

Course Name – LL.B 3rd 4th Sem

Subject –Law of Evidence

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Concept Covered – UNIT- II

Admission and Confession

An admission is a statement (oral or documentary), made by a party (or his representative), which suggests an inference as to any fact in issue or relevant fact.

According to Best, admission is a species of evidence and is called self regarding. This is of two kinds. When the evidence given is in favor of party it is self-serving; but, when it is otherwise, it is self- harming. The general rule is that self-serving evidence is not receivable; but self-harming evidence is always considered as satisfactory.

If A says 'B owes me Rs.5,000/- this is no evidence. This is self-serving. If A says 'B, has paid and does not owe me any debt', this is a fact self-harming and can be used by B.

An admission may be judicial. It may be extra-judicial i.e., outside the court or under other circumstances.

i) Persons to make admissions Sec 18-20:

Party: Admission may be made by the party to the proceeding.

Agents: Admission may be made on behalf of the party by the Advocate, Vakil, Power of Attorney holder, etc.

Proprietary or Pecuniary interest: Partners or joint contractors may make admissions, as they act as agents. There must be the identity in legal interest among them.

Predecessor-in-title: Admissions of such persons from whom a part had derived his interests, are admissible.

There must be privity between them Sec 19

e) Persons with representative character: Karta of a Hindu Joint Family may make admissions on behalf of other coparceners.

ii) Proof of position or Liability:

Admissions may be made by persons holding some position; In such a case their position or liability is to be proved.

T is the tenant of B. B has appointed A as his agent to collect rents.

B sues A' for not collecting rents. A denies any dues from T. Admission by T, that rents were due is admissible,

iii) Admission by referee:

Admissions made by a referee who is expressly referred to by the party, are admissible.

The question is whether, the horse H is sound. A says to B Ask 'C', he knows everything". Statements of "C" are admissible.

iv) Proof of admissions:

a) Admissions cannot be proved in favour of a party making them (self-serving evidence). But admissions may be proved against the person who is making them.

A says that a deed is forged. B says it is genuine, Statement by A that it is forged will not be allowed to be proved. But statement by A, that it was genuine, made before C, may be proved against A.

Exception :

Under Sn.32: Persons who are dead or those who cannot be called as witnesses: Statements made by them are admissible. Similarly a statement of the existence of any state of mind or body is admissible. Eg.:A is charged for casting the ship away. A produces log book kept in the ordinary course of his duty and the day to day recordings therein.

These are allowed as they would be admissible if A were dead

Admissions in Civil Cases:

In civil cases, admissions without prejudice are irrelevant.

A sues B for Rs.1,000/- B sends Rs.200/- without prejudice. This offer of Rs.200/- is not an admission of the liability of Rs.1,000/- and hence, not admissible.

Confession:

i) Definition:

Confession is not defined in the Evidence Act. **In Pakala Narayan Swami V. R.**, the court said that a confession should either admit in terms of the offence or, at any rate substantially all the facts which constitute a crime. The reason for allowing confession is that what a man voluntarily says against his own interests is likely to be true.

The confession should be recorded according to Sec 164 Cr.P.C.

ii) Admissibility:

To make a confession relevant, it must be shown that it was made by the accused

that it was voluntary

that it was true (accused may be convicted on this ground).

confession should not be prompted by inducement, threat or promise from a person in authority or made to gain any advantage or

to avoid any evil of a temporal nature. confession to a police officer is not admissible (Sec.25)

the confession is admissible if it is made before the Magistrate. It is not admissible if it is made by the accused while in police custody (Sec .26)

The reason for this is that a confession in police custody is untrustworthy. Further, it may have been exerted by torture by using "swear-box" or third degree methods". (Taylor)

g) the burden of proving that the confession is voluntary is on the prosecution. If it is not voluntary, even if it is true, it is not admissible.

i) How much of information, admissible: (Sec.27)

If the accused in police custody discloses any information and in consequence of that, the police discover a fact, only so much of information as relates distinctly to the fact so discovered may be proved.

Eg.: A tells the police when in custody --

- (i) that he has thrown his dagger into a well, and
- (ii) that it is with dagger that he has committed the murder of B. The first statement is admissible as a fact, if the dagger is discovered on the information given by A, but the second statement is never admissible, as it is a confession to the police.

iii) Relevancy of otherwise valid Confession Sec. 28 & 29.

If a confession is recorded after the removal of any threat, promise inducement etc., it is admissible. The court must be satisfied that the impression of threat etc., has been wholly removed. (**R.V.Sherrington**) and that it is voluntary.

If a confession is voluntary and relevant as per the Evidence Act (Sec.24), it does not become irrelevant merely because it was made under

- i) promise or secrecy or
- ii) in consequence of deception or artifice or
- iii) under the influence of drinks or
- iv) that no warning was given that he was not bound to confess.

iv) Confession of Accomplice: Sec 30.

