



# **KERALA**

**Judicial Services Exam**

**CIVIL JUDGE**

**High Court of Kerala**

**Paper - 2**  
**Volume - 2**



# KERALA JUDICIAL SERVICES

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# **Indian Evidence Act**

## Indian Evidence Act, 1872

- \* Indian Evidence Act is divided into 3 parts, 13 chapters 167 sections.
- \* James Fitz Step ten father of Act.
- \* Indian Evidence Act, Act no 1, 1872.
- \* Consent of Governor General, 1st March 1872.
- \* Came in force, 1 sept. 1872.

### IEA, 1872

Part I Relevancy of facts Sec 1-55 (Ch: 1,2)	Part II On proof (Ch: 3-6) Sec 56-100	Part III Production and effect of evidence Sec 101-167 (Ch: 7-11)
<ul style="list-style-type: none"> <li>* Ch:1 Preliminary 1-4</li> <li>* Ch:2 Relevancy of fact (sec 5-55)</li> </ul>	<ul style="list-style-type: none"> <li>* Ch:3 facts which need not be proved sec 56-58</li> <li>* Ch:4 Oral Evidence sec 59-60</li> <li>* Ch:5 Documentary Evidence 61-90A</li> <li>* Ch:6 Exclusion of oral evidence by documentary evidence sec 91-100</li> </ul>	<ul style="list-style-type: none"> <li>* Ch:7 Burden of proof sec 101-114A</li> <li>* Ch:8 Estoppel sec 115-117</li> <li>* Ch:9 Witnesses sec 118-134</li> <li>* Ch:10 Examination of witness sec 135-166</li> <li>* Ch: 11 Of improper admission &amp; rejection of evidence sec 167</li> </ul>

**Q.1. What is object of IEA?**

**Ans.** It is expedient to consolidate, define and armed the law.

**Q.2. What is the history of IEA?**

**Ans:**

### Presidency Area

Here English evidence act was applied with necessary amendments

First time in India Act, 10, 1835.

Second time India Act, 2, 1855.

Third time India Act, 1872.

Evidence word has come from Latin word 'Evidere' which means to see clearly. It is primarily a procedural law.

### Provisional Area

Here Hindu & Muslim law both were applied.

Substantial law	Procedural law
That law which shows right heat or duty punishment. E.g., Hindu law IPC.	That law which shows the procedures red in substantive law E.g., CrPC, CPC, evidence.

### Law

Lex lori	Lex fori
That is law of location where offence is committed E.g., IPC	That is law of forum (court) E.g., Indian evidence act, CrPC, CPC

- \* IEA is retrospective.
- \* Is it a complete Act?
  - Not a complete law because in addition to its Banker Book Evidence Act.

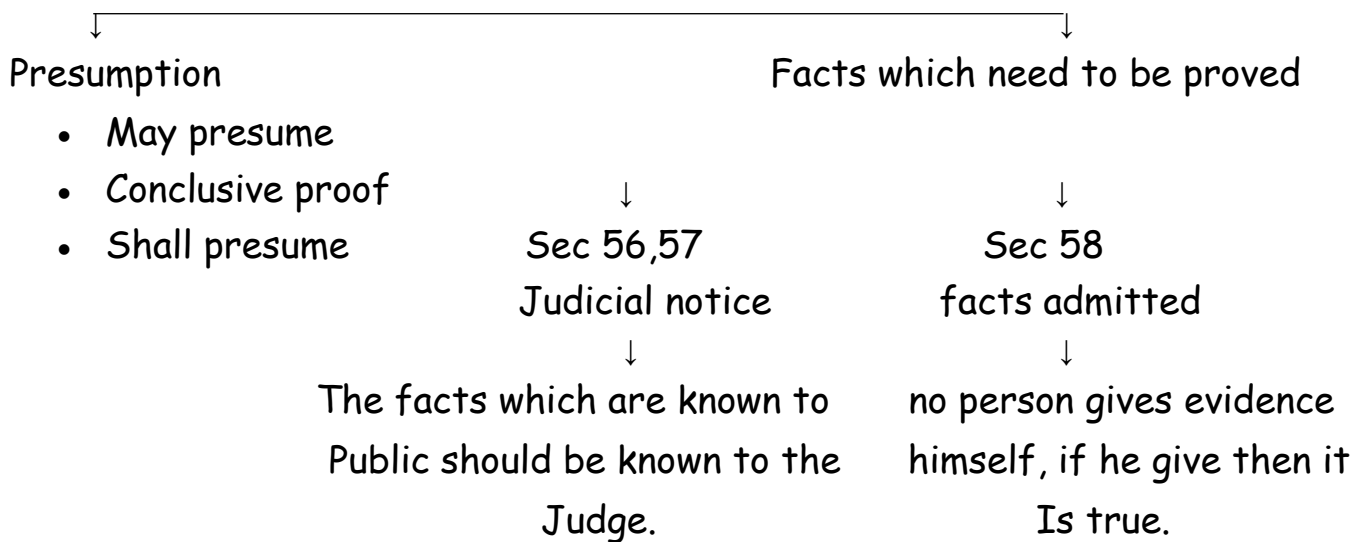
What is golden rule of IEA?

