendment) Act, 2002 in relation to recording of oral evidence of witnesses. Oral evidence can now be recorded by the Court Commissioner. As per Order XVIII, Rule 4 of C.P.C. in every case the examination-in-chief of a witness shall be on affidavit and copy thereof shall be supplied to the opposite party. The cross-examination and re-examination of that witness shall be taken either by the Court or by the Commissioner appointed by it. Sub-rule (3) of Rule 4 says that the Court or the Commissioner, as the case may be, shall record evidence either in writing or mechanically in the presence of the Judge or the Commissioner, as the case may be, and where such evidence is recorded by the Commissioner he shall return such evidence together with his report in writing signed by him to the Court appointing him and the evidence taken under it shall form part of the record of the suit. Audio-

video link is a mechanical process where the party is present on the screen and there is a mechanical devicer recording the evidence. As per sub-rule (4), the Commissioner may record such remarks as he thinks material respecting the demeanour of any witness while under examination: provided that any objection raised during the recording of evidence before the Commissioner shall be recorded by him and decided by the Court at the stage of argument. Indian Courts have held that physical presence of a person can be dispensed with. The Hon'ble Supreme Court upheld video conferencing as a vital tool for collecting evidence where the witness may not be conveniently or necessarily be examined in the Court. In **Amitabh Bagchi Vs. Ina Bagchi' AIR 2005 Calcutta, 11** it is held that, 'presence' does not necessarily mean actual physical presence in the Court. Thus, the recording of evidence through video conferencing is permissible in law however, certain guidelines are to be followed while recording evidence through video conferencing.

Electronic Evidence:

3- As per Section 3 of the Evidence Act, evidence means; (1) all statements which the Court permits or required to be made before him by witness in relation to the matter of fact under inquiry, such statements are called oral evidence; (2) All documents including electronic record produced for the inspection of the Court are called documentary evidence. The word “electronic record” includes record as per the Information and Technology Act, 2000.

4- According to section 2(t) of the Information Technology Act, 2000 “electronic record” means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. The Act recognizes electronic record in a wide sense thereby including electronic data in any form such as videos or

voice messages. The information technology has made it easy to communicate and transmit data in various forms from a simple personal computer or a mobile phone or other kinds of devices. The Information Technology Amendment Act, 2000 has recognized various forms of communication devices and defines a “communication device” under section 2(ha) of the Act. “Communication device” means cellphones, personal digital assistance or combination of both or any other device used to communicate, send or transmit any text, video, audio or image. The Indian I.T. Act 2000 lays down a blanket permission for records not to be denied legal effect if they are in electronic form as long as they are accessible for future reference.

Procedure for proving electronic records:

5- Section 65-A and 65-B have been inserted in the Indian Evidence Act, 1872 by amendment in 2008. Section 65-A lays down that the contents of electronic record may be proved in accordance with the provisions of Section 65-B. As per Section 2(t) of the Information Technology Act 2000, “electronic record” means data record or data generated, image or sound stored, received or sent in an electronic form or micro film or computers generated micro fiche.

6- Procedure for proving electronic records is given u/s. 65-B of the Indian Evidence Act. This section deals with admissibility of electronic record. The primary purpose is to satisfy proof by secondary evidence. It says that any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (i.e. computer output) shall be deemed to be a document. A computer output is a deemed document for the purpose of proof. If the conditions mentioned in this section are satisfied in relation to the information and computer in question it shall be

admissible in any proceeding without further proof or production of the original as evidence of any contents of the original or of any facts stated therein of which direct evidence would be admissible.

7- Following conditions have to be satisfied for proving computer output:-

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer.

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

8- In any proceedings where it is desired to give a statement in evidence by virtue of Section 65-B, it should be accompanied by a certificate identifying the electronic record containing the statement and describing the manner in which it was produced, giving such particulars of any device involved in the production of that electronic record for the purpose of showing that the electronic record was produced by a computer and showing compliance of the conditions of sub-section (2). The statement should be signed by a person, occupying a responsible official position in relation to the operation of the relevant device. Such certificate

shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

9- Indian Statutes do not have specific provision for recording evidence via video conferencing and it is the Indian Judiciary that has, through various landmark decisions, laid down the framework and parameters for the use of video conference facilities to record evidence. In the case of **Liverpool and London steamship Protection and Indemnity Association Ltd. Vs. MV 'Sea Success I' and another (2004) 9 SCC 512,** the Hon'ble Bombay High Court allowed the plea of the plaintiff to depose using video conferencing, as the witness was staying in U.K. with her two minor children and was unable to come to India.

In the case of **Bodala Murli Krishna Vs. Smt. Bodala Prathima AIR 2007 AP 43,** the Andhra Pradesh High Court allowed deposition of a U.S.A resident witness via video conferencing. The Court observed that there should not be any plausible objection for resorting to video conferencing in civil cases as Law has necessary facilities along with assured accuracy co-exist

10- In the case of **State of Maharashtra Vs. Dr.Prafula B. Desai AIR 2003 S.C.2053,** the question was whether a witness can be examined by means of a video conference. The Hon'ble Supreme Court observed that video conferencing is an advancement of science and technology which permits seeing, hearing and talking with someone who is not physically present with the same facility and ease as if they were physically present. The legal requirement for the presence of the witness does not mean actual physical presence. The Court allowed the examination of a witness through video conferencing and concluded that there is no reason why the examination of a witness by video conferencing should not be an essential part of electronic record.

11- In the case of **Anwar P.V. Vs. P.K. Bashir & others AIR 2015 SC. 180,** the Hon'ble Apex Court over ruled the legal position in the **State Vs. Navjot Sadhu's** case. It is held that, any documentary evidence in the form of electronic record can be proved only in accordance with the procedure described under Section 65-B of the Evidence Act and the electronic record shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record is inadmissible. It is further observed that section 65-B of Evidence Act has been inserted by way of amendment by the Information Technology Act, 2000. In asmuch as it is a special provision which governs digital evidence and which override the general provisions with respect to adducing secondary evidence under the Evidence Act. Section 45-A of Information Technology Act, 2000 provides for the opinion of examiner of electronic evidence can only be availed once the provision of Section 65-B are satisfied.

Procedure and Safeguards

12- While the Courts have held that recording of evidence through video conferencing is permissible in law, they have also cautioned that necessary precautions must be taken, both as to the identity of the witnesses and accuracy of the equipment used for the purpose. Certain guidelines have been indicated in the judgments discussed above, which are summarised below:

1- An officer would have to be deputed, either from India or from the consulate/ embassy in the country where the evidence is being recorded, who would remain present and who will ensure that there is no other person in the room where the witness is sitting while the evidence is being recorded.

2- Fixing the time for recording evidence is always the duty of the officer

who has been deputed to record evidence.

3- The witness would be examined during working hours of Indian Courts. A plea of any inconvenience on account of the time difference between and another country would not be allowed.

4- If it is found that the witness is not attending at the time (s) fixed, without any sufficient cause, then it would be open for the Magistrate to disallow recording of evidence by video conferencing.

5- The respondent and their counsel would have to make it convenient to attend at the time fixed by the officer concerned. If they do not attend, the Magistrate would take action as provided in law, to compel attendance.

6- In case of non-party witness, a set of plaint, written statement and/ or other papers relating to proceeding and disclosed documents must be sent to the witness for their acquaintance and an acknowledgement in this regard must be filed.

7- Before action of the witness under audio-video link starts, the witness would have to file an affidavit/ undertaking duly verified before a judge/ magistrate/ notary that the person shown as witness is the same person as who is going to depose with a copy of such affidavit to the other side.

8- The person who wishes to examine the witness on the screen would have to file an affidavit/ undertaking.

9- As soon as identification is completed, oath would be administered as per the Oaths Act 1969 of India, by an officer duly authorised to administer an oath.

10- The officer would ensure that the witness is not coached/ tutored/ prompted. The officer deputed will ensure that the respondent, their counsel and one assistant are allowed in the studio when the evidence is being recorded. The officer will also ensure that witness is not prevented from bringing into the studio the papers/ documents which may be required by their counsel. The visual is to be recorded at both ends. The witness alone can be present at the time or video conference.