If one of the accused makes a confession affecting himself and some other person, the court may take into consideration such a confession as against the other person, and of himself. If -

A and B are jointly tried for murder of C. It is proved that A, confessed stating "B and I, murdered C". The court may consider the effect of this confession as against B. but Corroboration necessary to convict a person on the confession of an accomplice.

In **Bhuboni Sahu V. King**, the Privy Council held that a confession of a co-accused does not tantamount to proof. It can be used only in support of other evidence, and cannot be the ground for conviction.

Admission and confession, distinguished:

Admission	Confession
An admission is a statement of fact It accepts that the fact asserted by the opponent is true; Hence, that fact need not be proved.	A confession is an admission made by the accused stating or suggesting the inference that inference that he committed the time.
Admission is usually applied to civil proceedings and consists of all statements made by the party, his agent, legal representative or person with derivative interest.	A confession is applied to criminal proceedings and must be made by the accused, before the Magistrate.
It is immaterial to whom the admission is made	A Confession is relevant only if it is made in the presence of a Magistrate during Police Investigation Sec. 164 Cr. P.C. A accused tells the Police that he has thrown the dagger into a well. and that he committed murder with that dagger, Held: the first statement of fact is discovered (fact) in consequence of information given by the accused. But, the second statement is not admissible as it amounts to a confession in police custody
An admission may be used on behalf of person making it, subject to certain statutory exceptions. An admission is not a conclusive proof of the matter admitted but may act as	A confession made voluntarily and deliberately, may be accepted as conclusive in itself, of the matter confessed

an estoppel.	
An admission of one of several parties in a suit is no evidence against another, generally.	A confession of one or two or more accused, jointly tried for the same offence, may be taken into consideration, against the Eg. : A and B jointly tried for murder. A said B and I murdered C. The Court may consider it against B.

Retracted Confession:

An accused, who makes a confession under Sec. 164 Cr.P.C. if **go back or withdraw his statements**. This is called retracted confession. In such a circumstance, the question will be which is to be believed either the confession or the retracted confession. To solve this courts have evolved certain principles: **(R.V.Babula)**

i) A confession statement duly recorded by the Magistrate under Sec 164 Cr.P.C. is not to be regarded as non voluntary, merely because there was retraction by the accused.

ii) As against the accused, the retract confession may form the basis of a conviction; but, as a rule of prudence and caution the retraction should be looked with suspicion, 'and corroboration is necessary to convict him.

iii) Against the co-accused, the value of retracted confession is nil, and hence substantial corroboration is necessary, to convict the co-accused.

iv) The accused may show satisfactory evidence to establish that the confession was made out of fear, duress, police torture, inducement or promise of some person in authority. Mere retraction is of no value.

In an English case, A in 1905 confessed that he had murdered 20 years ago.

He retracted in the trial. He said that after reading a story, he had fancied that he had murdered and made this confession. The court held that his confession was accurate.

It rejected the retraction and convicted him (Best's law of Evidence).

HEARSAY & DYING DECLARATION

Persons who cannot call as witnesses: Sec 32

(Exceptions to Hearsay Evidence Rule)

The general rule of Evidence Act is that any oral evidence must be direct i.e, Hearsay evidence is not admissible. It must be given on oath and must be subject to cross-examination by the opposite party. Otherwise, the evidence is not admissible.

There is, however one exception to this rule. Under Sec 32 & 33, there are four types of persons who are neither called before the court as witnesses, nor, are they subject to cross-examination. They are:

- i) those who are dead
- ii) those who cannot be found
- iii) those who have become incapable of giving evidence
- iv) those whose presence cannot be procured except after reasonable delay or expense.

The reason for allowing such an evidence is one of necessity and it may be impossible, to apply the test of cross-examination to them. But the circumstances show that their statements are true and trustworthy.

- (i) **Dying Declaration:** Statements made by a person as to the cause of his death or circumstances leading to his death, are relevant.
- (ii) **Business or Professional duty:** The statements made by the above four classes of persons, in the course of business or professional duty are admissible. Eg. entries in books kept by them or in documents used by them, are relevant and admissible.

Entries made by a Surgeon in her dairy, regularly kept, stating the birth of A on a particular day is relevant fact.

- (iii) **Pecuniary or other interests:** Statements made by any of against the pecuniary interest or title, exposing a person to criminal prosecution or damages in torts, are relevant and admissible.

The question is about the payment of rent to A. Letter by A's deceased agent that the rents were received and were kept under A's order are relevant

The question is about the legality of the wedding between A and B. The statements made by the clergy man (or officiating person) that the circumstances of that wedding were such that, it would be a crime, are relevant.

(iv) Custom or matters of general interest:

When the statement gives opinion of any such persons, as to the existence of public right of way, or custom or matter of general interest, of are relevant. But such an opinion must have been made before the controversy arose.

The question is whether there was a public right of way over a road. The opinion of the deceased village Headman that it was a public road is relevant.

(v) Relationship, Pedigree etc:

Statements made by such persons as to the relationship by blood, marriage or adoption, are relevant if they had some-special knowledge and if the statement was made before the controversy arose.

