LL.B. (3Yrs.) IVth Semester

Law of Evidence Act

Unit – I

Syllabus:-

Introduction and relevancy:- Evidence and its relationship with the substantive and procedural Laws. Definition : Facts, facts in issue, relevant, evidence proved, disproved, not proved, oral and documentary evidence (sec.3) Relevancy and admissibility, Doctrine of res gestae (sec. 6,7,8,9) Conspiracy (sec.10)

Long Answers

Q. 1- What do you understand by res gestae? Discuss its significance as an evidence.

Ans.

Section 6 of the Evidence Act lays down the relevancy of facts forming part of same transaction. Under the definition of the word "relevant" in section 3 one fact is said to be relevant with another when one is connected with the other in any of the ways referred to the provision of the act relating to the relevancy facts. Thus Section 6 lays down that the facts which are so connected with the facts in issue that they form part of the same transaction are relevant facts, whether they occurred at the same time and place or at different time and places.

- **Same transaction:** The term "same transaction" has not been defined in the Evidence Act. The definition of this term is given by Stephen who says, "A transaction is a group of facts, connected together to be referred to by a single legal name, a crime, a contract, a wrong or any other subject of enquiry which may be in issue. This section is based upon the English doctrine of Res-Gestae, which is a common law principle also applicable in Indian Law of Evidence.

Example: 'A' is accused of the murder of 'B' by beating him. Whatever was said or done by 'A' or 'B' or the by standers at the beating or so shortly before or after it as to form part of the transaction is a relevant fact.

It means when act or statement made that time by the person who commits offence or who suffers damage shall be relevant, if it constitute same transaction. The transaction consists both of the physical acts and the words accompanying such physical acts whether spoken by the person doing such acts or the person to whom such acts are done or by any other person or persons.

In section 6 that the statement must have been made contemporaneously with the act or immediately after it and not at such at interval of time as to make it a narrative of past events.

- **Ambiguities of Doctrine of Res Gestae:**

According to Prof. Wigmore, Res Gestae is not only entirely useless but even positively harmful. His view is correct upto a certain extent. The reason is that the facts, for which the term Res-Gestae is used, are relevant and practically used according to the rules of evidence. Therefore the term Res-Gestae is entirely useless and there is no use of it in English Evidence act.

Sir James Stephen, who prepared the draft of Indian Evidence Act, were aware of the weakness of Res Gestae. This is why he did not use this term anywhere in the Act, but incorporated its essential elements in different provisions of the Act.

Following are the evidences which are accepted as Res-Gestae:

a. Statement of the accused at the time and place of occurrence.
b. Statement of the third person at the sexual offences against any women.
c. Adoption deed in deciding the question of adoption.
d. Statement of the testator at the time of registration of will.

Q. 2- What is conspiracy? Discuss its relevancy as an evidence under the provisions of evidence Act.

Ans.

Criminal Conspiracy

Section 10 of Evidence act deals with the relevancy of conspiracy as an Evidence. This section applies when there is reasonable ground to believe the existence of conspiracy.

Conspiracy has been defined in section 120 – A of Indian Penal code. According to this section. When two or more parsons agrees to do or causes to be done.

(1) an illegal at or

(2) an act which is not illegal by illegal means such an agreement is designated a criminal conspiracy According to section 10 of Evidence Act.

Where there is reasonable ground to believe that two or more persons have conspired together to comment an offence or an actionable wrong anything said done or written by any one of such persons in reference to their common intention after the time when such intention was first entertained by any one of them is a relevant fact as against each of the persons believed to be so conspiring as well as for the purpose of showing that any such person was a party to it.

According to this rule anything said done or written by an member of the conspiracy is an evidence against the other members even if they are done in their absence and without their knowledge if the act done in reference to their common intention.

Conditions of Relevancy under Sections 10

(1) There must be a reasonable ground to believe that two or more persons have entered into a conspiracy.
(2) The act must have been done after the time when the intonation to conspire was first entertained by and of them
(3) The act must have been done in reference to their common intention.

The Evidence of such an act can be given for the following two purposes.

(1) To prove the existence of the conspiracy and
(2) To show that a particular person was a party to the conspiracy

This section applies only when there is a reasonable ground to believe the existence of a Conspires only a prima facie case of conspiracy has to be made out to bring the section into operation.

R.V.Blake and Tye 1844 –

This is the leading English case in this case Black was working as a landing waiter at the customs House. Tye worked at the same place as an agent for the importers. They were charged with conspiracy to dodge the customs by passing goods without paying full duty. The made certain entries in two books. One was used for carrying out the fraud but the other was for his private record. It was held that those entries in the former book were admissible against Black but the latter were not. It was said that evidence of an act of a conspirator is relevant against others only if the act should relate to the furtherance of the common object.

MIRZA AKBAR V. EMPEROR – 1940.

In this case Mirza Akbar and Mehr Tega were changed for murder and conspiracy to murder.The main evidence of conspiracy was certain letters between Mirza Akbar and Mehr Taja and the other evidence was statement before the Magistrate after she has been arrested. It was held that litters were relevant under action 10 because it was constant with the conspiracy to procure death of Ali Askar and was made at a time when such conspiracy to going on but the statement to magistrate was held not to be relevant because it was made after the object of conspiracy had already been attained.

In Sardul Singh V.State of Bombay 1957.

It was held by Supreme Court that the principle underlying the reception of evidence under section 10of Evidence act of the statement acts and writings of one conspirator as against the other is on the theory of Agency.

Q. 3- What is Admissibility of fact and what is relevancy of the fact? Distinguish between Admissibility of fact and relevancy of fact?

Ans. Relevancy of the fact: The term 'Relevancy' is not defined in evidence Act. Section-3 of the Evidence Act provide that a fact is become relevant only when it is connected with other facts in any of the ways referred to in this act relating to the relevancy of facts thus a fact is order to be relevant fact must be connected with the facts in issue or with any other relevant fact in any of the ways referred to in section 5 to 55. Sections declares that in a suit or proceedings evidence may be given of the existence or non-

existence of 1. fact in issue and 2. fact as one declared to be relevant in the following section 5 to 55. Relevancy of fact is based on logic and probability.

Admissibility of fact- Admissibility of the fact is defined under section 136 of the evidence Act. section 136 of the evidence act deal two thing-

1. Whether a fact is admissible or not.
2. Who is authority to decide its Admissibility?

according to section 136 lays down that court has authority to decide it whether a fact 15 is Admissible are not. Thus it is clear that it is not necessary that all relevant fact are admissible fact, while all Admissible fact are relevant facts.

Evidence may be confined to relevant fact and the judge is empowered to ask in what manner the evidence tendered is relevant. The judge must then decide its admissibility. the court must, at the time when the evidence is tendered, decide whether or not it is admissible.