11- Magistrate and notary are to certify to this effect.

12- The officer concerned will ensure that once video conferencing commences, as far as practicable, it is proceeded without any interruption and without any adjournments.

13- If the officer finds that the witness is not answering the questions, the officer will make a memo of the same. When the evidence is read in court, this is an aspect that will be taken into consideration.

14- The Court/ Commissioner must record any remark as is material regarding the demur of the witness while on the screen and shall note the objections raised during the recording of the witness either manually or mechanically.

15- Depositions of the witness, either in the question- answer form or in the narrative form, will have to be signed as early as possible before a magistrate or notary public and will thereafter orm part of the record of the proceedings. Digital signature can be adopted in this process, and such a signature will be obtained immediately after day's deposition.

16- The expenses and the arrangements are to be borne by the applicant who wants to avail the facility of video conferencing.

Conclusion

13- The progression of the Indian Evidence law is apparent as it has withstood the pressures and challenges of technology and the cyber world. The appropriate amendments in Evidence Law, incorporated by our judiciary show pro-activism. The law enforcement agencies and investigating officers have to update themselves about the authentication process prescribed by the Court regarding the admissibility of electronic/ digital evidences so that impediments in trial procedures can be successfully overcome. Proper training of law endorsement agencies in handling cyber related evidence and correct application of procedure and sections of Evidence Law while presenting such evidence in Court is the

primary need of recent times. Common man in the role of a complainant should be now aware that while submitting evidence to police or Courts, he should submit it with a certificate under Section 65-B (4) of the Indian Evidence Act so the Court takes cognizance and reads it as a primary evidence.

With this, we conclude the gist of paper.

Members of Core Group :-

Sd/-

Shri R.M. Sadrani,
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* * *

ERROR WITHIN JURISDICTION AND OUTSIDE JURISDICTION OF THE COURT IN CRIMINAL SIDE, AND PROCEDURE FOR RECORDING EVIDENCE INCLOUDING BY VIDEO CONFERENCE IN APPRECIATION OF ELECTRONIC EVIDENCE IN CRIMINAL MATTERS

INTRODUCTION :

1. The term " Jurisdiction" is not defined in the code. The word jurisdiction is derived from latin term and a combination of two words i.e. "JURIS" and "DICTION" . Juris means "law" and diction means to "speak". Thus the term jurisdiction means the power to speak or authority to decide. It limits within which, the court can exercise it's authority to administer justice prescribed with reference to the subject matter, pecuniary value and local limits. Before a court can be held to have jurisdiction to decide a particular matter, it must not only have jurisdiction to try the criminal case brought, but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the criminal case. It's jurisdiction must include the power/ authority to hear and decide a particular controversy that as arisen between the parties. It may be local pecuniary, personal or with reference to the subject-matter of the case.

JURISDICTIONAL ERROR :

2. There is distinction between judgment passed in criminal court by a court without jurisdiction and judgment passed by a criminal court in wrong exercise of it's jurisdiction i.e., in disregard of the law. In the former case the whole proceeding is void while in the latter case proceeding cannot be impugned in a collateral action even if it be erroneous upon it's face. Where an order is made by criminal court upon irregular assumption of the

jurisdiction, the order is voidable. There is a clear distinction between the jurisdiction of the court to try and determine a matter, and the erroneous action of such court in the exercise of that jurisdiction. The former involves the powers to act at all, while the latter involves the authority to act in the particular way in which the court does act. Therefore, the question whether a condition necessary for the exercise of that power, exists or not, is a matter included in the conception of jurisdiction and is not related to the exercise of jurisdiction. If a court has jurisdiction as regard the person, place or the character of the case, it may exercise jurisdiction and does exercise it whether correctly or erroneously in dealing judicially with a cause placed before it. If, however, by reason of any limitation imposed by statute, charter or commission, a court has no jurisdiction to entertain any particular criminal case, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court nor can the consent gives a court jurisdiction if a condition which goes to the jurisdiction has not been performed or fulfilled.

TYPES OF JURISDICTION OF A CRIMINAL COURT :

3. There are two types of jurisdiction of a criminal Court namely :

I] The jurisdiction with respect to the power of the Court to try particular kinds of offences:

4. That is a jurisdiction which goes to the root of the matter and if a Court not empowered to try a particular offence does try it, the entire trial is void. The later is not of a peremptory character and is curable under Section 462 CrPC. It is well settled that, no finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

5. It has been held by this Court in ***Purushottam Das Dalmia Vs. State of West Bengal [MANU/SC/0121/1961]***, that a Court trying an accused for an offence of conspiracy is competent to try him for all offences committed in pursuance of that conspiracy irrespective of the fact that any or all other offences were not committed within its territorial jurisdiction.

II] Territorial jurisdiction of the Court.

6. Territorial jurisdiction is provided just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular Court, the convenience of the accused who will have to meet the charge levelled againt him and the convenience of the witnesses who have to appear before the Court. It is therefore that it is provided in Section 177 CrPC that an offence would ordinarily be tried by a Court within the local limits of whose jurisdiction it is committed.

ERROR WITHIN JURISDICTION:

7. When ever any mistake of fact or law has been committed by any Court of law at the time of deciding the Case within the statutory jurisdiction is coined as error within jurisdiction. It do not cause proceeding to be void or null.

ERROR OUTSIDE JURISDICTION

8. If the trial Court having inherent lacking of jurisdiction to entertained or adjudicate the matter and finally adjudicate it, nothing

but the error outside the jurisdiction. If there is inherent lack of jurisdiction it become fatal .

9. ***State of Maharashtra Vs. Ibrahim A. Patel (MANU/ MH/ 1356/2007),*** wherein it held that, provisions of law comprised under Cr.P.C., nowhere empowered Magistrate to direct investigation to police officer other than one attached to police Station situated within territorial jurisdiction of Court of such Magistrate. Such powers could be exercise by High Court in writ jurisdiction or even while exercising powers under Section 482 of Cr.P.C.. However, Magistrate did not enjoy inherent power. Magistrate's powers were specified under Cr.P.C. and had to function strictly in accordance with provisions of law made thereunder. Provisions of law comprised under Cr.P.C. could not be amended otherwise than procedure known to law and not by issuance of Manual of Instructions. Provisions comprised under Clause 2, Chapter III of the Manual could not empower Magistrate to refer matter for investigation by CID. Therefore, Magistrate could not issue direction for investigation by police officer of police station situated beyond territorial jurisdiction of his Court. Thus, order of Additional Sessions Judge could not be sustained, and for same reasons order directing State CID to conduct investigation was also not maintainable.

10. The State of Maharashtra (At the instance of Senior Inspector of Police) vs. Prataprao @ Mahesh Baban Bhosale and Ors. ***[MANU/MH/1437/2010]***, it held, investigating authorities did not apply for further investigation and it was only upon application filed by de facto complainant under Section 173(8) of CrPC which was direction given by Magistrate to re-investigate matter. As Court had already indicated, such a course of action was beyond jurisdictional competence of Magistrate. Not only was Magistrate wrong in directing a reinvestigation on application made by de facto complainant, but he also exceeded his

jurisdiction in entertaining said application filed by de facto complainant. Respondent Nos. 1 and 2 since it did not state that Session Court under Section 173(8) of CrPC could also direct another agency such as CID or CBI to carry out further investigation. Reliance placed by Respondent Nos. 1 and 2 on other judgments, was not relevant and, therefore, it was not necessary to refer to facts of said cases. Complainant would not have locus standi to file an application for further investigation in Session Court, Session Court did not have power or jurisdiction to entertain an application filed by de facto complainant after police report was filed under Section 173(2) of CrPC seeking further investigation, seeking further investigation by CID under Section 173(8) of CrPC.

