

SECTION 3 OF IEA 1872

- legal means that is permitted by a court of law to prove or to disprove the legal issue in question
- Means & includes
all statements
all documents

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graph TD; A[evidence] --> B[oral  
59 IEA]; A --> C[documentary]
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evidence

oral
59 IEA

documentary

Documentary evidences

accepted by court only after oral testimony of concerned

- S.29 IPC –The word “document” denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.
- S.61 IEA - contents can be proved by primary/secondary evidence
- S.62 IEA defines primary evidence
- S.63 defines secondary evidences
- S.64 Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Oral evidence

....it refers to the fact that can be seen, heard or perceived

- Direct evidence[IEA60] in all cases oral evidence must be direct: it refers to the evidence of the person who has seen, heard or perceived the matter
- Indirect evidence :
 - [circumstantial]: several related things which strongly suggest the commission of crime
 - Hearsay evidence: evidence of the person who has heard what other were saying : not admitted in court except
 - Dying declaration
 - Res gestae: involuntary act or exclamation at the time of crime

Documentary evidences

- **Medical certificates**
 - Birth certificate
 - Death certificate
 - Sickness certificate
 - Vaccination certificate
 - Fitness certificate
 - Disability certificate
 - Age certificate etc....
- **Medico legal certificates**
 - Postmortem report
 - Injury report
 - Reports on sexual offences
 - Report of examination of drunk etc..
- **Dying declaration**
- **Dying deposition**

Dying declaration

victim is eyewitness/impending death

- Define: statement of the dying person about the circumstances leading to his death
- By whom recorded: magistrate/ if time does not permit in case of serious patient then doctor/police/village headman
- **Compos mentis[soundness of mind]: must be certified by doctor**
- Oath: not required
- In form of narrative:
Questions..answers
- Two witness
- Statement in Verbatim of Pt
- In Writing by person himself is preferred
- Leading questions not permitted
- Unable to speak: put questions and gesture in response is recorded
- If becomes unconscious , as much information has been recorded
- Read to person
- Sign or thumb impression, with signs of Mg/Dr and witnesses.
- Seal
- Certificate of Dr about fitness after conclusion
- Permissibility : ceases legal value if patient survives, however is corroborative evidence during trial
- Two DD: if differs → no value
- Treatment is priority

Dying deposition

- Oath: not required
- Magistrate: only magistrate can record
- Accused and/or lawyer remain present , may cross examine the patient
- Superior than dying declaration.
- Its like court procedure: Bedside court
- In practice in UK,USA, Australia

Oral evidence

- Evidence of a person who has seen, heard or perceived
- Important than documentary.. As cross examination is permitted
- Disadvantage: witness may turn Hostile

Exception to oral evidence

untraceable, dead, incapable of giving evidence, can not be called without unreasonable delay or expenditure

- Dying declaration
- Expert opinion
- in lower court if recorded & attested in presence of accused
- Previous judicial proceeding
- Scientific experts
- Public or hospital record

witness

- Witness is one who can **Understand** questions & give rational answer in relation to the matter under trial
- Commonabout fact seen , heard or perceived by him
- Expert technical /scientific /professional skill/training –evidence on matter observed, on matter of common knowledge or on hypothetical questions
- Hostile: who give false evidence or hide the truth deliberately, and is persecuted for perjury u/s 193 for imprisonment up to 7 years and fine

Court procedure

- Oath : will speak truth, whole truth and nothing but the truth
- ✓ Swear: except child under 12 years.
- ✓ Atheist: needs to solemnly affirm
- ✓ <12yrs

Examination in chief

burden to prove is always on prosecution & accused is presumed to be innocent till contrary is proved

- First examination
- By public prosecutor
- Witness Places facts have a bearing to case
- If expert give opinion or inference from findings
- Leading questions; not allowed unless witness is turned hostile
- Hostile witness: if declared hostile then cross examination is done by public prosecutor

Cross examination

- ✓ By [defense witnesses]
- ✓ Objectives
 - Elicit facts in favor of accused
 - Test accuracy of statement given in examination in chief
 - Shift, modify the statement in favour of his client
 - Discredit the witness saying that evidence given is inconsistent/inaccurate/biased/contradictory/untrustworthy
 - Remove undue emphasis on certain statement that is unfavorable to his client
 - Explain the fact favorable to his client
 - Develop new theory contrary to case history

Leading questions are permitted
No time limit for cross examination

Reexamination: by public prosecutor

- ✓ Clarify any Ambiguities
- ✓ Correct any Mistake
- ✓ Clarify the statement
- ✓ Amplify the statement

New matter can not be brought

Court questions

- At any stage
- Clear up points
- **Volunteering:** if expert witness finds that due to lack of clarity on fact due to lack of subject knowledge there may be injustice to any of party then he can seek the permission of the court and thereafter clarify the matter

■ Must know

- What is evidence?
- What is an expert witness?
- Types of expert?
- Leading question? when it can not be asked?
- Minimum Age to give the evidence
- Age exception for Oath
- What is witness?
- What is hostile witness? What is perjury? Punishment under perjury?
What is IPC 193?
- When leading question can be asked in examination in chief?
- What do you mean by volunteering of statement?
- What is hearsay evidence?
- What is compos mentis?
- D/D between Dying declaration and Dying deposition?