- (1) Evidence must be of matter in issue.
- (2) Best evidence must be given.
- (3) Evidence must be direct.
- (4) Hearsay is not evidence.

What is the difference in prudence between court and criminal law?

Civil law	Criminal law
<ul style="list-style-type: none"> <li>* Rule of preponderance [49. SP]</li> <li>* No presumption</li> <li>* Best evidence must be given.</li> <li>* Not so [admission]</li> <li>* If mutual agreement, then rules can be diluted (refer sec 23)</li> </ul>	<ul style="list-style-type: none"> <li>* Beyond reasonable doubt</li> <li>* Presumption of innocence of accused.</li> <li>* All evidence must be given.</li> <li>* There can be confession.</li> <li>* Not so.</li> </ul>

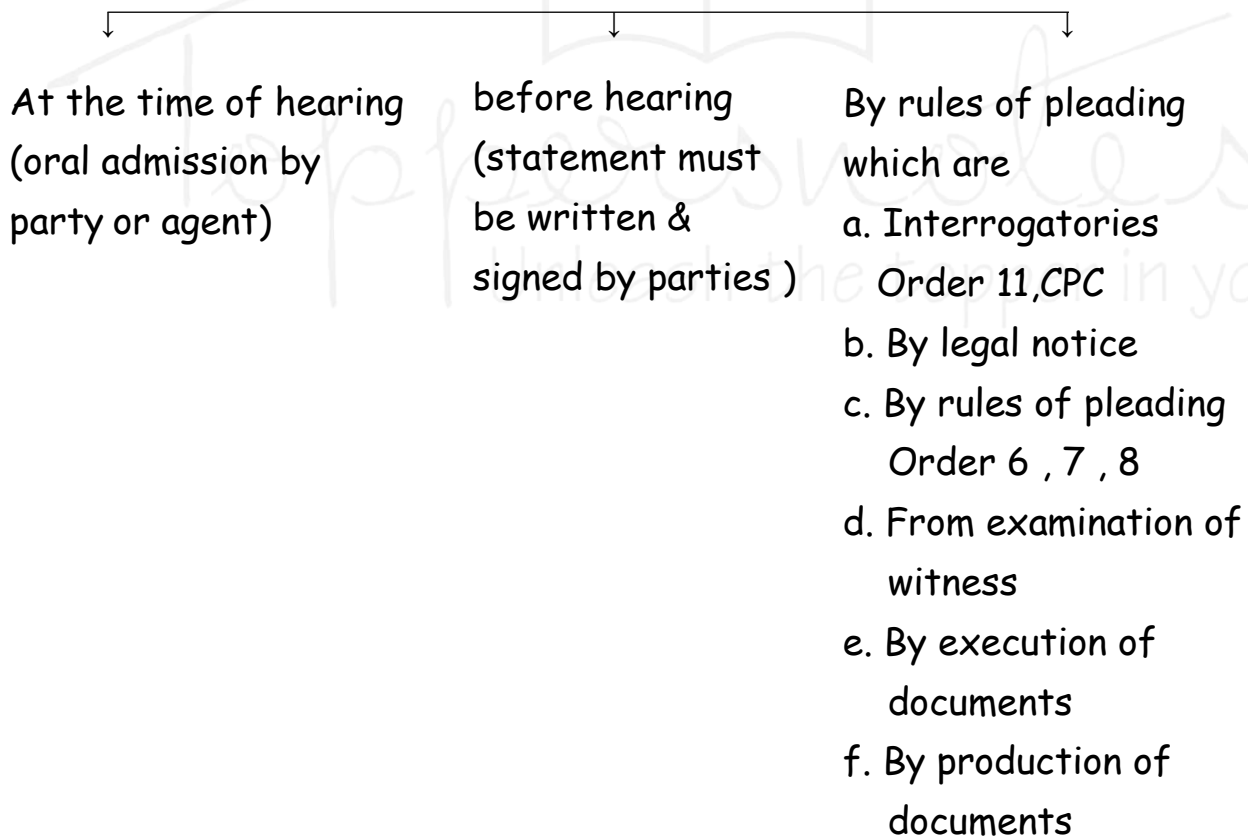
## CHAPTER 3 - PRESUMPTION [SECTION 56-58]



