

## **Quadrant II - Notes**

**Paper Code: LO 0712**

**Module Name: Definition and Kinds of Evidence**

**Module No:1**

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### **Nature of the Trial**

India is a common law country, follows the adversarial system. In the adversarial system, legal disputes are like contests. In the criminal case, anyone can set the case on the motion. The State would initiate the trial. In civil cases, the Plaintiff initiates the trial. Parties are free to choose their witnesses. They also free to decide the number of witnesses. As a result, witnesses are trained by the respective lawyers. Court has no control over the witness; judges have no idea about what evidence is going to be produced before them; hence, surprises are expected. In courts, the emphasis is on oral evidence though documentary evidence is admissible. The burden of proof usually on the Plaintiff or the Complainant.

### **Role of the Judge**

Judges are neutral. Principles of natural justice must be followed in deciding the disputes. Therefore, judges should not have any interest in the case, and they act as umpires. They do not have any prior knowledge of the case until it is referred to them. Further, they do not know the character of the parties. In fact, under the Indian Evidence Act character of the parties is mostly irrelevant with few exceptions.

### **Evidence:**

Evidence in a general sense is anything necessary to prove a particular fact. Indian Evidence Act focuses on what kind of evidence is admissible, who can give evidence, types of witnesses and order of examination of witnesses.

Section 3 “Evidence” means and includes—

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence;

(2) all documents, including electronic records produced for the inspection of the Court, such documents are called documentary evidence.

### **Kinds of Evidence**

1. Oral evidence: Oral evidence means all statements made by the witness before the court. Oral evidence could be direct or hearsay. The general rule is that oral evidence must be direct. However, the Indian Evidence Act recognises a certain exception to this rule and permits hearsay evidence—for Example, dying declaration, admission and confession.
2. Documentary Evidence: Documentary evidence means all the documents produced before the court. Documentary evidence includes real evidence such as the weapon used in the crime or any other exhibits produced in the court produce any material. The general rule is that in the case of documentary evidence, it is the primary evidence that is accepted. But on the certain ground the secondary evidence also permissible.
3. Circumstantial Evidence: Circumstantial evidence means evidence relating to various circumstances that are associated with the fact in issue. This evidence is connected to the fact in issue in such a way that they help the court in reaching a deduction.
4. Real Evidence: Means when the parties produce the tangible material things used in crimes like a weapon, blood-stained clothes etc., They are regarded as documentary evidence for proof.
5. Expert Evidence: When the court required to form an opinion on any technical issues, it may permit an expert to give his/her opinion. Such opinions are called as expert evidence. Example: Post mortem report.