

1. Define primary evidence and secondary evidence .Discuss the condition under which Secondary evidence of existing condition and contents of Documents may be given?

Ans- Primary evidence

The expression "primary evidence" of a document is defined in section 62. The following four are included in the expression "primary evidence":

1. The original document itself produced for the inspection of the court.
2. Where a document is executed in several parts, each part is primary evidence of the document.
3. Where a document is executed in counterparts, each counterpart is primary evidence against the party signing it. For example, in the case of a cheque, the main cheque is signed by the drawer so that it is primary evidence against him and the counterfoil may be signed by the payee of the cheque so that it will be primary evidence against the payee.
4. Where a number of documents are all made by one uniform process, as, for example, by printing, lithography or photography, each is primary evidence of the contents of document.

The section is based upon the principle that the "best evidence in the possession of power of the party must be produced. What the best evidence is, it must depend upon circumstances. Generally speaking, the original document is the best evidence." "This is the general and ordinary rule; the contents can only be proved by the writing itself."

Secondary evidence

Secondary evidence of a document is defined in section 63. It includes the following:

1. Certified copies of the original document;
2. Copies which are made from the original by mechanical processes which in themselves assure the accuracy of the copy; and copies compared with such copies;
3. Copies made from or compared with the original;
4. Counterpart of a document is a secondary evidence against the party who did not sign it. For example a cheque is secondary evidence against the payee, as he only receives it, but has not signed it; but the counterfoil which he signs is primary evidence against him;
5. Oral account of the contents of a document given by a person who has himself seen the document.

Attested copy as secondary evidence

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An attested copy was not taken to be good secondary evidence as the person who attested it was not called to prove the accuracy of contents of the copy.

Proof by primary Evidence

Section 60 embodies one of the underlying principles which is that a document must be proved by its primary evidence. The meaning of the expression "primary evidence" has been explained in S. 62. But lest technical considerations should defeat substantial justice, the following section, namely, S. 65, embodies situations which would sanctify secondary evidence.

Secondary evidence is allowed only in the circumstances mentioned in the Act. Any one of the grounds on which secondary evidence becomes admissible would have to be proved in the first place. A certified copy of a registered document was not allowed to be proved in evidence where no account was given of the absence of the original document. The original document was such that it would naturally be in the custody of the person who was producing certified copy because it was executed in his favour.

The fact that documents can be made falsely, a document which has been questioned has to stand the test of genuineness before it can be put to any use as the proof of a fact.

Objection to proposed mode of proving document to be raised at trial

It has been held in several decisions that objections, if any, as to the mode of proving a document should be at the trial stage itself. If no objection is taken at that stage, subsequently at the stage of appeal, it would be too late and would not be allowed. Where, however, a copy of the insurance policy and not the original document was produced before the Tribunal, the other party making no objection then, an objection before the appellate court was allowed so as to exclude the evidence.

Original lying in another suit in same court.-The certified copy of the original sale deed was not admitted. The original was lying in another suit in the same court. The Court said that the sale deed in question was not a public document. The only remedy of the plaintiff was to summon the file of the civil original suit in which the original sale deed was filed.

When secondary evidence can be given:-

The circumstances in which secondary evidence can be given are strictly regulated by the Act. Such circumstances are listed in section 65. In substance, the section provides that secondary evidence can be given in the following cases:

1. When the original is shown or appears to be in the possession or power
 - (a) of a person against whom the document is sought to be proved, or
 - (b) of any person out of reach of, or not subject to the process of, the court, or

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(c) any person legally bound to produce it, and although due notice has been given to him in accordance with the terms of section 66, he does not produce it.

2. When the existence, condition or contents have been proved to be admitted in writing by the party against whom the document is to be proved or by his representative-in-interest.
3. 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.
4. When the original is of such a nature as not to be easily movable. This would include cases of bulky documents.
5. When the original is a public document within the meaning of section 74.
6. When the original is a document of which the Evidence Act or any other law of the country permits certified copies to be given in evidence.
7. When the original consists of numerous accounts or other documents which cannot be conveniently examined in the court and the fact to be proved is the general result of the whole collection.