According to section 136, "when either party purpose to give evidence of any fact, the judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant and the judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not other wise. Thus it is clear that court has authority to decide it, whether a fact is admissible or is not and may be asked to party how it shall be relevant, if it is proved".

Illustration : it is proposed to prove a statement about a relevant fact by a person alleged to be dead, when statement is relevant under section 32. The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given the statement.

Section 136 of the evidence Act, further stated that if the fact to be provide is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be provide before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and court is satisfied written such undertaking.

Illustration : It is proposed to prove, by a copy, the contents of a documents said to be lost. The fact the original is lost must be proved by the person property is produced.

If the relevancy of one alleged fact depends upon another alleged fact being first proved the judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved or require evidence to be given of the second fact before evidence is given of the first fact.

Illustration : 'A' is accused of receiving stolen properly knowing it to have been stolen. It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The court may in its discretion, either require the properly to be identified before the denial of the possession is proved or permit the denied of the possession to be proved before the property is identified.

Distinction between Admissibility and Relevancy of facts-

Admissibility of facts		**Relevancy of facts**	
1.	Admissibility is not based on logic but on strict rules of law.	1.	Relevancy is based on logic and probability.
2.	The rules of Admissibility is described offer section 56 of evidence Act, 1872.	2.	The rules of Relevancy is described from section 5-55.
3.	The rule of Admissibility declares whether certain type of relevant evidence an Admissible or are to be executed.	3.	The rules of relevancy declares what is relevant.
4.	Admissibility is means and modes for admissibility of relevant evidence.	4.	Under evidence act the rules of relevancy means where evidence are Admissible.
5.	The facts which are admissible are necessarily by relevant.	5.	The facts which are relevant and not necessarily Admissible.

Unit-II

Syllabus:-

Admission (Sec.17-23) Confession (Sec.24.30)

Unit-II

Long Question

Q.1- Define confession? When it is not relevant? Distinguish it from Admission.
lLohdfr dk ifjHkkf"kr dhft,\ ;g dc vlxr g lLohdfr rFkk Lohdfr e vUrj Li'V dhft,A

Q.2- What is dying declaration. Discuss fully its evidentiary value.
eR; ekfyd dFku D;k gkrk g\ bld lkf{;d eY; ij foLrkj l o.ku dhft,\

Q.3- What is Admission? Who can make admission? Who can prove it ? Explain briefly.
Lohdfr D;k g \ Lohdfr dku dj ldrk g \ bl dku lkfcr dj ldrk gA

Long Answers

Q.1- Define confession? When it is not relevant? Distinguish it from Admission.

Ans.

The term confession is not defined in the Evidence Act. Provision related to with confession are mentioned in section 24 to 31. Section 24 of the Evidence Act lays down that when confession become irrelevant. Confession is a kind of admission made by the accused person in criminal proceeding. In other word we can say that every confession is admission but every admission is not a confession.

Thus confession is an admission made by a person charged with a crime at any time. Confession must either admit the offence or substantially all the facts which constitute the offence. **(Pakla Narayana Swamy Vs. Emperor).**

❖ **While confession is irrelevant:-**

Section 24, 25 and 26 of the Evidence Act deals with confessions. Section 24 lays down that if a confession appears to have been caused by threat, promise or inducement from any person in authority, it will be irrelevant and can not be proved against the offender making confession.

Section 25 excludes a confession made to a police officer. Section 26 lays down that if a person while in custody to a police man, confesses his guilt to any other person not being a magistrate, his statement will not be proved against him.

Section 27 lays down that when any fact is deposed to as discovered in consequence of the information received from a person accused of any offence may be proved irrespective of facts wither that information amounts to confession or not. Therefore section 27 is an exception of section 26.

For example: 'A' confesses his guilt and says he murdered 'B' with Gun. Gun is discovered by the police-inspector. Statement in which accused confesses that he has committed murder of 'B' shall not be relevant because no statement shall be relevant if it made before the police, so it shall not be admissible, but gun which is recovered by the police inspector shall be relevant in spite of the fact that recovery of gun became possible due to information given by accused person.

The conditions necessary for the application of section 27 are -

1. The fact must have been discovered in the consequence of the information received from the accused.
2. The person giving the information must be accused of an offence.
3. He must be in custody of a police officer.
4. Only that portion of the information which relates distinctly to the fact discovered can be proved, the rest is inadmissible.

5. Before the statement is proved somebody must dispose that some articles were discovered in consequence of the information received from the accused.
6. The fact discovered must be a relevant fact that is to say it must relate to the commission of the crime in question.

In **Pulukuri Kottaya Vs. Emperor (1947)** Privy Council held that only that part of the statement of accused could be proved under Sec. 27, which is related clearly with the discovered fact not the other part.

In **S.C. Bihari Vs. State of Bihar (1994)** Hon'ble Supreme Court held that the person, giving statement under sec. 27, must be the accused of any crime and should be within police custody. According to Sec. 25, the confession of the accused can not be proved against him, but the fact discovered by the police on the basis of the statement of accused shall be admissible under sec. 27.

In **State of Himachl Pradesh Vs. Jeet Singh (1999)**, Hon'ble Supreme Court held that statement of the accused under sec. 27 would not be inadmissible if the materials/ objects are discovered from the place where access of other person were also possible. Suspicious materials could be hidden even at the place where ordinary people have access and if such material is discovered at the statement of the accused then it will be admissible under sec. 27.

There are two types of confession -

1. Judicial confession.
2. Extra judicial confession

1. Judicial confession:

Judicial confession are those which are made before a magistrate or in court in the due course of legal proceeding. When a person confesses his guilt before the magistrate, if shall be judicial confession.

2. Extra judicial confession:

Extra judicial confession are those confession which are made before any persons other than magistrate. When a person made a confession to a private person shall be extra -judicial confession. In other words "a free and voluntary confession of guilt by a person accused of a crime not in court of convection, but before the person other than judge.

❖ **Distinction between judicial confession and Extra judicial confection:**

	Judicial confessions		**Extra judicial confessions**
1.	Judicial confession are those which are made to a judicial magistrate under section 164 Cr. P.C. or before the court during committed proceeding or during trail.	1.	Extra judicial confessions are those which are made to any persons other than those authorized by law to take confession, if may be made to take confession, it may be made to any person or to police during investigation of an offence.
2.	To prove judicial confession the person to whom judicial is made need not be called as witness.	2.	Extra judicial confession are proved by calling the person as witness before whom the extra judicial confessions is made.
3.	Judicial confessions can be relied as proof of guilt against the accused person if it appears to the court to be voluntary and true.	3.	Extra judicial confession ..... can not be relied its needs support of other supporting evidence.
4.	A conviction may be based on judicial confession .	4.	If is intake untaken whose conviction an extra judicial confession.