DISTINCTION BETWEEN ERROR WITHIN JURISDICTION AND ERROR OUTSIDE OF JURISDICTIONAL:

11. As regards the subject matter of a criminal case, a jurisdiction has been conferred on the criminal courts like court of Magistrate of the first class, court of Metropolitan Magistrate and the Court of Sessions. On the basis of classification of the offences in the first schedule of the Criminal Procedure Code, the jurisdiction vested in a particular court is based upon the subject-matter i.e., the nature of the offence. If criminal case tried by a court outside the jurisdiction other than the jurisdiction conferred on it in first schedule of Criminal Procedure Code, then such trial would be vitiated being outside the jurisdiction of such court. However, if any error or irregularity is committed by a criminal court during the trial of criminal case within it's jurisdiction, such error or irregularity does not per say vitiate the entire proceeding in such criminal trial. Thus the trial of a criminal case by criminal court outside it's jurisdiction either local or territorial

or subject-wise that is depending upon the nature of the offence, is not vitiated even if there is same error or irregularity during the trial of such case. However, if the error of irregularity pertain to jurisdiction of the criminal court either regarding it's local jurisdiction or subject wise jurisdiction then such illegality is not curable. The whole trial of such criminal case gets vitiated due to such error or irregularity.

LACK OF JURISDICTION:

12. It would be a case of "lack of jurisdiction" where the criminal court has no jurisdiction at all to pass an order. Higher Courts may review action on the ground that the criminal court exercised jurisdiction which did not belong to it. This review power may be exercised inter alia on following grounds:

i)That the law under which criminal courts are constituted and exercising jurisdiction is itself unconstitutional.

ii) That the authority is not properly constituted as required by law.

iii)That the authority has wrongly decided a jurisdictional fact and thereby assumed jurisdiction which did not belong to it.

EXCESS OF JURISDICTION:

13. This covers a situation wherein though authority initially had the jurisdiction but exceeded it and hence its actions become illegal. This may happen under following situations:

i) Continue to exercise jurisdiction despite occurrence of an event ousting jurisdiction.

ii] Entertaining matters outside its jurisdiction.

ABUSE OF JURISDICTION:

14. All powers must be exercised fairly, in good faith for the purpose it is given, therefore, if powers are abused it will be a ground of judicial review.

CONCLUSION :

15. The term jurisdiction is really synonymous with the word"power". Any court possesses jurisdiction over matters only to the extent granted to it by the Constitution, or legislation of the sovereignty on behalf of which it functions. The question whether a given court has the power to determine a jurisdictional question it itself a jurisdictional question. Such a legal question is referred to as "jurisdiction to determine jurisdiction." The Jurisdiction for trial of criminal matter in a criminal Court is a crucial factor. Error within jurisdiction or inherent lack of jurisdiction means, the court trying the criminal case is exclusively barred from conducting trial as its trial is exclusively vested with the Special Court or the Superior Court.

PART II

Procedure For Recording Evidence Including By Video Conferencing, Appreciation Of Electronic In Criminal Matters.

INTRODUCTION:

16. The proliferation of computers and the influence of information technology on society as whole, coupled with the ability to store and amass information in digital form have all necessitated amendments in Indian law, to incorporate the provisions on the appreciation of digital evidence. The Information Technology Act, 2000 and its amendment is based on the United Nations Commission on International Trade Law (UNCITRAL) model Law on Electronic Commerce. The Information Technology (IT) Act 2000, was amended to allow for the admissibility of digital evidence. An amendment to the Indian Evidence Act 1872, the Indian Penal Code 1860 and the Banker's Book Evidence Act 1891 provides the legislative framework for transactions in electronic world. *Digital evidence or electronic evidence* is any probative information stored or transmitted in digital form that a party to a court case may use at trial. Before accepting digital evidence it is vital that the determination of its relevance, veracity and authenticity be ascertained by the court and to establish if the fact is hearsay or a copy is preferred to the original. Digital Evidence is “information of probative value that is stored or transmitted in binary form”. Evidence is not only limited to that found on computers but may also extend to include evidence on digital devices such as telecommunication or electronic multimedia devices. The e-Evidence can be found in e-mails, digital photographs, ATM transaction logs, word processing, documents, instant message histories, files saved from accounting programs, spreadsheets,

internet browser histories databases, Contents of computer memory, Computer backups, Computer printouts, Global Positioning System tracks, Logs from a hotel’s electronic door locks, Digital video or audio files. Digital Evidence tends to be more voluminous, more difficult to destroy, easily modified, easily duplicated, potentially more expressive and more readily available.

17. Computer forensics is a branch of forensic science pertaining to legal evidence found in computers and digital storage mediums. Computer forensics is also known as digital forensics. The goal of computer forensics is to explain the current state of a digital artifact. The term digital artifact can include: A computer system storage medium (hard disk or CD-ROM) an electronic document (e.g. an email message or JPEG image) or even a sequence of packets moving over a computer network.

18. The definition of 'evidence' has been amended to include electronic records. The definition of 'documentary evidence' has been amended to include all documents, including electronic records produced for inspection by the court. Section 3 of the Evidence Act, 1872 defines evidence as under: "Evidence" - Evidence means and includes:- 1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; 2) all documents including electronic records produced for the inspection of the court. Such documents are called documentary evidence.

19. The term 'electronic records' has been given the same meaning as that assigned to it under the IT Act. IT Act provides for "data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated

microfiche". The definition of 'admission' (Section 17 of the Evidence Act) has been changed to include a statement in oral, documentary or electronic form which suggests an inference to any fact at issue or of relevance. New Section 22-A has been inserted into Evidence Act, to provide for the relevancy of oral evidence regarding the contents of electronic records. It provides that oral admissions regarding the contents of electronic records are not relevant unless the genuineness of the electronic records produced is in question. The definition of 'evidence' has been amended to include electronic records. The definition of 'documentary evidence' has been amended to include all documents, including electronic records produced for inspection by the court. New sections 65-A and 65-B are introduced to the Evidence Act, under the Second Schedule to the IT Act. Section 65-A provides that the contents of electronic records may be proved in accordance with the provisions of Section 65-B. Section 65-B provides that notwithstanding anything contained in the Evidence Act, any information contained in an electronic, is deemed to be a document and is admissible in evidence without further proof of the original's production, provided that the conditions set out in Section 65-B are satisfied. The conditions specified in Section 65-B (2) are:

> *Firstly, the computer output containing the information should have been produced by the computer during the period over which the computer was used regularly to store or process information for the purpose of any activities regularly carried on over that period by the person having lawful control over the use of the computer.*
>
> *The second requirement is that it must be shown that during the said period the information of the kind contained in electronic record or of the kind from which the information contained is derived was 'regularly fed into the computer in the ordinary*

course of the said activity'.

A third requirement is that during the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time that break did not affect either the record or the accuracy of its contents.

The fourth requirement is that the information contained in the record should be a reproduction or derived from the information fed into the computer in the ordinary course of the said activity.

20. Under Section 65-B(4) the certificate which identifies the electronic record containing the statement and describes the manner in which it was produced giving the particulars of the device involved in the production of that record and deals with the conditions mentioned in Section 65-B(2) and is signed by a person occupying a responsible official position in relation to the operation of the relevant device 'shall be evidence of any matter stated in the certificate'.

21. Section 65-B(1) states that if any information contained in an electronic record produced from a computer (known as computer output) has been copied on to a optical or magnetic media, then such electronic record that has been copied 'shall be deemed to be also a document' subject to conditions set out in Section 65-B(2) being satisfied. Both in relation to the information as well as the computer in question such document 'shall be admissible in any proceedings when further proof or production of the original as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.'

ELECTRONIC EVIDENCE -CASE LAW'S

22. ***Amitabh Bagchi Vs. Ena Bagchi (AIR 2005 Cal 11)***

[Sections 65-A and 65-B of Evidence Act, 1872 were analyzed.] The court held that the physical presence of person in Court may not be required for purpose of adducing evidence and the same can be done through medium like video conferencing. Sections 65-A and 65-B provide provisions for evidences relating to electronic records and admissibility of electronic records, and that definition of electronic records includes video conferencing.

23. ***State of Maharashtra vs. Dr Praful B Desai (AIR 2003 SC 2053)*** [The question involved whether a witness can be examined by means of a video conference.] The Hon'ble Supreme Court observed that video conferencing is an advancement of science and technology which permits seeing, hearing and talking with someone who is not physically present with the same facility and ease as if they were physically present. The legal requirement for the presence of the witness does not mean actual physical presence. The court allowed the examination of a witness through video conferencing and concluded that there is no reason why the examination of a witness by video conferencing should not be an essential part of electronic evidence.