Rules as to notice to produce

Under clause (a) of section 65, where the original document is in the possession of an opponent, he should be given notice to produce the document and, if he fails to comply with the notice, secondary evidence of the document becomes admissible. Where, for example, the plaintiff brought an action on a promissory note, and the defendant called the plaintiff's attorney as a witness who admitted that he had the original promissory note with him but declined to produce it, secondary evidence of its contents was allowed.

When notice not necessary. Such notice is, however, not necessary in the following cases and secondary evidence can be given without notice:

- (1) When the document is a notice by itself.
- (2) When the nature of the case itself makes it clear to the party in possession that he will be required to produce it.
- (3) When it appears or is proved that the other party has obtained possession of the original by fraud or force.
- (4) When the adverse party or his agent already has the original in the court.
- (5) When the adverse party or his agent has admitted that the original has been lost.

(6) When the person in possession of the original is out of the reach of the court or is not subject to the process of the court, for example, that he is a foreign ambassador and, therefore, the court has no jurisdiction over him.

2. Explain in Detail public document and private document .What evidence can be given to prove the public documents?

Ans-The Act lays down special rules relating to proof of public documents. It, therefore, becomes necessary to identify the documents which can be regarded as public documents for this purpose. Section 74 gives the list.

Sec. 74. Public documents. The following documents are public documents :

(1) Documents forming the acts or records of the acts

(i) of the sovereign authority;

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country.

(2) Public records kept in any State of private documents.

Two kinds of public document

The section places public documents into two kinds :

1. Documents forming the acts or records of the act of the sovereign authority, namely, the Parliament and the Legislative Assemblies, or of the official bodies and tribunals, and of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country, are public documents.

2. Private documents which are registered in public offices also become public documents. For example the memorandum and articles of a company are registered with the Registrar of Companies and, therefore, they become public documents.

Sec. 75. Private documents-All other documents are private. Section 75 closes the list of public documents by declaring close on the heels of section 74 that all other documents are private.

PROOF OF PUBLIC DOCUMENTS

The special rule of evidence relating to proof of public documents is that they can be proved by producing certified copies. It means that public documents are always provable by secondary evidence. Section 76, therefore, makes it the duty of the officer who has the custody of a public document to issue a certified copy of the document on demand.

Where in a process for acquisition of land, it became necessary to determine the value of land by the comparable sales method, evidence of registered sales was allowed by producing certified copies. Examination of the parties to the agreements was not considered to be necessary.

Section 76 then provides that certified copies which are issued by the custodian of the document may be proved in proof of the contents of the public document.

Section 77 tries to be more particular and gives the manner of proving certain kinds of public documents. The check-memo required to be maintained by the officer-in-charge of the counting of ballot papers, has been held to be a document forming record of the acts of a public officer and, therefore, certified copies were admissible in evidence. Cultivation registers and the registers of paddy producers have been held to be provable by producing certified copies. They are prepared by village assistants who are public servants. They are official registers. An electoral roll is a public document and, therefore, certified copy is admissible under this section to prove it.

A will was executed in the State of Goa with the intervention of Notary Public. The Court said that it became a public document. It could be proved by production of a certified copy. Such will carried with it a ring or halo of its authenticity and reliability and it was presumed to be true until disproved

Proof of official documents.

Sec.78 The section refers to the following:

1. Acts, orders or notifications of the Central or any State Government or their departments may be proved by the records of the department as certified by the head of the department concerned or by any document purporting to be printed by the order of the department.
2. The proceedings of the Legislatures may be proved by the journal of the legislature concerned or by published Acts or abstracts, or by copies purporting to be printed by the order of the Government concerned.
3. Proclamations, orders or regulations issued by Her Majesty or by the Privy Council, or by any department of Her Majesty's Government can be proved by copies or extracts contained in the London Gazette or purporting to be printed by the Queen's printer.