❖ **Distinction between confession and admission:**

	Confession		**Admission**
1.	A confession is a statement made by an	1.	An admission usually relevant to civil

	accused person which is sought to be proved against him in criminal proceeding establish the commission of an offence by him.		transaction and comprised all statements amounting to admission defined under section 17 and made by person mentioned under section 18, 19 and 20.
2.	Confession if deliberately and voluntarily made may be accepted as conclusive of the matters confessed.	2.	Admission are not conclusive as to the matters admitted it may operate as an estopple.
3.	Confession always go against the person making it.	3.	Admissions may be used on behalf of the person making it under the exceptions provided in section 21 of Evidence Act.
4.	Confessions made by one or two or more accused jointly tried for the came offence can be taken into consideration against the co-accused (Section 30).	4.	Admission by one of the several defendants in suit is no evidence against other defendant.
5.	Confession is statement written or oral which is direct admission of suit.	5.	Admission is statement oral or written which gives inference about the liability of persons making admission.

Q.2- What is dying declaration. Discuss fully its evidentiary value.
Ans.-

Dying Declaration:

By Sec. 32(1) two categories of statement are made admissible in evidence. They are 1) cause of his death 2) statement as to any circumstances of transaction which resulted in his death.

Under Sec. 32(1) Anticipation of death is not necessary. Judicial Authority of the Sec. was explained in **Pakala Narain Swami Vs. Emperor 1939 PC.**

Lord Atkin 'It has been suggested that the statement making must be at any rate near death that the circumstances only ..... acts done when and where the death was caused. The statement may be made the cause of death has arisen as before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction general expression indicating fear or suspicion whether of a particular individual or otherwise not related directly to the occasion of the death will not be admissible.

Circumstances of the transaction is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in cir5cumstantial evidence which includes evidence of all relevant facts and on the other hand narrower than Res gestae. There has to be proximate relationship between the statement and the circumstances of death.

The Principle laid down by P.C. was approved by SC in **Kaushal Rao Vs. State of Bombay AIR 1958** and held that it is not an absolute rule of law in every case that it should be corroborated by other evidence. The courts of course be fully convinced of the truth of the statement and naturally it could not be fully convinced if there were any thing in the surrounding circumstances to raise suspicion as to its credibility.

Following general propositions have been made by the court as to the reliability of dying declaration as to base convict.

1. There is no absolute rule of law that a dying declaration can not be the sole basis of conviction unless corroborated.
2. Each case must go by its own facts.
3. A dying declaration is not a weaker kind of evidence than any other place of evidence.
4. A dying declaration which has been properly recorded by a competent magistrate that is to say in the form of question and answers and as far as practicable in the wards of the maker is relevant and reliable.

5. To test the reliability of a dying declaration the court has to keep in mind that the circumstances like the opportunity of the dying man of observation.

A dying declaration to the relatives of the deceased when properly proved can be also trusted. The value of a dying declaration is closely linked with the circumstances of each case.

Jayaraj Vs. State of T.N. 1976 The statement of witness as to a dying declaration has to be tested on the basis of its own strength or weakness and not by reference to other things like has omission to mention the existence of the dying declaration in FIR made by him.

Patel Hiralal Joeta Ram Vs. State of Gujrat AIR 2001 SC Supreme Court held that the words statement as to any circumstances are by themselves capable of expending the width of scope of admissibility anything which has nexus with his death proximate or remote direct or indirect can also fall within the purview of subsection.

It is not necessary that while recording statement of deceased there must have been intention to use the statement as dying declaration. The statement as to the death of another person is not admissible. A statement falling under this category may be made before the cause of death has arisen or before the deceased had any reason to anticipate being killed but the circumstances must be circumstances of the transaction which resulted in the death of the declerant.

Q.3- What is Admission? Who can make admission? Who can prove it ? Explain briefly.

Ans.

Admission

Admission play every important role in judicial proceedings. If one or either party of a suit proves that part has been admitted, it cases the court work Sec.17 of IEA mentions the Admission. This section points out three things- **Defines Admission** 2ndly says **when admission will be relevant,** only when it is made by any of the person, specified in the Act as Sec. 18 says. Thirdly the sec. says that admission will be relevant only in the circumstances mentioned in this Act from Sec. 18 - 20.

Sec. 17: An admission is a statement, oral or documentary or in electronic form, which suggests any inferences as to any fact in issue or relevant fact and which is made by any of the person, and under circumstances hereinafter mentioned.

"An Admission is an statement which suggests same inferences as to the existence of a fact in issue or a fact relevant to the issue".

Ill: A person is sued for recovery of a loan and there is an entry in his account books recording the fact or the loan, that is an admission on his part of his liability or if he makes any statement to the effect that he does once the money that will also be an admission being a direct acknowledgement of liability.

Nagubain Ammal Vs. B. Sharma Rao 1956 Supreme Court said that an admission must be clear and unambiguous.

Why Admission are Admissible:

An admission is a relevant (fact) evidence Admission of a fact is a proof against the party making admission but admission as to pure question of law is not binding on the makes. Because Admission as to law is not an admission of thing so it also does not attract estoppel.

There are several reason that Admission is admissible. These are:-

1. Admission as waiver of Proof:

To a certain extent this principle has been adopted by the Sec. 58 of IEA. If a party has admitted a fact it dispense with the necessity of proving that fact against him. It operates as a waiver of proof. But court has full discretion as to accept or reject and say to prove.

2. Admission as Statement against interest:

As an admission is a statement against the interest of the maker, should be supposed to be true, for it is highly improbable that a person will voluntarily make a false statement against his own interest.

3. Admission as evidence of contradictory statement:

There is a contradiction between the party's statement and his case. This kind of contradiction between the party's statement and his case discrete his case.

4. Evidence of Admission as truth:

This is widely accepted reason that admission as evidence of truth, accounts for relevancy of admission is that whatever a party make about the facts of the case. "Whatever a party says in evidence against himself to be true may be presumed to be so."

Form of Admission:

1. Formal or Judicial Admission:

An admission which is made as part of the proceedings so that it is recorded in the file of the court that is called a formal or judicial admission.

Nagindas Ramdas Vs. Dalpat Ram Iccharam 1974 SC.

The effect of formal Admission was explained by the Supreme Court. **Sarkaria J.** pointed out that the material for the satisfaction of the court may take shape either of evidence recorded or produced in the case or it may partly or wholly be in shape of an express or implied admission made in the compromise agreement itself. Admission if true and clear are lay for the best proof of facts admitted and admissions are substantive evidence by themselves.

2. Informal or Casual Admission:

Such admission may occur in the ordinary course of life or in the course of business or in casual or informal conversation.