**Q.** what do you understand by facts admitted?

**Ans.**

### ADMISSION



IEA comes in concurrent list, entry no. 12.

Where ever there are tribunals then IEA not applicable, principles of natural justice apply.

**Q. What do you understand by Judicial Note? (Sec 56/57)**

**Ans.** Any facts of which court takes judicial notice need not to be proved.

(Sec 56). Of following things court takes judicial notice (13 + 1):

- i. All laws of India.
- ii. All public act of UK, local law, personal law directed by parliament of UK.
- iii. Articles of war.
- iv. Parliament of UK, constituent assembly of Indian, parliament legislature proceeding.
- v. Accession and sign manual of UK of Great Britain and Ireland.
- vi. All seals which are recognized by English courts.
- vii. Accession to office, name title, function and signature which is notified in official gazette.
- viii. Every state or sovereign recognized by India (Existence title or National Flag).
- ix. Division of time, geographical division of world & public festival, fast and holiday.
- x. Territory of government of India.
- xi. Commencement, continuation & termination of hospitably between government of India and other states.
- xii. Name of all member and officers of court.
- xiii. Rule of road on land or sea.

13+1 Apart from this matter of public history, literature art, science.

It is the direction of court that it can refer to books.

\* Omkar Nath vs Delhi Administration.

This list is not exhausted that is if court deems fits list can be extended.

\* Huruprasad Vs Sheo Dayal.

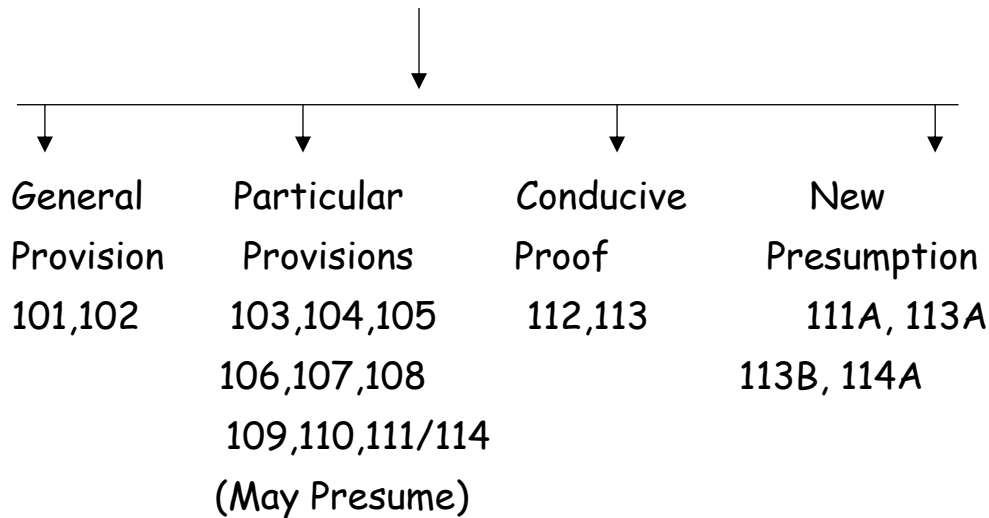
Judicial nature is of general things, not of personal proud edge.