Similarly, when such statements of relationship are made in any will, or family pedigree or tombstone etc., they are relevant, if they had been made before the controversy arose.

The question is whether S is the adopted son of F. A statement by F, in his will that S is his adopted son is relevant.

(vi) Evidence tendered in earlier proceedings:

Evidence given by any such person in judicial proceedings is relevant and admissible - in a subsequent proceeding if

- (i) the proceedings were between the same parties, or their legal representatives.
- (ii) there was cross-examination
- (iii) the questions were substantially the same as in the second proceeding.

Conclusions:

In all the above circumstances, the statements by the four classes persons are relevant and admissible. Though the rule is that Hearsay evidence is not admissible, in the above circumstances, the statements are admissible and hence, are exceptions to that rule.

Dying Declaration:

The general rule of evidence is that Hearsay evidence is not admissible. In other words, in the interest of justice, it is desirable that the person himself should give evidence (direct evidence) in a court, under oath. Under Sec 32, Dying declaration is an exception to this rule. This is based on necessity and also on the fact that there is no better evidence available.

Statement made by the deceased is relevant when it is in respect of -

- (i) cause of death and
- (ii) circumstances which resulted in his death. Such a person must be under expectations of death at the time of making it.

The statement is admissible in Civil and Criminal proceedings, if the person dies thereafter

Example

(a) The question is whether A was murdered by B. A dies of injuries received in transaction in which she was ravished. Statements by A as to her cause of death are relevant.

(b) The tongue of W, the wife was cut off by her husband, H and He threw the tongue from the window and escaped from the hinder-door of his house. W yelled. Police arrived within seconds. The Sub- Inspector put certain question to W. W made gestures and then died.

Held: the gestures recorded were admissible.

Shakuntala v. State of Haryana AIR 2007 SC 2709

In this case Supreme Court observed, “The principle on which dying declaration is admitted in evidence is indicated in legal maxim „nemo moriturus proesumitur mentiri” (a man will not meet his maker with a lie in his mouth)”.

Sudhakar & Anr. v. State of Maharashtra (July 17, 2000)

Sub-section (1) of Section 32 which provides that when the statement is made by a person as to the cause of his death or as to any circumstances of the transaction which resulted in his death, being relevant fact, is admissible in evidence. Such statements are commonly known as dying declarations.

Ram Bihari Yadav v. State of Bihar (1998)

Hon^{ble} Justice Syed Shah Quadri said,

Meaning - “A dying declaration made by a person who is dead as to cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which cause of his death comes in question, is relevant under Section 32 of the Evidence Act and is also admissible in evidence.

Exception of admissibility of „Hearsay Evidence“ -Though dying declaration is indirect evidence being a specie of hearsay, yet it is an exception to the rule against admissibility of hearsay evidence.

Substantive evidence - Indeed, it is substantive evidence and like any other substantive evidence requires no corroboration for forming basis of conviction of an accused.

But then the question as to how much weight can be attached to a dying declaration is a question of fact and has to be determined on the facts of each case”.

OPINIONS OF THIRD PERSONS WHEN RELEVANT

Sec 45 Opinions of experts. .- When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions , the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.

Illustrations

(a) The question is, whether the death of A was caused by poison. The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law. The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant

Sec 46 Facts bearing upon opinions of experts

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations (a) The question is, whether A was poisoned by a certain poison. The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.

Sec 47 Opinion as to handwriting, when relevant

When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact

Explanation.--A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

In case of **The State of Bombay v. Kathi Kalu Oghad and Others** (4 August, 1961) Supreme Court there is no infringement of Art.20(3) of the Constitution by compelling an accused person to give his specimen handwriting or signature; or impressions of his fingers, palm or foot to the investigating officer or under orders of a court for the purpose of comparison under the provisions of s.73 of the Indian Evidence Act.

Section 47A Opinion as to digital signature, when relevant -When the Court has to form an opinion as to the electronic signature of any person, the opinion of the Certifying Authority which has issued the electronic Signature Certificate is a relevant fact.

Sec 48 Opinion as to existence of right or custom, when relevant

When the Court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.--The expression "general custom or right" includes customs or rights common to any considerable class of persons. Illustration The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this section.

Sec 49 Opinion as to usages, tenets, etc., when relevant

When the Court has to form an opinion as to-- the usages and tenets of any body of men or family, the constitution and government of any religious or charitable foundation, or the meaning of words or terms used in particular districts or by particular classes of people, the opinions of persons having special means of knowledge thereon, are relevant facts.

Sec 50 Opinion on relationship, when relevant

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact

(a) The question is, whether A and B, were married. The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

Sec 51 Grounds of opinion, when relevant - Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also relevant. Illustration An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT

52. In civil cases character to prove conduct imputed, irrelevant. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

53. In criminal cases previous good character relevant. -In criminal proceedings the fact that the person accused is of a good character is relevant.

54. Previous bad character not relevant, except in reply.-In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1.- This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2.--A previous conviction is relevant as evidence of bad character.

55. Character as affecting damages.-In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive, is relevant.