Persons whose Admissions are relevant:

Sec. 18: lays down the list of persons whose admissions constitute evidence against a party similarly under Sec. 19 and 20 evidence can be given of the statement of persons who are not parties to the suit but whose statements also affect the position of the parties. So when the time sections are put together is that the admission of the following persons/ parties become relevant:-

1. Parties to the suit.
2. Agents of the parties.
3. Persons occupying representative character.
4. Statement of 3rd parties. There are :
    i) Persons having pecuniary of propriety interest.
    ii) Persons from whom the parties derived their interest.
    iii) Persons whose position is the issue relevant. Sec. 19.
    iv) Persons expressly referred to Sec. 20.

Ill:

A undertakes to collect rents for B.

B sues a for not collecting rent due from to B.

A denies the rent was due from C to B.

A statement by C that he owed B rent is an admission and is relevant fact against A. If A denies that C did one rent to B.

Sec. 19:

Says persons whose position is in issue though they are not parties to the case in admissible because where the right or liability of a party to the a suit depends upon the liability of a third person. Any statement by the third person about his liability is in admission against the parties.

Sec. 20:

This Sec. deals with one class lf vicarious liability. Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissible admissions.

Ill:

The question is whether a horse sold by B to A is sound B says to A g and ask C, C knows all about it. C's statement is on admission.

Sec. 21:

Admission are relevant and may be proved as against the person who makes them or his representative in interest but they can not be proved by or on behalf of the person who makes them or by his representative in interest.

Except:

1. U/Sec. 32 when the statement should have been relevant as dying Dec.
2. Statement as to bodily feeling or state of mind.
3. When otherwise relevant than as admission.

(As - Sec. 6, Sec.-8, Sec. 14, U/S-32 Any clause).

Sec. 22:

Provides that oral admission as to the contents of a document are not relevant unless and until the party proposing to prove them shows himself entitled to give secondly evidence.

Sec. 23:

When a person makes an admission without prejudice that is to say upon the condition that the evidence of it shall not be given, it can not be proved against him. Thus protection or privilege against disclosure is intended to encourage parties to settle their differences amicably and to avoid litigation if possible.

Sec. 31:

Says that Admission are not conclusive proof of the matter admitted, but as estopples under the provisions hereinafter contained so this is just a Prima Facie proof and not conclusive.

Unit-III

Syllabus:-

Method of Proof of facts: (Sec.4, 41, 79-90,105,107,108,112,113A, 114 and 114A) oral and documentary evidence (Sec. 59-78) Rules relating to Burden of Proof (Sec. 101-105). Facts prohibited from proving: Estoppels (Sec.115-117) Privileged Communications (Sec. 122-129)

Long Answers

Q.1- Discuss the law of evidence on burden of proof if there any exception of this rule?

Ans-

Burdon of Proof :- All other relevant facts, must be proved by evidence, that is

- By the statement of the witness.
- By the admission or confession of the parties and
- By the productions of the document.

The present chapter deals with the rule regulating the question upon which of the party to the case the burden of proof lies.

- **Burden of proof - Meaning** – The Burden of proof means the obligation to prove fact.

The strict meaning of the term burden of proof (onus Probandi) is this, that if no evidence is given by the party on whom the burden is passed the issue must be / and against him.

[The word "Burden of proof" has not been defined in evidence act. In criminal case it is accepted principles of criminal jurisprudence that burden of proof is always on prosecution. It never changes. This conclusion is derived from fundamental principle that the accused should be presumed to be innocent till he is proved guilty beyond reasonable doubt and accused has got right to take benefit of some reasonable doubt.]

If accused succeeds in creating reasonable doubt in favour of Plea. He would be entitled to be acquitted. **(Vijay Singh Vs. State of UP., 1990, SC)**

General Rule – The burden of proof vs. lies on the party who substantially arrests the affirmative of the issue. This is rule of convenience.

According to **Section 101** of the Evidence Act, whoever desires any court to give judgment as to any legal right or liability dependent on the existence of the facts to which he accept must prove that those fact are in existence.

This section is further stated that when a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Thus it is clear that burden of proof lies on that party who assert that facts on which right or liability of the parties depends and exists. Such party shall be bound to prove the existence the such fact. Thus burden of proof lies on such party. It is newer change. It is known as establish the fact. It is always remain same. Prosecution has burden of proof the prove guilty of accused beyond reasonable doubt.

In evidence act the term burden of proof has two meaning -

a. Burden of proof on pleadings (Establish the fact)
b. Burden of adducing evidence.

a. **Burden of proof on pleadings (Establish the fact)** - The burden that arise from the pleadings depends upon the facts asserted or denied and is determined by the rule of substantive and statutory law by presumption of law or fact. **For example -** 'A' files a suit against W, widow of B far declaration that he is owner of all the property left by B being his adopted son. W the window denies the factor of adoption. In this case A desires the event to give judgment to the effect that he is owner of the party left by B depending on the fact that he was adopted by B.

In this case the burden of proofs lies on A.

b. **Burden of adducing evidence**. - The burden of adducing evidence rests on the party who would lose it no evidence is led by any of the parties. For examples –

A file a suit on the basis of a bond B admits the execution of the bond but pleads that the bonds was taken by practicing fraud upon him.

In this case the execution of the bond is admitted and if no evidence is led by B on fraced, A will get a decree. B will lose.

Therefore, the burden to lead evidence first lies on B. He will first bad evidence and A will produce evidence to rebut the evidence led by B. This kind of burdens of proof is termed as onus of proof.

ONUS PROBANDI (Burdon of proof) – According to **Section 102** of the evidence Act, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Thus Section 101 deals with the first kind of burden of proof (establishment of the fact) where as section 102 deals with onus of adducing evidence burden of establishment of the fact arising from pleading and determined by substantive law never shifts it always remains constant. While burden of adduring is shifting constantly. In criminal cases burden of establish the fact lies on prosecution. It means prosecution has to prove the guilty of the accused beyond reasonable doubt. It's never change. For example -

'A' sue 'B' for land of which 'B' is in possession and which, as A Asserts, was left to A by the will of C, 'B' father.

If no evidence were given on either side, 'B' would entitled to retain his possession.

Therefore, the burden of proof is on A.

Triro Vs. Deo Raj (1993, J & K)

There was delay infilling the suit. The defendant had taken plea of limitation period. The plaintiff was in position to know the cause of delay. The burden of proving that the case was within prescribed limit was on plaintiff.

The subject of burden of proof has been dealt within section 101 to 114 of the evidence act. These sections lay down the general rule.

1. The burden of proof as to any particular fact lies on that person who wishes the court believe in its existence, unless it is provided by an law that the proof of that fact shall lie on any particular reason. (Section 103).

   Illustration A prosecutes B far theft, and wishes the court to believe that B admitted the theft to C must prove the admission.

