

Welcome students. Today we will be discussing Law of Evidence.

under Law of Evidence we are discussing Unit 1 Introduction.

We're starting with module number one, wherein we will be discussing definition and kinds of evidence. The outline for today's lecture.

First we will start with the nature of trial.

Because this is very important

to understand why evidence plays very important role in administration of justice. After that we will see what is the importance of administering evidence in the adversarial system. That is what we follow in India and then we will discuss the definition of evidence. And lastly we will discuss the kinds of evidence.

By watching this video, you would be able to understand the nature of trial. You would appreciate the role of evidence in adversarial system of justice dispensation and you will be able to comprehend the definition of evidence and also you will be able to understand the fundamental rules of evidence and you will also deduct the logic behind exclusion of certain evidences like hearsay evidence.

OK, so let us first understand the nature of trial. Essentially because we follow adversarial system every case before

the court looks like a contest. That means it is a dispute between two parties and parties initiate the trial in case of civil cases. In case of criminal cases, the prosecution ensures the trial. The parties select their own witnesses. That means both the parties are at the liberty to decide how many witnesses they want, what type of witnesses they want to produce, and because it is the witness based evidence that we are going to provide to the court. Mostly, the court would be emphasizing on oral evidence from the witnesses, and it so happens that the lawyers may train the witnesses. That's possible, and because the court, being a mute spectator, has no control over the trial. The parties produce the witnesses, hence the surprise sars are allowed and confessions by any of the party would be perfectly admissible provided certain conditions laid down by the Indian Evidence Act is fulfilled. Then in case of criminal law, the burden is always on the prosecution. In case of civil law that is on the plaintiff or the person who moved to the court.

What would be the role of the judge in the trial? The judge is expected to be neutral.

He would act as an umpire. We all watch cricket, so unless the

fielders ask for the umpire, the umpire would not give the decision and so the same thing whatever the remedies, you want, the party should ask and the umpire would decide. Similarly here the judge would decide and the judge has no interest and in fact he cannot have any interest in the case. In the entire trial, the judge would be a passive participant because he has no prior knowledge of the case. Only the case comes to before him. After the case comes to him, he will read the facts of the case. And he has no idea about the character of the parties and in fact under the Indian Evidence Act except few circumstances, your character is irrelevant.

So therefore, because of the nature of the trial that happens in India, the Evidence Act plays a very important role. So in every case, the parties alleges certain facts and the other party denies it.

The role of the court is to ascertain whose contentions are true and, accordingly, the court has to weigh the evidence that is available before it whatever submitted by the parties and then decide the contradictions.

Evidence is about the limitations placed on the information that judges hear. That means the judges are not

there to hear for whatever you want to say. The Evidence Act imposes certain limitations on what you can produce as a evidence.

The purpose of the limitations on the evidence is to arrive at right result

So the question that often comes to us is why such limitations?

Please understand. Judges are human beings. Judges have no prior knowledge of the case. Therefore there is a possibility that the judge may prejudice because of the parties behavior.

Hence the judge need to accept only certain evidences which are admissible under the Indian Evidence Act and to ensure the fair Justice the evidence that should be admissible before the court

is prescribed by the Indian Evidence Act and the judge should follow these principles.

So the question is, what is evidence?

In a general sense, anything which is necessary to prove a particular fact is an evidence. When you say 'A' borrowed money from 'B', every fact that shows that 'A' actually borrowed money from 'B' is an evidence. However, when we are using the word evidence, there is also another word used is

proof. That means whether evidence and proof are one and the same?

Many people use both as synonyms, but in fact there is a lot of difference. Evidence is a means of proof, whether 'A' killed 'B' or not? You produce evidence with that you would be able to either prove that 'A' killed 'B' or disprove that 'A' did not kill 'B'. OK, so with the help of evidence you would prove. Hence evidence and proof is two different things.

So law of evidence determines how parties are to convince the court regarding the right, or liability, and the basic function of the judicial officer is to ascertain the existence or non existence of facts and the judicial officer also declare rights and liabilities of the parties by applying the relevant facts and the law. OK, so let us go and see what is the actual definition given by Indian Evidence Act. Section three of the Indian Evidence Act talks about what is evidence. In fact, it doesn't given a definition. But it only says what includes under the Section three.