24. ***BODALA MURALI KRISHNA VS. SMT. BODALA PRATHIMA (2007 (2) ALD 72)***, it has held that, "…the amendments carried to the Evidence Act by introduction of Sections 65-A and 65-B are in relation to the electronic record. Sections 67-A and 73-A were introduced as regards proof and verification of digital signatures. As regards presumption to be drawn about such records, Sections 85-A, 85-B, 85-C, 88-A and 90-A were added. These provisions are referred only to demonstrate that the emphasis, at present, is to recognize the electronic records and digital signatures, as

admissible pieces of evidence."

25. ***DHARAMBIR Vs. CENTRAL BUREAU OF INVESTIGATION (148 (2008) DLT 289).*** it held that when Section 65-B talks of an electronic record produced by a computer referred to as the computer output) it would also include a hard disc in which information was stored or was earlier stored or continues to be stored. It distinguished as there being two levels of an electronic record. One is the hard disc which once used itself becomes an electronic record in relation to the information regarding the changes the hard disc has been subject to and which information is retrievable from the hard disc by using a software program. The other level of electronic record is the active accessible information recorded in the hard disc in the form of a text file, or sound file or a video file etc. Such information that is accessible can be converted or copied as such to another magnetic or electronic device like a CD, pen drive etc. Even a blank hard disc which contains no information but was once used for recording information can also be copied by producing a cloned had or a mirror image.

26. ***STATE (NCT OF DELHI) Vs. NAVJOT SANDHU (AIR 2005 SC 3820)*** There was an appeal against conviction following the attack on Parliament on December 13 2001. This case dealt with the proof and admissibility of mobile telephone call records. While considering the appeal against the accused for attacking Parliament, a submission was made on behalf of the accused that no reliance could be placed on the mobile telephone call records, because the prosecution had failed to produce the relevant certificate under Section 65-B(4) of the Evidence Act. The Supreme Court concluded that a cross-examination of the competent witness acquainted with

the functioning of the computer during the relevant time and the manner in which the printouts of the call records were taken was sufficient to prove the call records.

27. ***JAGJIT SINGH Vs. STATE OF HARYANA ((2006) 11 SCC 1)***

The speaker of the Legislative Assembly of the State of Haryana disqualified a member for defection. When hearing the matter, the Supreme Court considered the digital evidence in the form of interview transcripts from the Zee News television channel, the Aaj Tak television channel and the Haryana News of Punjab Today television channel. The court determined that the electronic evidence placed on record was admissible and upheld the reliance placed by the speaker on the recorded interview when reaching the conclusion that the voices recorded on the CD were those of the persons taking action. The Supreme Court found no infirmity in the speaker's reliance on the digital evidence and the conclusions reached by him. The comments in this case indicate a trend emerging in Indian courts: judges are beginning to recognize and appreciate the importance of digital evidence in legal proceedings.

28. ***TWENTIETH CENTURY FOX FILM CORPORATION Vs. NRI FILM PRODUCTION ASSOCIATES (P) LTD. (AIR 2003 KANT 148)***

In this case certain conditions have been laid down for video-recording of evidence:

- Before a witness is examined in terms of the Audio-Video Link, witness is to file an affidavit or an undertaking duly verified before a notary or a Judge that the person who is shown as the witness is the same person as who is going to depose on the screen. A copy is to be made available to the other side. (Identification Affidavit).

- The person who examines the witness on the screen is also to file an affidavit/undertaking before

examining the witness with a copy to the other side with regard to identification.

- The witness has to be examined during working hours of Indian Courts. Oath is to be administered through the media.

- The witness should not plead any inconvenience on account of time different between India and USA.

- Before examination of the witness, a set of plaint, written statement and other documents must be sent to the witness so that the witness has acquaintance with the documents and an acknowledgement is to be filed before the Court in this regard.

- Learned Judge is to record such remarks as is material regarding the demur of the witness while on the screen.

- Learned Judge must note the objections raised during recording of witness and to decide the same at the time of arguments.

- After recording the evidence, the same is to be sent to the witness and his signature is to be obtained in the presence of a Notary Public and thereafter it forms part of the record of the suit proceedings.

- The visual is to be recorded and the record would be at both ends. The witness also is to be alone at the time of visual conference and notary is to certificate to this effect.

- The learned Judge may also impose such other conditions as are necessary in a given set of facts.

- The expenses and the arrangements are to be borne by the applicant who wants this facility.

29. **CONCLUSION:**

The progression of the Indian evidence law is apparent as it has withstood the pressures and challenges of technology

and the cyber world. The appropriate amendments in Evidence Law, incorporated by our judiciary show pro-activism. The law enforcement agencies and investigating officers have to update themselves about the authentication process prescribed by the court regarding the admissibility of electronic/digital evidences so that impediments in trial procedures can be successfully overcome. Proper training of law enforcement agencies in handling cyber related evidence and correct application of procedure and sections of Evidence Law while presenting such evidence in court is the primary need of recent times. Common man in the role of a complainant should be now aware that while submitting evidence to police or courts, he should submit it with a certificate under section 65B(4) of The Indian Evidence Act so the court takes cognizance and reads it as a primary evidence.

Submitted with all respects and honour.

Sd/-

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District Judge -1,
Vasmath.

Sd/-

A.A. Sayeed,
District Judge-1,
Gangakhed.

Sd/-

C.W. Saindani,
District Judge, -1,
Hingoli.

Sd/-

S.G. Thube,
Adhoci District Judge-3,
Parbhani.

* * *

JURISDICTION OF COURTS:

Que 1. What is mean “lack of jurisdiction”?

Ans: When a court renders a decision in a suit of which the subject matter is outside of its purview either due to an explicit or implied bar in a statue or a principle of law. Lacking jurisdiction of other natures such as pecuniary or territorial jurisdiction cannot be said to be an inherent lack of jurisdiction.

Que 2. Explain “jurisdictional error”?

Ans: The legal world seems to have accepted that, 'jurisdictional error' as understood in the liberal or modern approach, laid down therein, makes a decision ultra vires or a nullity or without jurisdiction and the 'ouster clauses' are construed restrictively and such provisions whatever their stringent language be,have been held, not to prevent challenge on the ground that the decision is ultra vires and being a complete nullity, it is not a decision within the meaning of the Act.

Que 3. Distinction between lack of inherent jurisdiction and jurisdictional error?

Ans: The law provides a clear distinction between lack of inherent jurisdiction and jurisdictional error.Where the proceedings are instituted before the Court or Tribunal which have no jurisdiction, decision of such Court or Tribunal suffer from defect of lack of inherent jurisdiction. The former is primarily a question relating to law while the later may be an error of fact. Besides the above distinction, exercise of jurisdiction may be improper or it may be a case of excess of jurisdiction. In other words, lack of inherent jurisdiction would normally render the judgment a nullity while in other cases it may render the judgment as irregular. Jurisdictional error could both be without or excess of jurisdiction. Even under the English law in relation to Courtsand / or Tribunals, the crucial distinction between error on face ofrecord and those which do not has governed this field.To simplify it further, cases would fall in three different categories i.e. Excess of jurisdiction; improper exercise of jurisdiction and significanterror of law. The consequences and result of each of such error can be different and distinct in law.As observed by the Hon'ble High Court in the case of *State of Punjab through Deputy Secretary Department of Home*

Affairs and Justice Government of Punjab Vs. Sh. Sarabdeep Singh Virk, IPS(MANU/MH/O810/2009).

Que 4. When an error of law apparent on the face of the record ?

Ans: The term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require cletailed examination, scrutiny and elucidation either of the facts or the legal position if an error is not self-evident and detectton thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record Where there are two possible views regarding the interpretation or application of law vis-a-vis the particular facts of a case, taking one view, even if it is erroneous cannot be said to be an error apparent on the face of the record. There exist a distinction between a mere erroneous decision and an error apparent on the face of the record. An error can be said to be apparent on the face of record only when such an error is patent and can be found out without any detail argument without any scope for any controversy in regard to such error, which as if at a glance stares at the face.

Que 5. When suits expressively barred?