   B wishes the court to believe that at the time inquisition. He was else where.

2. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence. (Section 104)

   Illustration 'A' wishes to prove a dying declaration by B. A must prove B's death.

3. When a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the I.P.C. or within any special exception & provision contained in any other part of the same code, or in any law defining the offence, is upon him and the court shall presume the absence of such circumstances. (Section 105).

   Illustration 'A' accused of murder alleges that by reason of unsound of mind, he did not know the nature of Act. The burden of proof is on A.

Bhikari Vs. State of U.P. (1966, SC.)

SC stated that if an accused pleads insanity he has to prove that he was insure at the time of occurrence.

Exception of General rule -

4. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. (Section 106).

   Illustration 'A' is changed with traveling and railway without a ticket. The burden of proving that he had a ticket is on him.

Gureharan Singh Vs. State of Punjab (A.I.R. 1956 SC)

Burden to proof of alibi lies on the accused as it is specially with in his knowledge but failure to prove does not help the prosecution which has to prove the guilty beyond reasonable doubt.

Burden of proof in case of les ipsa Loquiter - (Tort) Negligence) Generally specialty in a case of negligence the burden of proof of negligence on the part of the dependant lies on the plaintiff, But in case where the fact speak for themselves showing negligence of the defendants. The burden lies on the dependant to prove that he was not negligent.

(Minicipul Corporation on Delhi us Subhagwati) (1960)

5. **Burden of proving death of person known to have been alive within 30 years** – When the question is whether a man is alive or dead and it is shown that he was alive within thirty years, the burden of proving that he is dead is on me person who affirmed it.
6. **Burden of proving that person is alive who has not been head of for Seven years** :- Section 108 of Indian Evidence Act prove that when the question is whether a man is alive or dead, and it is proved that he has not been heard of far seven years by those who would naturally have heard of him it he had been alive. The burden of proving that he is alive is shifted to the person who affirms it.

   In **Subhash Ram Chandra Wadekar Vs. UOI (1993 Bombay SC)** – It was issued that the person who has not been heard of far seven years should be presumed to be dead. It is not a conclusive presumption but it is rebuttable presumption.
7. (**Section 109) Burden of proof as to relationship** in the case of partners, Land lord and tenant or principal and agent, and it has been shown that they have been acting as such the burden of proving that they do not stand or how ceased to stand to each other in those relationships respectively is on the person who affirms it.
8. **Burden of proof as to ownership (section 110)** – When the question is whether any person is owner of anything of which he sis shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.
9. (**Section 111) – Proof of good faith in transactions where one party is an relation to achieve confidence** – Where there is question as to the good faith of transaction between parties, one of whom stands to the other in a position of active confidence the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

   Illustration : The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Q.2- What is estoppels under the provisions of evidence Act? Discuss with the help of statutory Provision.

Ans.-

Estoppel – Section 115 of the Evidence Act, 1872 defined Estoppel. Section 115 lays down that when one person by making false representation (either by words or by conduct) has intentionally caused a person to believe to thing to be true and to act upon such belief neither he nor his representatives in a subsequent proceeding will be allowed to say that the representation was false.

The principle of Estoppel is that when a person by his words. Whether written or spoken, or by his conduct makes a representation that a certain of things is true and the other person, relying upon the truth of the representation, after his position, the person making the representation will be stopped from denying the truth of it. Estoppel is based on rule of enquity, justice and good consciences. Estoppel prevents a person from saying one thing at one time and retreating form it at another time. Estoppel

originates from representation or conduct of the party. It is a rule of Evidence. Estoppel is used as defense and not cause for bringing a suit.

Section 115 of Evidence Act defined Estoppel as –

When a person has by his declaration act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

Illustration :

1. 'A' intentionally and falsely leads 'B' to believe that certain land belongs to 'A' and thereby induces 'B' to buy and pay for it. The Land afterwards becomes the property of 'A' and 'A' seeks to Act aside the sale on the ground that at the time of the sale, he has no title. He must not be allowed to prove his want of title.
   This section Illustration is based upon the doctrine laid down in **Pickard Vs. Sears (1837 H.L.)**
2. A, intentionally and falsely leads B to believe that Bharat cold Storage belongs to A, and thereby induces B to buy and apply for it. The Bharat Cold Storage afterwards becomes the property of A and A seeks to set aside the sale on the ground that, at the time of the sale, he had no title.

Requisites of Estoppel :-

The following are the essential requisites of estoppel –

a. There must be some representation by way of declaration, act or omission.
b. The representation must be made with in intention to be acted upon.
c. The representation must have been acted upon. It means another person get upon the belief and alter his position.

1. The representation to form the basis of an estoppel may be made either by –

i. Statement or by
ii. Conduct and conduct includes negligence.

Estoppels is based on the maxim- "**allegans contraira non est audientdus**," A person alleging contradictory facts should not be heard estoppels Prohibits a party from proving anything which contradicts his previous declaration or act, to the prejudice of party, who relying upon, them, altered his position estoppels shuts the mouth of a party. estoppels prevents him saying one thing at one time and the opposite at another it means, a person can not speak truth and false together.

To invoke the doctrine of estoppels these conditions must be satisfied -

i. Representation must be made by a person to another by oral or written or by conduct.
ii. The other person must have all upon the said representation.
iii. Such action must be against the person, who believe on it, and act.

A. Representation of a mere intention can not amount to an estoppels representation must relate to an existing fact, if the representation relates to a promise do future it can not be binding as an estoppels. **Sunder Lal Vs. Suja (1956, SC)**

B. A representation made by agent will be as effectual for the purpose of estoppels as if it had been made by his principal.

C. **Truth known to both the parties** : Where the party effected by the representation had come to know before he acted upon, if that the representation was false, he can not avail the rule of estoppels. **(Permanand Vs. Champalal (1956 all. H.C.)**

D. **Intention to deceive** : The existence of estoppels does not depend upon the motive or knowledge of person who makes the representation.

Leading case:

Rajesh Wadhwa Vs. Dr. (Mrs.) Sushma Goel (1989, Delhi)

In this case the lease deed executed by land-lady's father on behalf of land lady eviction petition was filed by father, under power of attorney of land-lady. The tenant was is topped from taking plea that land-lady's father was not duly constituted attorney to file the eviction petition.

Sarat Chandra Dey Vs. Gopal Chandra Lala(Privi Council, 1891-92)

A Muslim died leaving behind some property, and a son, a daughter and their mother. The whole of the property, including the shares of the son and the daughter, was in possession of the mother. She also claimed the property under a deed of gift executed by her husband in her favour, but her claim failed, the gift-deed having been found to be invalid. While the mother was in possession, she mortgaged the whole of the property and the mortgage's interest was purchased by the defendant, Sarat Chandra. The mortgage was executed through the agency of the son. Subsequently both the son and the daughter sold their shares in the property to the plaintiff, Gopal Chandra the plaintiff started the present case to recover the possession of the property from the mortgage.