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4. The Acts of the executive or the proceedings of the Legislature of foreign country can be proved by journals published by their authority or by copy certified under the seal of the country concerned or by any recognition of the same in any Central Act.

5. The proceedings of a municipal body in a State may be proved by a copy of such proceedings which is certified by the legal keeper of the proceedings or by a printed book purporting to be printed by the authority of such body.

6. Public documents of any other class in a foreign country may be proved by the original or by a certified copy issued by the legal keeper of the document with a certificate under the seal of a notary public, or of an Indian consul or diplomatic agent, that the copy is duly certified by the officer having the custody of the original, and upon proof of the character of the document according to the law of the foreign country. Where the document was authenticated by the stamp of the legal keeper of records and was also duly signed and certified by the Indian consulate to the foreign country, the Court said that the document was duly proved as it fulfilled the requirements of Section 78(6).

3. Explain in full the rule that “oral evidence in all cases must be Direct” also narrate the exceptions to this rule.

Ans-A fact may be proved either by oral evidence of the fact or by documentary evidence, if any. This means that there are two methods of proving a fact. One is by producing witnesses of fact, which is called oral evidence, and the other, by producing a document which records the fact in question and this is called documentary evidence. This chapter, therefore, deals with two matters, namely,

1. Oral evidence, and
2. Documentary evidence

Definition of oral evidence [Sec. 3]

The meaning of the expression "oral evidence" is given along with the definition of the term "evidence" in Section 3. The first part of the provision which defines evidence deals with oral evidence. It says:

All statements which the court permits or requires to be made before it by witnesses in relation to the matters of fact under inquiry; such statements are called oral evidence.

Direct oral evidence

Oral evidence must be direct. This means that a witness can tell the court of only a fact of which he has the first hand personal knowledge in the sense that he perceived the fact by any of the five senses. Where, for example, the question is whether a particular statement was made, a person who heard the making of the statement may appear in the court to tell the court of the fact that the statement was made in his presence or hearing. This will be direct oral evidence.

Exclusion of hearsay evidence

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The section, thus, excludes hearsay evidence. Hearsay evidence means the statement of a witness not based on his personal knowledge but on what he heard from others. The effect of provision is that if the fact of which the evidence is offered is a fact which could be seen, the evidence must be of a person who personally saw the happening of the fact.

Exceptions to hearsay

It is very difficult to make any general statement about the law of hearsay evidence which is entirely accurate. The rule has never been absolute. A number of exceptions have become well established. The exceptions which have been imported into the Indian Evidence Act have been noted at their respective places in connection with the relevancy of facts and, therefore, only a brief mention will be sufficient here.

1. Res Gestae [Sec. 6]

The statement of a person may be proved through another person who appears as a witness if the statement is a part of the transaction in issue.

2. Admissions and Confessions

An admission of liability or confession of guilt which takes place outside the Court is proved through the testimony of a witness to whom the admission or the confession was made.

3. Statements Relevant Under Sec. 32

Statements which are admitted under section 32 are mostly the statements of deceased persons or persons who are not available as witnesses. The evidence of their statement in the circumstances mentioned in the section is received through the testimony of persons who heard their statements or otherwise acquired knowledge of the statements. The evidence of such statements is, therefore, the evidence of hearsay and is specially declared to be relevant.

4. Statements in Public Documents

Statements in public documents, such as, the Acts of Parliament, official books and registers, can be proved by the production of the document and it is not necessary to produce before the court the draftsmen of the document.

5. Evidence in Former Proceedings

Section 33, which has already been noted, provides that evidence given by a witness in a proceeding can be used as evidence of the truth of the facts stated in any subsequent proceeding between the same parties or their privies, provided that the witness has died or is, for some other reason, unavailable.

6. Statement of Experts in Treatises [Sec. 60, proviso]

The proviso to Sec. 60 recognizes this exception. It says 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

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giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable.

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