Ans: As per Section 9, Civil Procedure Code, a suit is said to be expressively barred when barred by any enactment for the time being in force. This may include any statute, law, bye-laws, order etc. CPC itself expressively bars the jurisdiction of civil courts in certain circumstances. Section 11 of the Code of Civil Procedure bars a court from trying a suit in which matter in issue is res judicata. Section 47 bars a decree holder from filing a suit when he can file execution proceedings.

Other instances where jurisdiction of civil court is expressively barred includes among others, special tribunals under relevant statutes e.g. Industrial Tribunal, Election Tribunal, Revenue Tribunal, Rent Tribunal, cooperative Tribunal, Income Tax Tribunal(Sec. 293, Income-Tax Act,1961)l, Motor Accidents Claim Tribunal(Sec. 68-D, Motor Vehicles Act), etc. ; domestic tribunals e.g. Bar Council, Medical Council, University, Club etc. Whenever statutes uses the expression that a decision of an authority shall be final, the jurisdiction of a Civil Court to go into the correctness or otherwise of the decision is taken away.

But, there may be circumstances where the remedy provided by a statute is not adequate and all questions or disputes cannot be decided by a special tribunal.In such cases, the jurisdiction of a civil court is not barred to the extent of those

issues or remedies, not provided for in the law ousting its jurisdiction. If the provisions of the statute has not been complied with or the Statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure or the tribunal or the authority acts ultra vires, the Civil Court have jurisdiction to examine those cases to interfere and set matters right.

Que 6. When suits impliedly barred?

Ans: Suits may be barred impliedly when they are barred by general principles of law as when they are barred being against the Public Policy or State Policy. For example, suit by a witness to recover money agreed to be paid to him for giving evidence in a Court of Law and suits based on illegal or immoral contracts. It has observed in *Union of India* v. *Ram Chand (1994 SCC (1) 44)* "The principle underlying is that a court ought not to countenance matters which are injurious to and against the public weal."

Que 7. When jurisdiction of civil court excluded?

Ans: In the landmark decision of Dhulabhai v. State of M.P (AIR 1969 SC 78), after considering a number of cases, Hidayatullah, C.J. summarised the following principles relating to the exclusion of jurisdiction of civil courts:

Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally

associated with actions in Civil Courts are prescribed by the said statue or not.

Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit dies not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

Que 8. What is mean by error within jurisdiction ?

Ans: This comes perilously close to saying that there is jurisdiction if the decision is right in law but none if it is wrong. Almost any misconstruction of a statute can be represented as 'basing their decision on a matter with which they have no right to deal', 'imposing an unwarranted condition' or 'addressing themselves to a wrong question'. If, a court misconstrued the statute or a notification or a ordinance or rule under it, the error was committed within jurisdiction and the only remedy against it was the one provided by the statute itself, such as an appeal or a revision.

Que9. What is mean by error outside jurisdiction ?

Ans: If a court has no jurisdiction of the subject of an action, a judgment rendered therein does not adjudicate anything. It does not bind the parties, nor can it thereafter be made the foundation of any right. It is a mere nullity without life or vigor. The infirmity

appearing upon its face, its validity can be assailed on appeal or by motion to set it aside in the court which rendered it, or by objection to it when an effort is made to use it as evidence in any other proceeding to establish a right. If a trial court does not have subject matter jurisdiction and, therefore, has no power to entertain the proceedings or decide a question, an appellate court lacks jurisdiction to review or evaluate an evidentiary determination for an act outside the jurisdiction of the court whose judgment or order is appealed.

Que 10. When objections can be taken in respect of jurisdiction?

Ans: Sub-Section 1 of Section 21 CPC shows that objection as to the place of suing shall not be entertained by any appellate or revisional court unless such objection was taken in the court of first instance and that too at the earliest possible opportunity. The time limit for raising such objection is also set in the provision. Therefore, the question as to lack of territorial jurisdiction should be raised by the opposing party at the earliest point.

Sub Section 2 of the said provision shows that all disputes relating to lack of pecuniary jurisdiction shall be raised in the court of first instance and at the earliest possible opportunity. As in the case of objections relating to territorial jurisdiction, time for raising the objection regarding pecuniary jurisdiction is also limited in the provision.

Sub Section 3 to Section 21 CPC deals with objection regarding the competence of the executing court in similar lines as in the cases of pecuniary and territorial jurisdictions. It is very important to note that Section 21 CPC does not deal with the subject matter jurisdiction.

The Hon'ble Supreme Court consisting of four Hon'ble Judges in *Hira Lal Patni v. Sri Kali Nath (AIR 1962 SC 199)* held as follows :"It is well settled that the objection as to local jurisdiction of a court does not stand on the same footing as an objection to the competence of a court to try a case. Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction. On the other hand an objection as to the local jurisdiction of a court can be waived and this principle has been given a statutory recognition by enactments like S.21 of the Code of Civil Procedure."

Que 11. Classification of jurisdiction of a Court?

Ans: The Hon'ble Supreme Court in *Harshad Chiman Lal Modi v. DLF Universal Ltd., (2005) 7 SCC 791* laid down the law in following terms :

"The jurisdiction of a court may be classified into several categories. The important categories are :

(i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter.

So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity." Later, this decision was followed by the Hon'ble Supreme Court in *Hasham Abbas Sayyad v. Usman Abbas Sayyad (2007 (2) SCC 355.*

EVIDENCE

Que 01. Which proof is required for the verification of digital signature?

Ans. Section 73-A of Indian Evidence Act provides that, in order to ascertain whether a digital signature is of the person by whom it purports to have been affixed, the court may direct that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate or it may direct any other person to apply the public key listed in the Digital Signature Certificate and verify the Digital Signature purported to have been affixed by that person.

Que02. Is the audio cassette a document? What is to be proved to

make it admissible as documentary evidence?

Ans. The tape records of conversation between persons and of speeches are documents as defined by section 3 of the Evidence Act. They are admissible in evidence on satisfying the following conditions –

2) The voice of person alleged to be speaking must be duly identified by the maker of the record or by others who know it.
3) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, has to be there so as to rule out possibilities of tampering with the record.
4) The subject matter regarded had to be shown to be relevant according to rules of relevancy found in Evidence Act.

TukaramVs.Manikrao, AIR 2010 SC 965.
L.B. BukhariVs. B.R. Mehara, AIR 1975 SC 1788.
R.M. MalkaniVs. State of Maharashtra, AIR 1973 SC 157.
The procedure is also given in Chapter VI, Para-24 of the Criminal Manual.

Que03. How the conversation recorded on a mobile between two persons can be proved in court of law?

Ans. It can be proved by producing the mobile phone and the memory card in which the conversation in question is recorded. The data of the conversation stored either in mobile phone or in memory card is magnetic media device. Therefore, the same can be proved by following procedure provided in section 65-B of Indian Evidence Act. See-
ShriMadhukar K. FardeVs. C.B. I., MANU/MH/0777/2012.

Que04. Whether a photograph printed by electronic camera is admissible under section 65 (b) of Evidence Act?

Ans. Yes. The photograph printed by electronic camera satisfies the conditions provided in section 65 – B of Evidence Act as it is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer.

Que05. The defendant admits the xerox copy of sale deed, its genuineness is also not disputed. Whether the proof of attestation is dispensed with?

Ans. In view of section 58, the facts which are admitted by the other side, need not be proved. And in view of section 70, it shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

Que06. Is it necessary to produce digital card to prove photographs?

Ans. Yes. Because the photograph flashed by electronic camera are stored in memory card. It is being magnetic media storage device, it satisfies the conditions provided in section 65 – B of Evidence Act.

In view of section 65 – B, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document. Thus, an electronic record is a documentary evidence.

Que07. Witness deposed that, the pictures taken by him were saved in memory card of his mobile. He had prepared a CD of the photograph from the memory card to produce the CD in the court. Print outs of photographs were taken from CD. He produced the memory card before the court. Can the court mark the memory card as article and a direct to return it immediately to the witness for safe custody until further order?

Ans. No.Because the pictures taken by him are stored in memory card. It is being magnetic media storage device, it satisfies the conditions provided in section 65-B of Evidence Act.

