
Admissibility of evidence under the Indian Evidence Act, 1872

Oral Evidence

Documentary Evidence

Primary Evidence

Secondary Evidence

Direct and Circumstantial Evidence

Section 61: Proof of contents of documents:

- The contents of documents may be proved either by primary or by secondary evidence.

Section 64: Proof of documents by primary evidence:

- Documents must be proved by primary evidence except in the cases hereinafter mentioned.
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Section 62: Primary evidence

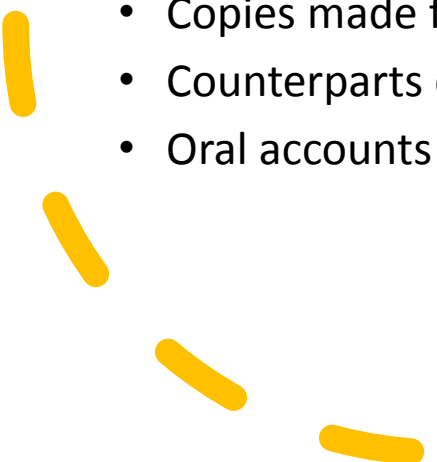
- Primary evidence means the document itself produced for the inspection of the Court.
- Explanation 1: Where a document is executed in several part, each part is the primary evidence of the document
 - Two originals made – each signed by all the parties – then, each such document on its own is the primary evidence and sufficient if produced. Both do not have to be necessarily produced in such a case.

The case of counterparts: Para 2 of Explanation I

- When a document is in several originals, but they are not signed by all the parties. For example, a document is signed by A and its other original copy is with B who has signed it. Both A and B exchange their copies with each other, such that the original version with B is signed by A, and the original version with A is signed by B.
- In such a case, the document signed by a party is primary evidence against them when in the hands of another. Therefore, the counter-part document in the hands of A and signed by B is primary evidence of the document in favour of A and against B. Corollary: if A has to prove secondary evidence, they can rely on the document signed by themselves.

- Explanation 2: Where a number of documents are all made by one uniform process, as in the case of printing, lithography, or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.
- For example – If you take 5 print-outs of one word document, each printed copy is a primary evidence of the other. BUT if there is one original, and say 5 photocopies are made, then they are not primary evidence of the contents of the original (because the original is the primary evidence!)
- ‘uniform process’ – at the same time through the same process



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- Section 63: Secondary evidence
 - Secondary evidence “means and includes” –
 - Certified copies given under the provisions hereinafter contained;
 - Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
 - Copies made from or compared with the original;
 - Counterparts of documents as against the parties who did not execute them
 - Oral accounts of the contents of a document given by some person who has himself seen it.
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63(1): Certified copies under the provisions hereinafter contained

- Section 76 – public officer – certifies to be a true copy of a public document
- Section 77 – proof of documents by production of certified copies
- Section 79 – presumption as to genuineness of certified copies



63(2): Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies

- So, photocopies, for e.g., are secondary evidence of the contents of the original document.
- “copies compared with such copies” – other copies made independently, not through the same photocopying machine at the same time as the other copies – but can be compared and found similar – are also secondary evidence of the contents of the original



63(2): Copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies (CONTD.)

- Illustration (a): a photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original
- Illustration (b): A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter, if it is shown that the copy made by the copying machine was made from the original.



Section 63(3): copies made from or compared with the original

- How is this different from 63(2)?
- The mechanical process of making copies from the original (photocopy etc) are already covered under 63(2), hence 63(3) covers handwritten transcriptions, i.e. non-mechanized copies, compared with the original
- 63(2) specifically says “mechanical processes”, whereas 63(3) is silent on the processes – meaning it refers to non-mechanical. The Illustration (c), too, refers to transcription
- Illustration (c): A copy transcribed from a copy, but afterwards compared with the original, is secondary evidence; but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original

63(4): counterparts of documents as against the parties who did not execute them

- “counterparts of documents as against the parties who did not execute them”
- a document is signed by A and its other original copy is with B who has signed it. Both A and B exchange their copies with each other, such that the original version with B is signed by A, and the original version with A is signed by B.
- In hands of A: counterpart signed by B – primary evidence against B. But
- If in hands of A: the counterpart signed by A – secondary evidence against B.

63(5): oral accounts of the contents of a document given by some person who has himself seen it

- A witness orally tells the court what they read in the document. This is secondary evidence of the document. As always – the document itself is the primary evidence.
- Also, that person should have themselves seen the document (otherwise it shall be hearsay / indirect oral evidence hit by S. 60) – “who has himself seen it”
- Illustration (d): Neither an oral account of a copy compared with the original, nor an oral account of a photograph or machine-copy of the original, is secondary evidence of the original
- This means: it should be an oral account of the contents of the original document, not oral account of the contents of the secondary evidence



Where do carbon-copies fall?

Mohinder Singh v Jaswant Kaur (Dead) Through LRs, AIR 2019 SC 5760, Justices Deepak Gupta and Aniruddha Bose:

- A carbon copy signed by both parties is primary evidence under Explanation 2 of Section 62 – “made by one uniform process”

Prithi Chand v State of Himachal Pradesh, (1989) 1 SCC 432:

- since the carbon copy was made by one uniform process the same was primary evidence within the meaning of Explanation 2 to Section 62 of the Evidence Act



NB: Signature needs to be there even on the carbon copy for it to be PE. Likewise, if several copies coming out of a typewriter and each signed properly – each is PE.

Section 65: Cases in which secondary evidence relating to documents may be given

“ (a) When the original is shown or appears to be in the possession or power— of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) 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;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in 1[India] to be given in evidence2; 1[India] to be given in evidence2;"

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible. In case (b), the written admission is admissible. In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible. In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.”