The defendant claimed an estoppels against son and daughter should not be permitted to say that the mortgage was void. They had allowed the mother in remain in possession and on had acted on her behalf in executing the mortgagee. That was a representation that the mother had the right to mortgage. The mortgage acted on this representation.

The question before the privi council was, whether the plaintiff was estoppels from proving the invalidity of the mortgage their lordship held that the son was so estoppels and so was the plaintiff to the extent of his share, but that there was no estoppels against the daughter.

Doctrine of estoppels can be used as shield but not a sword- Sundra Bai Vs. Devaji (1954, SC)

An estoppels is only a rule of evidence cause under a certain circumstances can be invoked by a party to an action. No action arises on the estoppels itself.

In case of **Banwari Lal Vs. Sukhdarshan (SC, 1973)** estoppels prevents a person from denying the truth of the statements previously made by him. it does not create a cause of action. it can be used a shield but not sword.

Generally estoppels are three kinds :

i. Estoppels by record.
ii. Estoppels by deed.
iii. Estoppels by conduct.

1. **Estoppels by Record :** The doctrine of Res-judicata is an example of estoppels by record. every party has a right against a decision. every party has a right of appeal against what he may consider to be a wrong decision, if he does not do so or having done so, loses is appeal, he can not afterwards rake up the same issue again and between the same parties. This kind of estoppels is dealt with under section 10 and 11 of the civil procedure code, 1908, and sections 40-44 of the evidence act.

   Radhey Shaym Modi Vs. Jadunath Mohapatra (1991, ori.)

   A father and one of his sons were facing a decree of eviction they applied far review the father died. the son continued the review proceedings without asking far substitution of his brothers far the decreased father. He was not allowed subsequently to challenge the execution proceedings on the ground. of the absence of legal representation.

2. **Estoppels by deed :** if both the party have interred into contract and made a deed, both parties shall be bounded with content of such deed. **P.G. Hariharan Vs. Padarill (1994, Kar.)** Where a lessee makes as a deed of sub-lease, it will operate to the extent of his rights as a lessee, e.g., the sub-lease will be bound by the period of the original lease, though not mentioned in the Sub-Lease.

3. **Estoppels by Conduct:** (Estoppels "in pais") estoppels in pais is known as estoppels by conduct or representation. Where person induce another person to inter into contract with him on the basis of facts which are fraudulently or innocently mis-represented. He would be bound by his statement. in case of **G.Saran Vs. Lucknow University (1976, SC).** conduct of appearing before the selection committee

without protest as to the irregularity in its constitutions know to the candidates would stop him from challenging the validity of the selection on the basis.

Exception of Doctrine of Estoppels-

a. **No, estoppels against law or statute :** A rule of law can not be resorting to the doctrine of estoppels far example- minor can not enter into contracts. No rule stop to disclose him real name. **(Mohri Bibi Vs. Dharemodas Ghosh (P.C.)**
b. **No estoppels against sovereign Act:** The supreme court has lad down that it is will settled that there can not be any estoppels against the government in the exercise of its sovereign, legislative and executive function.

Where a legal development authority allowanced a housing scheme and accepted application under it, subsequently finding that the scheme was in violation of the master plan cancelled it. It was held to be free to do so without shackles of promissory estoppels. **Housing board co-operative, society Vs. State (1987, MP)**

PROMISSORY ESTOPPELS

Promissory estoppels developed as an exception to the doctrine of consideration when a person makes promise to another person and after that he says that it had made without consideration. He shall not permitted to say that. Incase of Central London property Trust Ltd. Vs. High Trees House Ltd. (1947, KB)-

A block of flats was let out far a period of Ten years on an agreed rent. War intervened and flats fell vacant the lessee was not able to pay the full rent. The land lord agreed to reduce it to half and went on receiving half rent till the war end. Normal conditions brought people back to cities. Flats wee again fully occupied. The land lord demanded full rent far the future and also arrears far the period during which only half rent war paid.

The court held that the land lord was entitled to restore the full rent, because it was only a concession given by him and he had a right to withdraw the concession for the future. He had held out a concession and had itself been acting on it by accepting half rent. He was, therefore, stopped from saying that his agreement to accept only half the rent was without consideration. In case of Motilal Padampat Sugar mills Vs. state of U.P. (1979, S.C.) In this case supreme court allowed the petition, holding that the government was bound by its declared intention.

Q.3 What are privileged communication? Under what circumstances privilege can be claimed? Explain.

Ans.-

Privileged Communication – There are cases in which a witness is not compelled to give evidence or is not bound to give answer. Those communication is called as privileged communication to which no body can disclose it or court shall not allowed to disclose although witness is want to disclose it. Concept of privileged communication is based on public policy. Thus it means and it includes two kind of information –

1. Communication to which no body can disclose. or
2. Communication to which a witness want to disclose but court prohibits it to disclose.

These are the following privileged communication under evidence Act –

1- **Judge and Magistrate (section 121)** – No Judge and Magistrate shall be compelled
   a. to give evidence about his conduct in reason to a case tired by him or
   b. Can not be made to disclose anything which he come to know as a court in course of trail.

This privilege can not be claimed by such persons in respect of facts which they come to know not as a court in discharge of their duty but which is observed by them as ordinary men.

There is one exception, when Judge or Magistrate can disclose such privileged communication, if special order has been given by superior court to which he is subordinate.

Illustration

a. 'A', on his trail before the court of session, says that a deposition was improperly taken by 'B', the Magistrate 'B' can not compelled to answer question as to this, except upon the special order of a superior court.
b. 'A' is accused before the court of session of having given false evidence before 'B', a Magistrate, 'B' cannot be asked what A said, except upon the special order of the superior court.
c. A is accused before the court of session of attempting to murder a police officer who Ist on his trail before 'B', a session judge. 'B' may be examined as to what occurred.

2- **Communication during marriages (Section 122)** No Person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married.

According to the section any communication during the wedlock by the husband to his wife or wife to her husband is procured from being proved on a court of law. Thus this action prohibits the wife or the husband from disclosing the communication between them.

Exception - There is one exception to the general rule. When there is a suit between the husband and the wife. The communication between them can be proved by them. Same as criminal providing if any criminal proceeding against each other communication made by them can be proved. Such communication can be disclose by either party (husband or wife) with the consent of other.

Marriage communication between husband and wife is got privileged not only during the existence of marriage but also after the dissolution of marriage. But prior communication is made before marriage can not get priviled under this section.

In case of M.C. Verghese vs. T.J. Ponnan (1970, SC) – The court held that A divorced woman can not give evidence against his further husband about communication which was made between and her farmer husband. Court further stated that protection of section 122 shall be available after dissolution of marriage.