\* List of Judicial notice under sec, 57 is illustrative only.

\* Exhaustive = Complete; full; comprehensive.



## Burden of proof (sec 101-114A)



### Q.1. What do you understand by burden of proof?

**Ans.** Liable to prove any fact lies on the whoever desirers any court to give.

**Sec 101:** Judgment as to any right or liability which depends upon existence of facts is bound to prove the existence, it is called burden of proof.

- \* It is always affirmative i.e., who needs right shall prove it.
  - Shiv Charan by Chandra Bhan.
- \* Rule of convenience which facilitates proceedings of court.
  - Burden of proof partially determines the right to begin.
  - Gauri Shankar vs. UOI
- \* When legislature has made any law then it is the presumption it is correct.
- \* Burden of proof on that person who challenges.
  - Destine by Dastane
- \* Where matter is civil then burden of proof is on plaintiff.

**Sec 102:** On whom the burden of proof will be on that person who shall fail, if no evidence from either side.

[Onus Probandi]

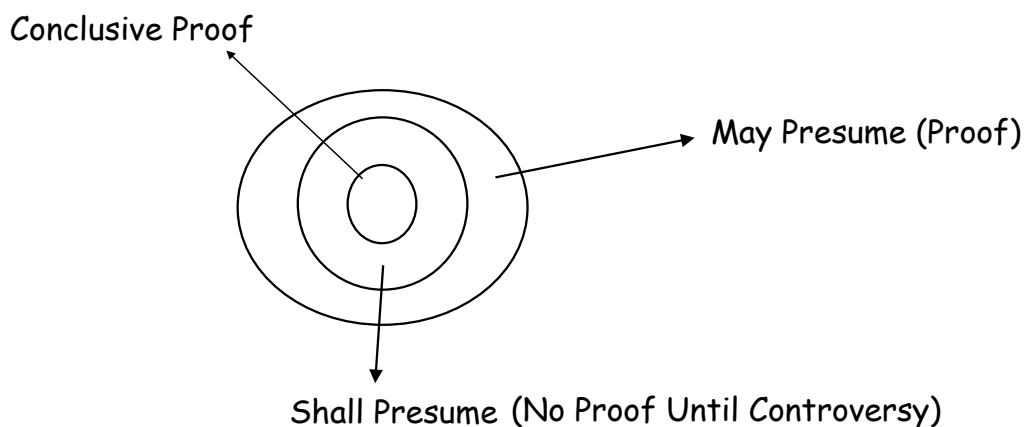
**Q. What do you understand by onus of proof?**

**Ans.** Every party according to facts and circumstance give evidence by which burden of proof changes its positions.

- \* At a particular point of time burden of proof is called onus of proof.
- \* Onus of proof changes but burden of proof is constant.