In view of section 65-B, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document. Thus, an electronic record is a documentary evidence. Therefore, it is required to be placed in safe custody by the court itself. See-

DharambirVs.Central Bureau of Investigation, 148 (2008) DLT 289.

Que08. How to prove photographs flashing by using digital camera?

Ans. The photograph printed by electronic camera satisfies the conditions provided in section 65 – B of Evidence Act as it is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer.

In view of section 65 – B, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document. Thus, an electronic record is a documentary evidence.

To prove an electronic record certain conditions are prescribed in

section 65-B (2) of Indian Evidence Act.
In DharambirVs. Central Bureau of Investigation, 148 (2008) DLT 289, the Honourable Delhi High Court categorically explained as to how an electronic record should be proved.

Que09. How the contents of SMS, sent from mobile phone are to be proved in evidence?

Ans. It can be proved by producing the mobile phone and memory card in which the SMS in question is stored. The data of the SMS stored either in mobile phone or in memory card, it is magnetic media device. Therefore, the same can be proved by following procedure provided in section 65-B of Indian Evidence Act. See-
ShriMadhukar K. FardeVs. C.B.I., MANU/MH/0777/2012.

Que10. Whether 5 years old electronic record is admissible in evidence?

Ans. **Yes.** In view of section 90-A of Evidence Act, where any electronic record, purporting or proved to be five years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the digital signature which purports to be the digital signature of any particular person was so affixed by him or any person authorised by him in this behalf.

Que11. Whether presumption under section 90 of Evidence Act is applicable to certified copies of 30 years old documents? What about Will 30 years old?

Ans. Presumption under section 90 does not apply to a copy or a certified copy even though 30 years old, but if a foundation is laid for the admission of secondary evidence under section 65 of the Evidence Act by proof of loss or destruction of the original and the copy which is 30 years old is produced from proper custody, then only the signature authenticating the copy may under section 90 be presumed to be genuine.
LakhiBaruahVs. Padma KantaKalita, AIR 1996 SC 1253 at 1256, 1257.
Shital Das Vs. Sant Ram, AIR 1954 SC 606.
K.V. SubbarajuVs. C. Subbaraju, AIR 1968 SC 947.

As regards the will, before any presumption under section 90 of the Evidence Act may be prayed for the party relying on will must plead that the document was properly executed and duly attested.
RanguVs.Rambha, AIR 1967 Bom. 382.

Que12. Whether a 30 years old document can be exhibited to that

extent of its contents without examining its executors?

Ans. No. section 90 of Evidence Act provides that, the document which is proved to be 30 years old and produced from proper custody the court may presume that the Signature and every other part of such document, which purports to be in the handwriting of any person, is in that persons handwriting and, in the case of a document executed or attested by the person by whom it purports to be executed or attested. Presumption will not be applicable to the contents. The contents of document is required to be proved in the manner provided.

It is now a well-settled law that, if the document is proved to be of 30 years old and if it is produced from the proper custody, the Court may presume genuineness of its attestation, handwriting and execution if the original document is produced. But, the presumption will not extend to attestation and execution if a document tendered is copy or certified copy of such document.

Que13. Whether an account extract of Bank can be admissible under section 34 of Indian Evidence Act?

Ans. Yes.Where in the case of Bank loan, the Bank produced books of account. The entries therein was corroborated by the Branch Manager and other Bank officials. The borrower has admitted getting the loan. There was sufficient proof of loan transaction.
State Bank of India Vs. YumnamGouramani Singh, AIR 1994 SC 1644.

Que14. Whether same rules of execution are applicable to Codicil which apply to will to which Codicil relates?

Ans. On account of registration of a document, including a **will or codicil,** a presumption as to correct and is regularity of attestation could not be drawn, if the Registrar of deeds satisfies the requirement of an attesting witness, he must be called in the witness box to depose to the attestation. His evidence would be liable to be appreciated and evaluated like the testimony of any other attesting witness.
The endorsement made by the Registrar will be relevant for registration purposes only.
Registrar of deeds could not be ‘statutory attesting witness’ to codicil merely by discharging duties of registration. See –
Bhagat Ram Vs. Suresh, AIR 2004 SC 436.
Therefore it can be safely said that, same rules of execution are applicable to Codicil which apply to will to which Codicil relates.

Que15. Whether a certified copy of plaint, written statement are public documents?

Ans. A plaint or written statement is not a public document because it is not act of a public officer.
Smt. ShamlataVs.Vishweshwara, AIR 2008 Bom. 155.

Que16. Whether mere production of original documents and exhibiting the same is sufficient to prove its contents?

Ans. No.It is held that mere production & exhibition of original document, does not dispense with the proof of document, in accordance with law of evidence.
Geeta Marine Services Vs. State, 2009 Cri.L.J.910 (Bom.) (Para 26)

Que17. Whether exhibiting the document is sufficient to read the same in evidence?

Ans. Marking of a document as an exhibit does not dispense with proof of the document in accordance with the law of evidence. Such a document marked as an exhibit is only for the purpose of locating and identifying the document. It is required to be proved according to the law.
Geeta Marine Services Vs. State and another, 2009 Cri. L. J. 910 Bom.

Que18. Whether the Sub Registrar before whom document was registered can be an attesting witness?

Ans. Prima facie the Registering Officer puts his signature on the document in discharge of his statutory duty under section 59 of the Registration Act and not for the purpose of attesting it. If there is evidence to show that Registering Officerputhis signature on the document with the intention of attesting it either after seeing the executant sign the instrument or having received from him personal acknowledgement of his signature, he can be said to be attesting witness.
Abdul JabbarVs. VenkataSastri, AIR 1969 SC 1147.
GirjaDattaVs.Gangotri Singh, AIR 1955 SC 346.
PentakotaSeetharatnamVs.Pentakota, AIR 2005 SC 4362.

Que20. What precautions must be taken at the time of exhibiting documents?

Ans. This question has several facets. Normally, before exhibiting document, the Court must take in to consideration the following aspects, namely,

(i) Relevancy of document,
(ii) Admissibility of document,
(iii) Question as to whether it is to be compulsorily registered?
(iv) Question as to stamp duty,
(v) Primary evidence or secondary evidence,
(vi) Public documents & certain presumptions,
(vii) Attestation, execution, etc. and so on . . . .

Mr.HemendraRasiklalGhiavsSubodhMody (Bom.H.C.) (FB) 16/10/2008

Geeta Marine Services Vs. State, 2009 Cri.L.J.910 (Bom.)
Also see Para-33 & 34 of Chapter VI of Criminal Manual.

Que22. Under section 65, what is the subjective satisfaction of court for allowing secondary evidence?

Ans. As per Section 65 of Indian Evidence Act, subjective satisfaction of Court for allowing secondary evidence is that, first the party intending to lead the secondary evidence must show that there is and was existence of original document, thereafter, it has been lost, destroyed or it is in the possession of opposite party and other condition as mentioned in Section 65 of Indian Evidence Act.

Que23. Original document is in the possession of another party against whom the document is sought to be proved, what is the procedure for giving secondary evidence?

Ans. The secondary evidence of the contents of a document may be given when the original is in possession or power of the person, against whom it is sought to be proved. To give secondary evidence in such case, the party must prove that the original document is in the possession of the person against whom it is sought to be proved.
ManikLalVs.HormasJi, AIR 1950 SC 1.
VishwanathVs. Genu, AIR 1956 Bom. 555.
Ashok Vs. MadhavLal, AIR 1975 SC 1748.
LaxmanVs.Anusuyabai, AIR 1976 Bom. 264.

Que24. Original document is in the possession of another person who is not a party to proceeding. What is the procedure to allow secondary evidence?

Ans. Section 130 of Evidence Act provides that, the witness, who is not a party to the suit shall not be compelled to produce his title deeds to any property, or any document in virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing

to produce them with the person seeking the production of such deeds or some person through whom he claims.

Que25. A text is written on the dead body of a person. Whether it can be said to be a document? How it can be proved?

Ans. Yes. A text written on the dead body of a person is a document because it satisfies all the necessary ingredients of definition of "document" as mentioned in section 3 of Indian Evidence Act.