Ram Bharose vs. States of U.P. (1954, P.C.) The statement of the accused to his wife that he would give her jewels and that he had gone to the house of the deceased is inadmissible.

3- Evidence as to affairs of state (Section 123) – No person shall be permitted to give any evidence derived from unpublished official records relating to any affairs of states. There one exception of this rule, if head of department give permission he can disclose it. But superior authority has power to grant permission or to reject permission to do so.

There are two requisite of such privileged communication –

a. The document must be an unpublished official record.
b. it should relate to the affaires of the stand.

Provision of section 123 of the evidence Act is based on maxim 'salus populist suprema lex". It means public interest is supreme law.

Privileged communication under section 123 of the Evidence act should be claim only one ground that if it shall be disclosed, it will much effect the interest of public or it will be against the interest of public. No other ground can be claim of such privilege communication. It is not a proper argument to claim such privilege under section 123 of the evidence Act that if communication is disclosed, it will against the interest of department or against the defense of state, which is gave in any cause.

The term **'affair of state**' is not defined in evidence act. Now a days it has more wide meaning. Now a days state is welfare state, it is performed much affairs which is directly or indirectly affected the people. Thus it is difficult to decide which action is come under the affair of state. In every case it shall be divided by the court. Court shall take notice all the fact or circumstances which is adduced before the court.

Raj Narain vs. Indira Gandhi (1974, all H.C.) the court held that the affairs of state may be defined as matter of public nature in which the state is concerned and disclose of which will be injurious to the public interest.

In case of S.P. Gupta vs. President of India & orther (1982, S.C.) the court held that communication between law ministry and chief justice of India is not public interest. So no privilege can be claim under section 123 of evidence Act.

Thus it clear that who is competent authority to decide it, whether a document is privileged, section 123 stated that head of department has authority to decide it whether such communication can be disclose or not. But that is no so. Section 162 of the act reed with section 123. Section 162 court is final authority to decide it. Thus privilege under section 123 in respect

of any document only applies to un published official record relating to any affairs of state. Public Interest is paramount consideration to decide it, whether such communication is privileged or not.

4. **Section 124 : Official Communication** :- According to section 124 No public officer shall be compelled to disclose communication made to him in official confidence when he considers that the public interests would suffer by the disclosure.

5. **Information as to commission of offences : (Section 125) –** No Magistrate or police officer shall be completed to say whence he got any revenue offices has also privileged under this section.

Thus section 125 says down that when a police officer or a magistrates can not be compelled to say as to who gave him the information that the offence was being committed. Section 125 has been enacted to safeguard the interest of such informers.

6. **Professional Communication (Section 126) –** No barrister, attorney, pleader or vakil, shall at any time be permitted to disclose an communication made to him in the course of employment or to state the contents or condition of any document has been given to him by client or any advice has been given by such person to his client.

There is one exception of such rule. If client express his content to disclose it, attorney, pleader or vakil shall disclose such communication made to him.

Protection of this section is not available to following communication :

a. Any such communication made in furtherance of any illegal purposes.

b. Any fact observed by any barrister, pleader or attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

In two situation concent of client is immaterial. This section makes clear that the obligation stated in this section continues after the employments has ceased.

Illustration

A. 'A', a client, says to 'B', an attorney – "I have committed forgery and 1 wish you to defend me."

As the defense of a man known to be quilty is not a criminal purpose, this communication is protected from disclosure.

B. 'A', a client, says to 'B', an attorney – I wish to obtain possession of properly by the use of a forged deed on which I request you to sue."

C. A, being charged with embezzlement, retains B, an attorney to defend him. In the course of the proceedings B observes that an entry has been make in A's account book, charging a with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected disclosure.

This communication, being made in furtherance of a criminal purpose, is not protected from disclosure.

Thus a man of legal profession is forbidden from disclosing without his clients consent –

1. Any communication made to him in course of and for the purpose of his employment; or

2. The contents of conditions of any documents which come to knowledge in the course of and for the purpose of his employment; or
3. Only legal advisers is prevented from disclosing the communication. Only those communication is protected under this section which is made him during the existence of the relationship. No communication can get protection of section 126, which is made before or after such relationship. The privilege applies to all communications either oral or documentary made in course of and far the purpose of employment as legal advisor.

In case of Shiva Charan Das vs. Golab Chand (1936 Act HC) – The privilege given by this section can be waived by the client and not by legal advisor. If the client gives his consent the communication so made may be disclosed by the vakil otherwise not.

Section 127 is extension of section 126 which is stated that the provisions of section 126 shall apply to interpreters, and the cleaners or servants of barristers, pleaders, attorney and vakils. We should read section 129, 128 and 127 with section 126. Section 126 lays down that legal advisor is not permitted to disclose a certain kind of communication without the consent of the client. But section 128 says that if a legal advisor appears as witness before the court, he does not waived the privilege affored by section 126. It means mere calling of the lawyer as a witness also does not amount to waives of the privilege.

There is one exception of such rules, if the client calls the lawyer as a witness and put him question in respect of the communication his consent would be deemed and then the lawyer would be permitted to disclose the communication.

Thus it is clear that waiver of this privilege may be by express consent under section 126 or it may be conduct under section 128.

Section 129 of the act is counter part of section 126. It lays down that no one shall be compelled to disclose to the court any confidential communication which has taken place between him and his legal advisor unless **he offers himself as a witness.** Mere presence of client before the court as a witness not means the waiver of privilege.

Unit-IV

Syllabus:-

Presumptions regarding discharge of Burden of Proof: Evidence by accomplice (Sec. 133 with 114 (b). Judicial notice (Sec. 114). Dowry death (Sec. 113-B). Certain Offences (Sec. 111-A)

Long Answers

Q.1- Who is an accomplice? Discuss the evidentiary value of the evidence given by an accomplice.

Ans.-

Who is accomplice ?

The term "Accomplice" has been not defined under the evidence Act. The term accomplice may include all particeps criminis. Accomplice is person who is guilty associate in crime.

Section 133 of the evidence Act stated that an accomplice shall be acompent witness against an accused person and a connection is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Accomplices is not only that person who is take direct part in the commission of crime, but it include those person who assist, those persons who has committed crime, after or before commission of crime.

Judgement of Devies vs. Director of public prosecution (1954), (House of Lords) has been followed by the supreme court in **R.K. Dalmia vs. Delhi Administrative** in this case court stated

that there is no formal definition of the term accomplice." Following person is called as accomplice if called as witness for prosecution –

1. Persons who are **participles criminis** in respect of the actual crime charged whether as principals or accessories.
2. Receivers have been held to be accomplices of the the thieves from whom they receive goods (stolen) on a trial of the latter for **Larceny (R vs. Jennings (1912) (R vs. Dixon).**

Reliance at the testimony of Accomplice : it deal by two section of the Act. Section 133 of the evidence act lays down that –

a. A accomplice is a competent witness against accused.
b. Accused person can be convicted on sole testimony of accomplice.