Circumstances	Burden of proof
Sec 103: Particular Fact * Wherever there are particular facts	a) On that person who wants court to believe. b) Or on that person which under law is required to prove. E.g. (marriage-divorce)
Section 104: Admissible * Wherever admissibility of a fact is required to be proved and it depends on another fact.	* Then burden on proof on that person who requires facts to be admissible. E.g. (Will-death certificate)
Section 105: Exception * Wherever any accused wants to bring his case in exception.	* Then burden of proof shall be on accused (sec 84 IPC unsoundness)
Section 106: Facts specially in knowledge * Wherever facts especially in knowledge (Men rea)	* Burden of proof shall be on that person who has knowledge. E.g., Res ipsa Loquitor (thing speak for itself) * E.g., Road accident medical negligence Scott Vs Condon Catherine Docks Co. * Res ispa Loquitor means occurrence of some types of accident is sufficient to imply negligence.
Section 107: Presumption of life: 30 year wherever person is living or dead and it is proved that within 30 year he was alive.	* This shall be the presumption that he is alive. Burden of proof shall be on that person who affirms he is dead

<p>Section 108: Presumption of death: 7 year wherever there is not heard till 7 year, by those persons who could have heard.</p> <ul style="list-style-type: none"> <li>* If there is contradiction between sec 107 &amp; 108 sec 108 shall prevail.</li> <li>* The presumption of sec 108, is not suo moto.</li> <li>* That is go to court and declare civil death.</li> </ul>	<ul style="list-style-type: none"> <li>* Burden on proof shall be on that person who affirms that he is alive.</li> </ul>
<p>Section 109: Wherever there are following matters:</p> <ol style="list-style-type: none"> <li>a. Partnership</li> <li>b. Landlord &amp; tenant</li> <li>c. Principal &amp; agent</li> </ol> <ul style="list-style-type: none"> <li>* And it is shown that in such capacity acted.</li> </ul>	<ul style="list-style-type: none"> <li>* Burden of proof is on that person who denies the relationship.</li> </ul>
<p>Section 110: (Ownership) Wherever it is shown that any person is in possession of thing then this presumption that he is owner.</p>	<ul style="list-style-type: none"> <li>* Burden of proof shall be on him who denies ownership.</li> </ul>
<p>Section 111: (Good Faith) Wherever there is transaction between two parties, and it is shown that one out of them was in position of active confidence and question is whether there was good faith in transaction.</p>	<ul style="list-style-type: none"> <li>* Burden of proof shall be on that person who was in position of active confidence.</li> </ul>



## Conclusive Proof

[Sec 41, 112, 113] [A thing is proved by another thing and shall not be allowed to disprove]

- \* Nandal Wasudev Badwaik Vs Lat Nandlal Badwaik
- \* Sec 112 is scientific in nature if in any circumstances DNA test is done then it shall prevail it over sec 112. Sec 112 is rebuttable.

**Sec 112:** It is rebuttable conclusive proof because it has exception. The remaining two [sec 41, 113] are irrefutable.

a) Wherever a child is born during continuance of valid marriage b/w mother and another person.

b) Or during 280 days after its dissolution of marriage.

- \* (Dissolution of marriage by two ways)
  1. Death
  2. Divorce
- \* Then it shall be conclusive proof that such child is legitimate child of that person.
- \* Exception at the time of getting begotten there was no access [means sexual access].
- \* Kanti Devi vs Kaushi Ram
- \* Gautam vs State of Bengal
- \* DNA test shall not be in ordinary circumstance only in exceptional circumstance.
- \* Rohit Shekhar vs N.D. Tiwari
- \* Wherever there is prima facie serious matter then only court.
- \* Santo Devi Vs state of Haryana
- \* Due to negligence of Dr. Child was born even after vasectomy operation, Dr. Was liable to pay damages.
- \* Shall give permission for DNA Test.

**Sec 113:** Wherever any notification in gazette that before Govt. of India Act, 1935. If any territory, added of any native state, prince, or ruler, then it shall be 'conclusive proof' that a valid session of such territory took place at the date mentioned in such notification.

**Q. What is reverse burden of proof?**

**Q. What do you understand by new presumptions?**

**Ans.** It is the general principle of criminal law that burden of proof is on the prosecution and it has to prove beyond reasonable doubt. If any link in chain is broken, then the effect is that the benefit shall be conferred to the accused and he shall be acquitted.