So it has two parts. Part one says all statements which the court permits or required to be made by witnesses. So

essentially part one is talking about oral evidence. That means the witnesses when they come before the court and make the statement. This is an evidence and it is called as a oral evidence.

Second one, it talks about all documents, including electronic record produced for the inspection of the court. Such documents are called documentary evidence.

That means the second type of evidence is admissible before the court is a documentary evidence. So any document produced before the court becomes a documentary evidence. Please remember here because the Information Technology Act was brought in the year 2000, so every time that we are using the word 'Document' in Indian Evidence Act it automatically includes an electronic record. Therefore,if you look into the kinds of evidence, broadly, the kinds of evidence are divided into 2.

Oral evidence and Documentary evidence. Oral evidence is further divided into two more. One is direct evidence. Second one is a hearsay evidence. Similarly, the documentary evidence is also divided into two categories. First category is the primary evidence and second category is secondary evidence.

Now what is oral evidence? Section 60 of the Indian Evidence Act says that Oral must be direct.

What I mean by direct is.

If a fact can be seen, the witness should say that he saw

it. If a fact can be heard, the witness say he heard it.

For example, I heard an explosion.

Third one is if it could be perceived. The witness who says

that he perceived. For example, when I touched the body, the

body is warm, so I perceived it. I

smellt kerosene smell. Again, it is perceived. I felt bitter

taste in my mouth after drinking the juice given to

me, so these are all things that you could perceive.

And the last one is if you are holding an opinion, it

must be your opinion.

So what section 60 indirectly says is a hearsay evidence is not

admissible, which should be direct evidence. What is hearsay

evidence? A statement of witness not based on his or her personal

knowledge, but heard from somebody else. Say for example,

I come to the court and say 'A' killed 'B', how do you know? my

friend told me. So this is a hearsay evidence. Hearsay

evidence is not admissible because it is not reliable. It

cannot stand for Cross examination.

For example, if in a cross

examination and they asked me, how do you know 'A' killed 'B'.

I didn't know my friend told me. Why your friend was there on that particular day at that time? I have no idea. Is it a daytime or is it night? I don't know. My friend didn't tell me. So that means you can't stand for cross-examination.

And there could be a possible distortion.

What my friend told me exactly, I may not be giving in the same words before the court. And sometimes the context in which the statement was made could be misunderstood. My friend told me in a sarcastic manner, but I think it is a serious manner. So this is why hearsay evidence is not admissible.

The second one is documentary evidence. Section 61 says the contents of the documents may be either proved by primary or secondary evidence. Whenever you have to prove a document before the Court, you could prove it by primary or secondary evidence. Primary evidence means the document itself. That means the original document. Suppose there is an agreement between A&B. If the dispute is regarding the agreement, the original agreement would be produced before the court.

Similarly, whether I purchased the goods because I filed a case for a defect of the goods, then I produce the original receipt of purchasing the goods. This is a primary evidence. Suppose there is a dispute regarding the will, the original draft of the will is produced before the court. So general rule is documents must be proved by primary evidence. But there are exceptional circumstances a secondary evidence is allowed to be produced. What is secondary evidence? Any certified copy, a photocopy, or a copy made from or compared with the original.

For example, a xerox or what is called a photocopy counterparts of the documents are allowed. Counterpart means suppose when you fill a form to pay the money in the bank there is a counter foil will be given to you. So that is a secondary evidence against you. The oral account of the contents of the document is also seen as a secondary evidence. Examples had already given you photocopies pictures of original documents, scanned copies, etc. There are other evidences. One is real evidence that is the actual weapon used in the murder scene, etc. could be used, but that comes under classified as a documentary evidence. Circumstantial evidence is there is no direct evidence, but the circumstances shows the evidence that is a

circumstantial evidence. The last one is expert's evidence.

That means an expert can be called by the court to give his opinion. So therefore only these kinds of evidences are allowed and these are the references that you could use for further study.

Thank you.