

# Part II

On Proof

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- **56 to 58-----facts need not be proved**
- **59 and 60----- oral evidence**
- **61 – 66-----How the Contents of the Document are to be proved**
- **67 – 90----How the Document is to be proved to be Genuine**
- **91 – 100----How for and in what cases the oral evidence is excluded by documentary evidence ----- Sections**

## 56. Fact judicially noticeable need not be proved

- No fact of which the Court will take judicial notice need be proved

## 57. Facts of which Court must take judicial notice -

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- The Court shall take judicial notice of the following facts;
- All laws in force in the territory of India;
- All public Acts passed or hereafter to be passed by Parliament
- Articles of War for the Indian Army, Navy of Air force;
- The course of proceeding of parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the Legislature established under any law for the time being in force in Province or in the States;
- The accession and the sign manual of the Sovereign
- All seals of which English Courts take judicial notice; the seals of all the Courts in India and of all Courts out of India established by the authority of the Central Government

- The accession to office, names, titles, functions and signatures of any public office in any state,
- The existence, title and national flag of every State recognized by the Government of India;
- The divisions of time, the geographical divisions of the world, and public festivals, facts and holidays notified in the Official Gazette;
- The territories under the dominion of the Government of India;
- The commencement, continuance and termination of hostilities between the Government of India and any other State or body of persons;

- The names of the members and officers of the Court, and of their deputies and subordinate officers and assistants and
- also of all officers acting in execution of its process, and of all advocates, attorneys, vakils, pleaders and other persons authorized by law to appear or act before it;
- The rule of the road, 12on land or at sea.
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- In all these cases, and also on all matters of public history, literature, science or art, the Court may report for its aid to appropriate books or documents of reference.

# Oral Evidence

## **59. Proof of facts by oral evidence**

All facts, except the contents of documents or electronic records, may be proved by oral evidence.

## **60. Oral evidence must be direct**

Oral evidence must, in all cases whatever, be direct; that is to say—

- if it refers to a fact which could be seen, it must be the evidence of a witness who says who says he saw it;
- if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;
- if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;
- if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds:

- Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable:
- Provided also that, if oral evidence refers to the existence to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

# Hearsay

- Various sense ---- whatever person is heard to say ---- whatever a person declares on information given by someone else
- It is used with reference to that which is Written as well as Spoken
- It denotes that kind of evidence which doesnot derive its value solely from the credit given to witness himself but rest on the competency of another person
- It comes from the knowledge of other person
- It is incompetent to establish any specific fact
- It is susceptible kind of evidence
- Fraud may be caused -----not subject to ordinary test----no correctness-----no completeness ----no motive and demeanour of the witness can be examined----- no legal sanctions-----vast consumption of public time---lengthy procedure

# Reasons for Exclusion

Hearsay evidence is no evidence because oral evidence must be direct in all cases. It is discarded on the basis of its relative untrustworthiness for judicial purpose

1. The irresponsibility of the original declarant, whose statement were made neither on oath nor subject to cross examination
2. The depreciation of truth in the process of repetition
3. The opportunities for fraud
4. The tendency of such evidence to protract legal inquiries
5. To encourage the substitute of weaker for stranger
6. Increase expenses and vexation
7. Consumption of public time

# Exceptions to hearsay

- **Res Gestea** – under Section 6 statement made by persons who are not examined may be proved through other persons who appear as witness and they amount to original as distinguished from hearsay provided that such statement form part of same transaction. (Section 6)
- **Admission and Confession** – an extra judicial admission and confession which is sought to be proved through the testimony of a witness to whom it is made, is admissible as an evidence (Section 17-31)
- Statements by persons who cannot be called as Witness (Section 32)
- Evidence given in former proceedings (Section 33)
- Entries in book of Accounts (Section 34)
- Entries in Public record (Section 35)
- Opinion of an Expert (Section 46 and 46)

- Opinion as to Handwriting (Section 47)
- Opinion as to digital signature (Section 47-A)
- Opinion as to existence of rights and custom (Section 48)
- Opinion as to usages, tenents, body tendency , family practices, meaning of particular word (Section 49)
- Opinion as to relationship (Section 50)
- Statements incorporated in Acts and Notifications, Government Maps, Charts, plans, etc. (Section 34-39)

# 61- Proof of contents of documents

The contents of documents may be proved either by primary or by secondary evidence.

## 62. Primary evidence

- Primary evidence means the documents itself produced for the inspection of the Court.
- Explanation 1—Where a document is executed in several parts, each part is primary evidence of the document :
- Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.
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- Explanation 2- Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest ; but, where they are all copies of a common original, they are not primary evidence of the contents of the original.
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# 63- Secondary Evidence

- Secondary evidence means and includes—
- (1) certified copies given under the provisions hereinafter contained;
- (2) Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies.
- (3) copies made from or compared with the original ;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a documents given by some person who has himself seen it.

## 76. Certified copies of public documents

- Every **public officer** having the custody of a public document,
- which any person has a **right to inspect**,
- shall give that person on **demand** a copy of it on payment of the **legal fees** therefore,
- together with a certificate written at the foot of such copy
- that it is a **true copy** of such document of part thereof, as the case may be, and
- such certificate shall be **dated** and subscribed by such officer with his **name** and his **official title**, and shall be **sealed**, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

# 64-Proof of Documents by Primary Evidence


- **Documents must be proved by primary evidence except in the cases hereinafter mentioned.**

## 65. Cases in which Secondary Evidence relating to documents may be given

Secondary evidence may be given of the existence, condition, or contents of a documents in the following cases:-

- (a) When the original is shown or appears to be in the possession or power—
  - of the person against whom the document is sought to be proved , or
  - of any person out of reach of, or not subject to, the process of the Court or
  - of any person legally bound to produce it,
  - and when, after the notice mentioned in section 66, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) when the original is of such a nature as not to be easily movable;

- (e) when the original is public document within the meaning of section 74;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in <sup>40</sup>[India] to be given in evidence
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court and the fact to be proved is the general result of the whole collection.
- In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.
- In case (b), the written admission is admissible.
- In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, admissible.
- In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.



**How the Document is to be proved  
to be Genuine  
section 67 - 90**

- **67. Proof of signature and handwriting of person alleged to have signed or written document produced –**
- If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his hand writing.
- **67A. Proof as to digital signature.-** Except in the case of a secure digital signature, if the digital signature of any subscriber is alleged to have been affixed to an electronic record the fact that such digital signature is the digital signature of the subscriber must be proved.



- **68. Proof of execution of document required by law to be attested –**
- If a document is required by law to be attested it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:
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- Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specially denied.

- **69. Proof where no attesting witness found**
- If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the hand writing of that person.
- **70. Admission of execution by party to attested document –**
- The admission of a party to an attested document of its execution by himself shall be sufficient proof of its execution as against him, though it be a document required by law to be attested.

## **71. Proof when attesting witness denies the execution**

- **If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence**
- **72. Proof of document not required by law to be attested**
- **An attesting document not required by law to be attested may be proved as if it was unattested**

## 73. Comparison of signature, writing or seal with others admitted or proved

- **In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.**

- **The court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.**
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- **3<sup>o</sup>[This section applies also, with any necessary modifications, to finger – impressions.]**

## 73A. Proofs as to verification of digital signature

- **In order to ascertain whether a digital signature is that of the person by whom it purports to have been affixed, the court may direct-**
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- **(a) that person or the Controller or the Certifying Authority to produce the Digital Signature Certificate;**
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- **(b) 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 the person.**

- **Explanation.- For the purpose of this section "Controller" means the Controller appointed under sub-section (1) of section 17 of the Information Technology Act, 2000.]**