- \* So, in India, connection rate is very low.
- \* Legislature considering this problem from 1983, have done few amendments which relate to national and social security.
- \* In this the rule of burden of proof has been changed.
- \* Wherever matter pattern to following sectors: (i) 111 A, (ii) 113 A, (iii) 113 B, (iv) 114 A.
- \* Criminal amendments, 1983 was passed due to which SC, case:
- \* *Tukaram vs State*
- \* In these the burden of proof shall be on accused that he proves his innocence.
- \* It shall be according to 'rule of preponderance.' Once accused has proved his innocence, then the general rule shall apply, i.e., the burden of proof shall again on prosecution & it has to be proved, 'beyond reasonable doubt'. If seen closely then new presumption is nothing, but stage on the old presumption.

**Sec 111 A:**

- \* Wherever it is shown that in disturbed area firearms were used on armed forces which were maintain public order and discharging public duty.
- \* Then court shall pressure following offences:
  - a) 121, 121 A, 122, 123 IPC
  - b) Criminal conspiracy, attempt, abetment of an offence under sec 122 and 123.
- \* Burden of proof shall be on accused to prove innocence.
- \* Disturbed area = a
  - a) Such area which is declared as such by Govt. [Kashmir].
  - b) Such area where disturbance of public peace for 1 month or more. [E.g. Riot].

**Sec 111A:** come by 1984 -> shall presume.

**Sec 113 A:** 1983 May presume

- \* Wherever there is a married woman, and she commits suicide within 7 year of marriage then it is a cruelty.
- \* The court may presume that by husband or his relative's abetment for suicide took place.
- \* Cruelty = 498 A, IPC [By husband and family]

**Sec 113 B:** 1986 shall presume.

- \* Wherever dowry death is under question.
- \* It is shown that soon before death there was demand for dowry and because of it there was cruelty and harassment.
- \* The court shall presume that dowry death took place.
- \* Dowry death = 304 B, IPC.
- \* Heeralal vs Delhi Administration.
- \* Soon before death means there is no particular time period, court shall see whether any proximity between demand of dowry and death.

**Sec 114 A:** 1983 Shall presume.

- \* Wherever matter relate to sec 376 (2) (a -n) of IPC.
- \* It is shown that sexual intercourse has taken place.
- \* Women states that consent was not there.
- \* The court shall presume that rape has been committed.

**Sec 114:** The court may presume existence of fact considering natural events human condition and public and private business.

a → Stolen property

b → Accomplice

c → Bill of exchange

d → State of things

e → Judicial and executive order.

f → Course of business.

g → Document not produced.

h → Refused to answer.

i → Document by which obligation is created.

**Q. What do you understand by improper admission or rejection of admission?**

**Ans.** Improper admission = such evidence taken which should not have been admitted.

Rejection of evidence = such evidence not taken which must have been taken.

**Sec 167:** Improper admission and rejection of evidence shall not be a ground itself:

- a) Of new trial
- b) Reversal of any decision.
- \* If that court, in front of which objection is raised is satisfied, that without such evidence also there was sufficient evidence to justify or even if rejected evidence was revived then also there could be no variation in decision. [Effect is seen]
- \* It applies on both civil and criminal matter sec 99 CPC and Sec 465 CrPC.

There is similar provision.

- \* Narayan Vs State of Punjab
- \* New trial only when there is fundamental defect.
- \* Devi Das Jabjevan Vs Parzeeda Begum.
- \* If any importance document is left, then there can be new trial.
- \* The right of sec 167, is with appellate and revisional court.
- \* New trial only when there is effect on administration of justice.
- \* The object of this section is on tribunal ground judgment shall not be set aside.

## [Section 115 to 117]

**Q. What is estoppel? Sec 115:**

**Ans:** Wherever any person does any act declaration or omission.

- \* By which he intentionally causes (active) or permits.
- \* To another person, who believing him does an act.
- \* Then later neither such person, nor his representative shall be allowed to deny the truth.
- \* Pickard Vs Syeers.
- \* By this case this principal comes, illustration is also this.
- \* Banwari Lal Vs Sukh Darshan
- \* It is based on equality.
- \* Sharad Chand Vs Gopal Chand
- \* No body shall be allowed to deny his statement.

