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AWT-1 INDIAN EVIDENCE ACT

① Difference between Admission and Confession.

The difference between Admission and Confession are as follows:-

Firstly, Admission is dealt with under sections 17-23 of the Indian Evidence Act whereas Confession is dealt with under sections 94-30 of the Indian Evidence Act.

Secondly, the term "Admission" is comprehensive and includes confession. On the other hand "Confession" is a mere species of Admission.

Thirdly, admission is a mere acknowledgement of the fact suggesting an inference to the fact or issue or relevant fact. But, Confession is the admission of guilt as to an offence and all subsequent acts constituting an offence.

Fourthly, admission deals with both civil cases as well as criminal case. However, confession deals only with criminal cases.

Fifthly, admission of one co-accused or co-defendant is not binding on other co-accused or co-defendant. Whereas, confession of a co-accused is binding on other co-accused as well.

Lastly,

② Short note on Leading Questions.

Sections 141 - 143 of the Indian Evidence Act deal with leading questions.

Section 141 states that any question which suggests an answer which the person asking such

question which or expects to receive is a leading question.

Section 142 provides when the leading questions must not be asked. It states that in examination-in-chief or re-examination, leading questions must not be asked if the adverse party objects to such questions.

However, the section also provides that leading questions can be asked in examination-in-chief or re-examination with the permission of the court. Further, section 143 provides when leading questions must be asked. The section states that leading questions must be asked in cross-examination.

③ Who is an Expert? When is the opinion of expert relevant? What is the value of such opinion in evidence? State the case law.

An expert is a person having specialized skills in the subject to which he testifies. He need not have any professional qualification or degree.

In the case of *Bal Krishna Das v. Radha Devi*, the court held that an expert is a person who has acquired, through training and experience, the ability to express opinion on a particular matter, which the other witnessed do not possess.

Similarly, in *Abdul Rehman v. State of Mysore*, an goldsmith was considered to be an expert on the matter of purity of gold.

The relevancy of expert opinion is contained in the provisions of sections 45 - 51 of the Indian Evidence Act.

Section 45 dealing with the definition of expert opinion states that -

- i) when the court has to form an opinion
- ii) upon any point of foreign law, or of science, or of art, or of handwriting, or of finger impressions
- iii) opinion given by a person having special skill in such foreign law, science, art, handwriting or finger impression as relevant
- iv) Person giving such opinion is called 'expert'

The Information and Technology (Amendment) Act, 2002 inserted section 45A which deals with the relevancy of opinion of examiner of electronic evidence.

Further section 46 deals with the facts bearing upon the opinion of expert. It provides that facts which are not otherwise relevant become relevant if they support or are inconsistent with the opinion of expert.

Section 47 relates to the relevancy of opinion of an expert as to handwriting. The section provides that when a court has to form an opinion as to a person by whom any document is purported to be written or signed, then any person acquainted with the handwriting of the person, by whom the document was supposed to be written or signed, that the document was or was not written or signed by that person is a relevant fact. Section 47 also provides that, in the following cases, a person is said to be "acquainted with the handwriting of a person" -

- i) when he has seen that person write
- ii) when he has received documents written by

that person for answer to the documents written by himself and addressed to that person.

iii) when, in the ordinary course of business, the documents supposed to be written by that person have been habitually submitted to him.

Section 47A, inserted by virtue of the Information and Technology (Amendment) Act, 2002, states that when the court has to form an opinion as to the electronic signature of any person, the opinion of the certifying authority who issued that signature is a relevant fact.

Further, the relevance of opinion as to general custom or right is dealt with under section 48 which states that when the court has to form an opinion as to the existence of any general custom or right, the opinion of persons who would be likely to know of existence of such custom or right, if it existed, is a relevant fact.

Similarly, section 49 states that when the court has to form an opinion on the following three aspects:-

- the usages or tenets of any family or body of persons;
- constitution and government of any religious or charitable foundation, or
- the meaning of terms or words used in a particular district or by a particular class of persons.

The opinion of any person having means of special knowledge on the subject is a relevant fact.

Section 50 says that when the court has to form an opinion as to the relationship of one person with another, the opinion expressed by conduct, as to the existence of such relationship, of any person who, being a

member of family or otherwise, would have special knowledge on the subject, is a relevant fact.

Lastly, section 51 provides that where the opinion is formed by any living person, the grounds on which such opinion is formed is also relevant.

The expert opinion hold a significant value in evidence. If during a peradventure of suit, there are two opinions, one is a regular opinion and the other is an expert opinion, the regular opinion if inconsistent with the expert opinion, is completely discarded and expert opinion is accepted.

In the case of *Latesh v. State of Maharashtra*, the court observed that where oral evidence and medical evidence are in conformity ^{with} one another, the oral evidence will be given preference over the medical evidence. However, when the two are contradictory, medical evidence will be given preference over oral evidence.

Similarly in the case of *Asish Talu v. Makram Singh*