While Section 114 illustrations (b) Evidence Act lays down that court may presume that an accomplice is unworthy of credit unless corroborated in material particular.

Both section of evidence Act is not contrary to each other, but it is supplementary to each other. Where section 133 of the Act says that merely testimony of accomplice is sufficient to convict to accused person. There is no need of corroboration of testimony of accomplice. While section 114 illustration (b) lays down the presumption. Which is rebuttable. In this type of presumption, court has discretionary power to direct further proof.

If court is not satisfied with the testimony of accomplice. It may call of more proof and far corroboration of such testimony from independent evidence. If court is satisfied with accomplice testimony. There is no need of corroboration. It may act upon sole testimony of accomplice and convict accomplice on sole testimony of accomplice. Conviction shall be legal.

The different court have different opinion in this reference. Bombay high court has propounded the following principles –

1. It is not necessary that every essential particular should not be corroborated.
2. Corroboration should be an independent nature.
3. It is not essential that corroborative evidence should be direct evidence. Circumstantial evidence which connects him with the crime is adequate.

In the case of Lalchand vs. States (1961, pat, H.C.) it was decided it the evidence of the accomplice under section 133 is the best evidence. Hence is no need of corroboration of evidence of accomplice conviction shall be proper without corroboration.]

In case of Mutha Kumar Swami vs. King Emperor (mad, HC) – Court held that court can act on the uncorroborated evidence of an accomplice when it believes his evidence to be true.

Allahabad high court has same view, as a rule, a conviction based on the un corroborated testimony of an accomplice is not illegal. But as a general rule it would be most unsafe to convict an accused person on the uncorroborated evidence of an accomplice.

Accomplice evidence is unreliable because he -

1. In order to remove the blame from himself for false evidence he can take a false oath.
2. He has participated in the offence, and in consequence of that he has become an immoral person, and can neglect the discipline of an oath.
3. With the assurance of getting pardon, he would tell everything that he known, then he will be freed.

According to section 133 of the Evidence Act. A accomplice is a competent witness against the accused person. A accused can be convicted merely sole evidence of accomplice if court believe that evidence has been given by accomplice is true. These is no need of corroboration of each particular of evidence in any case corroboration of evidence of accomplice should be necessary or not. It is depends on discretion of court. It shall decide it.

Q.2- What is presumption? Discuss the types of Presumptions? How is it admissible under evidence law.

Ans

Every facts on which judgment is given must be proved on which the rights of the parties depends. But the law of evidence has provided that a court can take into consideration certain facts without calling for poof of them i.e. the court may presume certain things. In other words court shall take certain fact into consideration and there is no need to prove those facts. It is called as presumption.

For example: Wrist watch of Ram is stolen and soon after the incident it is recovered from the possession of Shyam. There shall be a natural presumption that Shyam has either stolen the watch himself or received if from thief knowing it to be stolen.

Presumptions are of two kinds:-

1. Presumption of fact or Natural presumption
2. Presumption of law (rebuttable and irrebuttable).

1. Presumption of Fact:

Presumption of facts are the inference which are naturally drawn from the observation of the cause of nature and the constitution of human mind. Example: Section 86, 87, 88, 88A, 90, 90A, 113A, 114 deal with the presumption of fact. These presumptions are generally rebuttable.

2. Presumption of law:

It is of two kinds:

(i) **Irrebuttable:** The conclusive or irrebuttable presumption of law are those legal rules which can not bec overcome by any evidence that the fact is otherwise. Example:- Section 82 of the I.P.C.- 'Nothing is an offence which is done by a child under 7 years of age" is conclusive proof that a child below 7 can not commit any crime. Section 41, 112, 113, 115 and 116 of Evidence Act also deals with conclusive proof or irrebuttable presumption of law.

(ii). Rebuttable Presumption:- This kind of presumption arises when presumption in law are based on certain legal rules, defining the amount of evidences requisite to support a particular allegation, which fact being proved, may be either explained or rebutted by evidence to the contrary, but are conclusive in absence of such evidence. Example: A man is presumed innocent until he is proved guilty or A child if born in a legal wedlock shall be presumed to be legitimate.

Section 79-85C, 89, 105, 107, 108, 111A, 113B, 114A are the examples of this presumption.

❖ **Distinction between presumption of fact and presumption of law:**

	Presumption of fact		**Presumption of Law**
1.	Presumption of fact is based on logic, human experience and law of nature.	1.	Presumption of law is based on the provisions of law.
2.	Presumption of fact is always rebuttable and goes away when explained or rebutted by establishment of positive proof.	2.	Presumption of law is conclusive unless rebutted as provided under the rules giving rise to presumption.
3.	The position of presumption of fact is uncertain and transitory.	3.	The position of presumption of law is certain and uniform.
4.	The court can ignore presumption of fact however strong it is.	4.	The court can not ignore presumption of law.
5.	The presumption fact are derived on the basis of law of nature, prevalent customs and human experience.	5.	Presumption of law are derived on established judicial norms and they have become part of legal rules.
6.	The court can exercise its discretion while drawing presumption of fact.	6.	Presumption of law is mandatory i.e. court is bound to draw presumption of law.

Q.3- What is judicial notice? What are the facts of which court must take judicial notice.

Ans.

There are certain facts which need not be proved. They are the facts of which the court shall take judicial notice and fact which have been admitted. Section 56 of evidence act lays down that no fact, of which court will take judicial notice need to be proved. It is a binding duty of court to know such facts.

Section 57 lays down the facts of which court must take judicial notice. It means in following case court is bound to take judicial notice of that fact which is mentioned below:-

1. All laws in force in the territory of India.
2. All Acts of the British Parliament and all local and Personal Acts directed by the British Parliament to be judicially noticed.
3. Articles of war for the Indian Army, Navy or Air Forces.
4. The course of proceeding of the British Parliament of the constituent assembly of India, and of Parliament and Legislature established under any law in force in India.
5. All seals of courts in India and England.
6. The accession and sign manual of the sovereign of the United Kingdom and Ireland.
7. The accession to office, names, title, functions and signature of gazetted officer.
8. The National flag of every country recognized by the Government of India.
9. The Division of time, the geographical divisions of the world and public festivals, facts and holidays notified in the official Gazette.
10. The territories under the dominion of the Government of India.
11. The commencement continuance or termination of war between the Government of India and any other country.
12. The names of court officials and of all advocates etc. authorized by law to appear or act before the court.
13. The rule of the Road, on land or at sea.