The dead body generally cannot be preserved permanently and it is not the thing which can be produced before the court. Therefore, a text written on the dead body of a person can be proved by producing any secondary evidence as mentioned in section 65 of the Act. Generally, it can be proved by oral evidence or photograph or by inquest panchnama.

Que26. Whether the contents of newspaper can be admitted in evidence without examining the reporter?

Ans. No.Because no judicial notice can be taken of facts stated in a news item being in the nature of hearsay evidence unless proved by evidence *aliunde.*A report in a newspaper is only hearsay evidence. The presumption of genuineness attached under section 81 to a newspaper report cannot be treated as proved of the facts reported therein. It is now well settled that a statement of fact contained in a newspaper is merely hearsay and, therefore, in admissible in evidence in the absence of the maker of the statement appearing in the court and deposing to have perceived the facts reported.
Laxmi Raj ShettyVs. State of Tamil Nadu, AIR 1988 SC 1274.

Que27. Whether certified copy of sale deed can be directly exhibited without producing an original sale deed executed by the parties?

Ans. No. A certified copy of a registered sale deed may be produced as a secondary evidence in the absence of the original, but if it is a just an ordinary copy, there is no evidence regarding the contents of the original sale deed. It is not the public document within the meaning given in section 74.
Kalyan Singh Vs. Smt. Chhoti, AIR 1990 SC 396.
A certified copy of the sale deed can be exhibited as it is the evidence of registration thereof. But for the proof of the contents there in, it should be proved by the proper evidence only. It is now settled a position that, mere marking an exhibit does not dispense with proof of the document. And therefore, there is no need to de-exhibit the document. The question regarding proof of the document

can be decided later on.

S.T. KhemchandVs.Y. Satyam, AIR 1971 SC 1865.

Que28. When the party refused to produce a document even on receipt of notice, whether he can afterwards use the said document as evidence?

Ans. No. In view of section 164 of Indian Evidence Act, the party who refused to produce a document even after notice to produce it, cannot afterward produce the same document on record. Section 164 quotes restriction and bar for the same. However, such party may use said document with the consent of other party or with the leave of the court.

Que31. In a suit where the defendant sought to use the will as a defence, the plaintiff who produced the will in the same suit and admitted execution, whether he can question the legal validity of the will in respect of certain properties?

Ans. No. At the very instance when the plaintiff produces a will on record and seek certain claims on its basis, it becomes available to the opposite party not only to see the document but it can take the benefit of the same. In view of section 115 of Indian Evidence Act, the plaintiff in such a case is estopped from preventing the defendant to take the benefit of that document.

Que32. When insufficiently stamped document is produced, whether the court can at its own direct the parties to impound the document?

Ans. In view of section 33 of the Bombay Stamp Act, the duty is casted on the courts that whenever any instrument, in his opinion is a chargeable with duty is produced or comes in the performance of his function, he shall, if it appears to him that such instrument is not duly stamped, he shall impound the same irrespective whether such instrument is valid or not in the eye of law.

Que33. When a document which requires to be registered is impounded and deficient stamp duty is paid, whether such a document can be admitted in evidence without registration?

Ans. Payment of a deficit stamp duty is different thing and governed by Stamp Act. Registration of document which is compulsorily to be registered regulates in view of section 17 of Indian Registration Act. Section 49 of the Registration Act contemplates that, the document

which is compulsorily to be registered shall not be received in evidence. Therefore, if the document is to be compulsorily registered, the same cannot be read in evidence though it is impounded and due stamp duty is paid.

Que37. In secondary evidence, whether execution of the document should be first proved or its contents should first be shown, for treating the admissibility in evidence?

Ans. As per Sec. 65 of Evidence Act, the party intending to prove the contents of document by way of secondary evidence, first have to prove the existence and condition of original thereafter, the condition laid down in the section must be fulfilled before secondary evidence will be given. The execution of original has to be proved according to the provision given in Section 67 and 68 of the Act. Thereafter, its contents and genuineness have to be proved.

Que38. Can newspaper report be admitted as a documentary evidence? In what manner its contents are to be proved? Whether the contents therein are said to be hearsay evidence?

Ans. The newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. Those have to be proved and the manner of proving a news report is well settled. Newspaper is the best secondary evidence of its contents and was not admissible in evidence without a proper proof of the contents under the Act. The author of the news has to be examined.
Quamarul Islam Vs. S.K.Kanta, AIR 1994 SC 1733 (1750-51)

Que41. Whether the certified copy of sale deed is a public document and can it be exhibited directly?

Ans. No. A certified copy of a registered sale deed may be produced as a secondary evidence in the absence of the original, but if it is a just an ordinary copy, there is no evidence regarding the contents of the original sale deed. It is not the public document within the meaning given in section 74.
Kalyan Singh Vs. Smt. Chhoti, AIR 1990 SC 396.

Que42. The document is exhibited. The application came on record that the document is not exhibited as per the provisions of Evidence Act. Can said documents be de-exhibited or the hearing of question

involved can be postponed?

Ans. It is now settled position that, mere marking an exhibit does not dispense with proof of the document. And therefore, there is no need to de-exhibit the document. The question regarding proof of the document can be decided later on.
S.T. KhemchandVs.Y. Satyam, AIR 1971 SC 1865.

Que45. If sale deed exhibited from the evidence of purchaser. But seller has objection regarding examination of attesting witnesses. The objection is not accepted by court. Whether the contents of sale deed are proved mere by exhibiting document?

Ans. No. It is held that merely because a document is marked as an exhibit, the same does not dispense with the proof of document, in accordance with law of evidence.
Geeta Marine Services Vs. State, 2009 Cri.L.J.910 (Bom.) (Para 26)

Que46. When an objection as to the mode of proof of a document should be raised?

Ans. An objection merely to the mode of proof of a document, which is relevant should be raised at the very time the document is sought to be tendered in evidence and proved. Objection to the admissibility is also required to be raised at the time of tendering the evidence. Haji Md. Vs. State of W.B., AIR 1959 SC 488. Gopal Das Vs. ShriThakurji, AIR 1943 PC 83. PurushottamaVs.Perumal, AIR 1972 SC 608.Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence: and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as an exhibit an objection as to its admissibility is not excluded and is available to be raised even at later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit.

Geeta Marine Services Vs. State, 2009 Cri.L.J.910 (Bom.) (Para 16)

Que47. Whether documentary evidence includes electronic record? How the information in computer is to be proved?

Ans. In view of sections3 and 65 – B, any information contained in an electronic record which is printed on paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document. Thus, an electronic record is a documentary evidence. To prove an electronic record certain conditions are prescribed in section 65-B (2) of Indian Evidence Act.In **DharambirVs. Central Bureau of Investigation, 148 (2008) DLT 289,** the Honourable Delhi High Court categorically explained as to how an electronic record should be proved.

Que48. Whether a partition of property is to be effected by registered document only?

Ans. No.In various judgements, the Honourable Supreme Court of India and other High Courts have held that, even the partition may be oral. The Maharashtra Land Revenue Code provides certain provisions by which, by application made to Tahsildar, partition can take place by consent of all the Co-parceners. Thus, the partition can be effected either by registered document or by making an application to Tahsildar or it can be oral also.

Que51. Whether carbon copies are primary evidence?

Ans. When a number of documents are prepared with the help of carbon, all would be originals of themselves. But, if the carbon copy has some ink writing and if it appears that the whole of it could not be prepared by one uniform process it would not be original as it cannot be said to have complied with requirements of section 62.
MakhanlalVs.State, AIR 1958 Cal. 517.
Prithi Chand Vs. State of H.P., AIR 1989 SC 702.

Que52. Whether the documents referred to witness in his cross examination can be exhibited?

Ans. There is well established practice followed in all Courts in the State that if cross-examination of a witness is made by referring a document to the witness, the said document is admitted in evidence

and is marked as an exhibit. Marking of an exhibit is only for the purpose of identification of the document and mere marking of exhibit to a document, does not mean that it is proved. Therefore, merely because a document referred to in cross-examination is marked as an exhibit, the same does not dispense with the proof of document, in accordance with law of evidence.
Geeta Marine Services Vs. State, 2009 Cri.L.J.910 (Bom.)

Que56. How the former statement recorded by police under section 161 of Criminal Procedure Code is to be proved?