Quote "No person can blow hot and cold air at the same time."

- \* Shyam Vs State of UP
- \* The principal of estoppel is based on the following:
- \* No person shall be allowed to take advantage of his mistake.
- \* No person shall be unjustly enriched.
- \* No person shall do contrary statements.

**Q. What are those matters in which principal of estoppel does not apply?**

**Ans.** (i) Enactment

(ii) When both the parties know the actual situation.

(iii) Criminal law

(iv) Minor

(v) Act of sovereign.

**Q. What are the various types of estoppel?**

**Ans.** a) Estoppel by deeds.

b) Documents which are in court (By record)

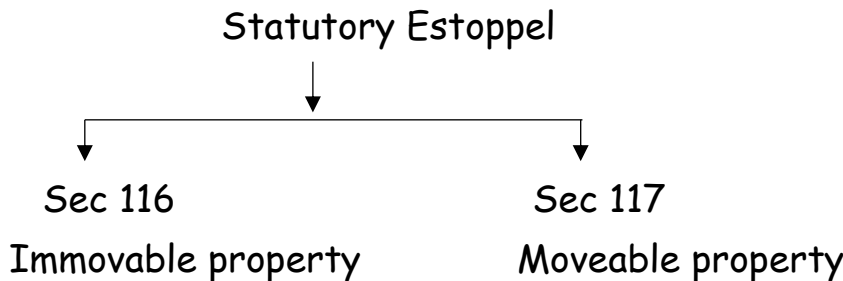
c) estoppel by conduct [pair]

d) Promissory estoppel.

e) Statutory estoppel [116 & 117]



- f) Estoppel by acquiescence [means allow]
- g) Estoppel by negligence.
- h) Estoppel by election [sec 35 of TPA]
- i) Estoppel by attestation [means signature]



**Sec 116:**

Tenant	License
Wherever any person is tenant of immovable property, at the time of commencement of tenancy, then he shall not be allowed to deny that landlord did not have right in property at the time of tenancy.	Wherever any person has received possession due to license then he shall not be allowed to deny that the landlord at the time of license did not have the title.

**Sec 117:**

Bill of exchange	License/Bailment
Wherever there is bill of exchange then the acceptor shall not be allowed to deny that drawer didn't have authority to draw bill of exchange.	Wherever matter is of license or bailment then person shall not be allowed to deny that such bailer or licensor did not have right.
Exception: [explanation 1] on this ground there can be denial whether it was actually drawn by person actually drawn by person [signature miss match.]	Exception: [explanation] if thing is delivered to another person then it has proved that such person had right against the bailer.[library]

\* Motilal Pacharnpat Sugar mills Vs State of UP is related to promissory stopple.



**Sec 120:**

- (i) In civil cases, husband and wife of both parties are competent.
- (ii) In criminal matters, husband and wife of that person against whom prosecution [accused], his or her husband or wife complete witness.
- \* Fronis stanly Vs Intelligence officer  
Evidence of accomplice should be corroborated by some other evidences.

**Q. Who is accomplice and what is the evidence value?**

**Ans.** Such person who actively participate in offence and later on tender of pardon he becomes prosecution witness such person is called accomplice.

- \* Also refer sec 306-308 of Cr PC.

**Sec 133:** Accomplice is a competent witness against the accused person and conviction is not illegal merely because it proceeds on uncorroborated testimony of accomplice.

- \* R.K. Dalmia Vs Delhi Administration
- \* Wherever several people join together and commit offence then they are accomplice.
- \* Ram Gopal Vs State
- \* The statement of accomplice should be taken with caution.
- \* Rameshwar Vs State of Rajasthan
- \* It is not necessary that every statement must be corroborated. The whole statement must be corroborative.
- \* Testimony of an accomplice before it is accepted acted upon, must be corroborated from non- independent source.
- \* Barquet Ali Vs Crown

Accomplice is primarily a offender he can lie. So his statement must be corroborated.