Ans. If it is intended to contradict a witness by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.
Tahsildar Singh Vs. State of U.P., AIR 1959 SC 1012.

Que57. How the video clips and text messages of mobile handset can be proved during the trial of the proceeding?

Ans. It can be proved by producing the mobile phone and the memory card in which video clips and text messages in question are stored. The data of the video clips and text messages stored either in mobile phone or in memory card is magnetic media device. Therefore, the same can be proved by following procedure provided in section 65-B of Indian Evidence Act. See-
ShriMadhukar K. FardeVs. C.B. I., MANU/MH/0777/2012.

Que58. Whether the copy transcribed from a copy but never compared with original can be used as secondary evidence?

Ans. No. The copies must be made from the original by mechanical process, as the process itself ensure the accuracy of the copy, for example the printing, lithography or photography. When the copy is transcribed from the copy is neither a carbon copy nor a copy compared with the original and therefore it was not the secondary evidence of the original.
R.M. PandeVs. A.P.I. Ltd., AIR 1956 Bom. 115.
LaxmanVs.Anusuyabai, AIR 1976 Bom. 264.

Que60. What is the meaning of "proper custody" given in explanation of section 90 of Indian Evidence Act?

Ans. The explanation to the section 90 defines a ‘proper custody’. According to this explanation, proper custody means from a place where the document might reasonably be expected to be found. It

does not necessarily mean the custody of the person in the law to hold the document but it means either the custody of a person entitled in law to hold it or any other custody which in the circumstances of the case appears to the court to be consistent with its genuineness. The provisions of section 90 read with explanation insist on a satisfactory account of the origin of the possession being given by the party relying upon the document. The custody might not be in the strictest sense legal custody, but, whether it originated right or wrong, the origin must be explained. The court must examine the surrounding circumstances tending to establish the connection of the party producing the document with the person with whom the document should naturally have been.
Rudra Gouda Vs. Basan Gouda, AIR 1938 Bom. 257 at 262.

Que61. Whether the map prepared by private architect can be exhibited without calling him as a witness?

Ans. The map prepared by private architect cannot be exhibited without calling him as a witness because it does not carry presumption as to its accuracy.KisanlalVs. Dinkar, 2004 (1) Mh.L.J. 138.

Que66. Whether presumption under section 85 of Evidence Act is available to the power of attorney registered before the Sub Registrar?

Ans. Yes. There is a presumption of regularity of official acts and the Sub Registrar registering the deed of power of attorney is discharging his official duty. Therefore, the Power of attorney is registered before the Sub Registrar is valid and effective both under section 85 of the Indian Evidence Act and section 33 of Indian Registration Act.
Jugraj Singh Vs. Jaswant Singh, AIR 1971 SC 761.

Que72. Whether question can be allowed in cross examination without referring document?

Ans. A witness may be cross-examined as to his previous statement without showing him the writing if it is relevant to the matter in issue.
Tahsildar Singh Vs. State of U.P., AIR 1959 SC 1012 at 1021.
If the previous contradictory statement of a witness is intended to be proved, his attention must be called to it. The object of this procedure

is to give the witness a chance of explaining or reconciling his statements before the contradiction can be used as evidence. If the opportunity to explain is not given, the contradictory writing cannot be placed on the record as evidence.
BalGangadharTilakVs.SrinivasPandit, AIR 1915 PC 7.
Tara Singh Vs. State, AIR 1951 SC 441.

Que76. Whether the certificate as mentioned in section 65-B(4) of Evidence Act is mandatory? What if such certificate is not available?

Ans. As per Section 65-B(4) where it is desire to give a statement in evidence of electronic records, a certificate is necessary and in absence of the said certificate, the proof and production of the original as an evidence of any contents to the original or of any fact stated therein is necessary.

Que78. Is it permissible to allow the witness to depose in respect of the contents of a document without producing the same before the court?

Ans. As a general rule, oral evidence as to the contents of document is not admissible without producing the document before the court. But in exceptional cases mentioned in in section 63 (5) read with the conditions provided in section 65 of Indian Evidence Act, such oral evidence can be allowed.
The oral evidence of the contents of a document is admissible when the secondary evidence is permissible.
Mohammad Yusuf Vs. D., AIR 1968 Bom. 112.

Que79. Whether certified copies of plaint and a written statement in other proceeding can be directly exhibited?

Ans. A plaint or written statement is not a public document because it is not act of a public officer. Hence, it cannot be exhibited directly.Smt. ShamlataVs.Vishweshwara, AIR 2008 Bom. 155: 2008 (3) Bom CR 166

Que82. Whether document insufficiently stamped without impounding it can be read as admissible evidence?

Ans. If the document which is insufficiently stamped is basis of the suit or the claim, the same cannot be admissible unless and until it is impounded.

But, in view of section 35, the law is settled that, once the document is admitted in evidence, it cannot be rejected even by the Appellate Court on the ground that, it is not duly stamped. The Appellate court can however, suomoto, or on application by the Collector determine the amount of stamp duty.
JaverchandVs.Pukhraj, AIR 1961 SC 1655.

Que84. Documentary evidence given by a competent witness in judicial proceeding and same came to be proved and exhibited in earlier proceeding. Whether same can be straightway accepted in another proceeding without following procedure of proving the documents?

Ans. Document in another case is neither evidence nor matter before the Court seized of a case and so it cannot be relied upon to decide the case. ChaturbhujPandeVs. Collector, Raigarh, (1969) 1 SCWR 320.

Que86. Whether it is necessary to examine medical officer who has issued Medico Legal Certificate (MLC)?

Ans. As far issuance of certificate by medical officer is concerned, the medical certificate is being a public document is admissible, but to prove the contents of medical certificate, the medical officer is required to be examined.

Que87. When a document is referred to during cross examination and has been marked as an exhibit, whether such exhibition dispenses with the proof of documents required by the Evidence Act?

Ans. No.It is held that merely because a document referred to in cross-examination is marked as an exhibit, the same does not dispense with the proof of document, in accordance with law of evidence.
Geeta Marine Services Vs. State, 2009 Cri.L.J.910 (Bom.) (Para 26)

Que90. Whether the deposition of a witness recorded in another proceeding can be directly read without examining him?

Ans. A testimony made in one case by a witness cannot be used in another case until and unless the said witness is examined and to prove his said testimony. In order that such testimony to be used must be proved.
Pammi @ Brijendra Singh Vs. Govt. of M.P., AIR 1998 SC 1185.

Que93. How to prove previous statement /deposition?

Ans. A witness may be cross-examined as to his previous statement without showing him the writing if it is relevant to the matter in issue.
Tahsildar Singh Vs. State of U.P., AIR 1959 SC 1012 at 1021.

If the previous contradictory statement of a witness is intended to be proved, his attention must be called to it. The object of this procedure is to give the witness a chance of explaining or reconciling his statements before the contradiction can be used as evidence. If the opportunity to explain is not given the contradictory writing cannot be placed on the record as evidence.
BalGangadharTilakVs.SrinivasPandit, AIR 1915 PC 7.
Tara Singh Vs. State, AIR 1951 SC 441.

Que94. What is value of an unregistered sale deed in evidence?

Ans. In a view of section 17 of Registration Act, the sale deed is required to be compulsorily registered and in view of Section 49 of the Registration Act, the document which is compulsorily to be registered shall not be received in evidence. However in view of the proviso to Sec. 49 of the Act, an unregistered document affecting immovable property may be received as a evidence of a contract in suit for specific performance of contract or evidence of co-lateral purpose. But if the sale deed is the basis of suit or claim, it cannot be read in evidence.

Que95. Whether post-mortem report is public document?

Ans. The post-mortem report and /or inquest report is not a public document.
State Vs. Gian Singh, 1981 Cri. L.J. 538.

Que96. Document is insufficiently stamped. It is produced in evidence and admitted by the other side. Now what is admitted need not be proved, whether impounding of that document is necessary?

Ans. Section 35 of the Bombay Stamp Act contemplates that, where an instrument has been admitted in evidence, such admission shall not, except as provided in section 58, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.
JaverchandVs.Pukhraj, AIR 1961 SC 1655.

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