

**LAW OF EVIDENCE****E- Content.**

**SECTION 17 :** Admission defined.—An admission is a statement, [oral or documentary or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

An admission is a statement of fact which waves or dispenses with the production of evidence by conceding that the fact asserted by the opponent is true. According to the definition an admission: (i) is a statement, oral or documentary or contained in electronic form, (ii) which suggests any inference as to any fact in issue or relevant fact, and (iii) which is made by any person under the circumstances hereinafter mentioned. Such circumstances as “hereinafter mentioned” have been mentioned in Sections 18 to 30. Strictly speaking, the admission has been dealt with in Sections 17 to 23 and 31, whereas When admission falls short of actual admission of guilt, it may be used as evidence against the person who made it or his authorized agent, as an admission under section 21.” An admission may be a judicial admission or an informal/casual/evidentiary admission. The former i.e. judicial admissions under Section 58 are considered to be on a higher footing than evidentiary admissions.

According to Phipson the admission is relevant on the following reasons.

**1. “Admissions as waiver of proof:** If a party has admitted a fact, it dispenses with the necessity of proving the fact against him. It operates as a waiver of proof. An admission, therefore as an admission is not conclusive against the person making it, but it may operate as an estoppel under section 115 of the Evidence Act. It was held in *Queen Empress v. Tribhovandas Manekchand*, 1884, that a confession which is inadmissible in a criminal proceeding may be used as an admission in a civil proceeding.

**2. “Admissions as statement against interest:** It is natural for a man to make statement in his favour. An admission, being a statement against the interest of the maker should be supposed to be true, for it is highly improbable that a person will voluntarily make false statement against his own interest.”

**3. “Admissions as evidence of contradictory statements:** Where there is contraction between the statements of the party and his case, the contradiction is relevant. For example, A sues B upon a loan. The account book shows that the loan was given to C. The statement in his Account Book contradicts his case against B.”

**4. “Admissions as evidence of truth:** The statements made by the party about the facts of the case, whether they may go in his favour or against his interest, should be relevant as representation or reflecting the truth as against him. Whatever a party says in evidence against himself may be presumed to be so.”

## **Forms of Admissions:**

There are two types of admissions viz., (1) Judicial, and (2) Extra-judicial Admissions.

### **1. Judicial Admission:**

The judicial or formal admission is addressed to the court and is the part of the proceeding. It is made on the record in the file of the court.

### **2. Extra-judicial Admissions:**

The extra-judicial or informal admission is statement of fact made by the party previously in course of life or business which is inconsistent with the facts to be established at the trial. The Supreme Court observed that admissions are very weak kind of evidence and the court may reject them if it is not satisfied from other circumstances that they are untrue.

SECTION 18 : Admission by party to proceeding or his agent.—Statements made by a party to the proceeding, or by an agent to any such party, whom the Court regards, under the circumstances of the case, as expressly or impliedly authorized by him to make them, are admissions. by suitor in representative character.—Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character. Statements made by—

(1) party interested in subject-matter.—persons who have any proprietary or pecuniary interest in the subject-matter of the proceeding, and who make the statement in their character of persons so interested, or

(2) person from whom interest derived.—persons from whom the parties to the suit have derived their interest in the subject-matter of the suit, are admissions, if they are made during the continuance of the interest of the persons making the statements.

This section gives list of persons who can make admissions and whose admissions can be used as evidence.

1. Statements made by a party to the proceeding What is admitted by a party must be presumed to be true unless the contrary is shown. (Nathoo Lal v. Durga Prasad, 1954) There must be a clear and unambiguous statement by the party. (Nagubai v. B Shama Rao)

2. By an agent to any such party whom the Court considers authorized

3. By a suitor in representative character e.g. executors, trustees, administrators

4. By a party interested in the subject-matter .i.e co-owners but not co –defendants.

5. By a person from whom interest has been derived There should be privity i.e. a mutual or successive relationship to the same right in property. Privity may be: (1) privity in blood: heir, ancestor, coparcener, etc., (2) privity in law: executor & testator, heir & intestate, (3) privity in estate or interest: vendor/vendee, lessor/lessee.

SECTION 19 : Admissions by persons whose position must be proved as against party to suit.—Statements made by persons whose position or liability, it is necessary to prove as against any party to the suit, are admissions, if such statements would be relevant as against such persons in relation to such position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies such position or is subject to such liability.

Illustration A undertakes to collect rents for B. B sues A for not collecting rent due from C to B. A denies that rent was due from C to B. A statement by C that he owed B rent is an admission, and is a relevant fact as against A, if A denies that C did owe rent to B.

SECTION 20 : Admissions by persons expressly referred to by party to suit.—Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration The question is, whether a horse sold by A to B is sound. A says to B—"Go and ask C. C knows all about it". C's statement is an admission.

The word "information," occurring in Section 20, is not to be understood in the sense that the parties desired to know something which none of them had any knowledge of where there is a dispute as regards a certain question and the Court is in need of information regarding the truth on that point, any statement which the referee may make, though known to one or both of the parties, is nevertheless "information" within the

meaning of Section 20, Evidence Act. In eviction suit where person having power of attorney for tenant admits arrears of rent tenant subsequently cannot resile from such admission; Ram Sahai v. Jai Prakash, AIR 1993 MP 147. Section 19 and Section 20 are exceptions to the general rule laid down in Section 18. Under this section the parties to the proceeding may use the statement of third person if the statement of third person contained an admission against his own interest, and could have been used against him if he sued or was sued in connection with matter involving the position or liability affected by that admission. In other words, “the admission of a third person against his interest, when it affects his position or liability and when that position or liability has to be proved against a party to the suit, is relevant against the party.” The admissibility of statement made by a third person depends upon the proof of his position as against the parties to the suit or proceeding. An admission by the third person is relevant only up to his liability. Section 20 also says about admission by third party/person by of reference is admissible.

**SECTION 21:** Proof of admissions against persons making them, and by or on their behalf.—Admissions are relevant and may be proved as against the person who makes them, or his representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his representative in interest, except in the following cases:—

(1) An admission may be proved by or on behalf of the person making it, when it is of such a nature that, if the person making it were dead, it would be relevant as between third persons under section 32.

(2) An admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

(3) An admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

#### Illustrations

(a) The question between A and B is, whether a certain deed is or is not forged, A affirms that it is genuine, B that it is forged. A may prove a statement by B that the deed is genuine, and B may prove a statement by A that the deed is forged; but A cannot prove a statement by himself that the deed is genuine, nor can B prove a statement by himself that the deed is forged.

(b) A, the Captain of a ship, is tried for casting her away. Evidence is given to show that the ship was taken out of her proper course. A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. A may prove these statements, because they would be admissible between third parties, if he were dead, under section 32, clause (2).

(c) A is accused of a crime committed by him at Calcutta. He produces a letter written by himself and dated at Lahore on that day, and bearing the Lahore post-mark of that day. The statement in the date of the letter is admissible, because, if A were dead, it would be admissible under section 32, clause (2).

(d) A is accused of receiving stolen goods knowing them to be stolen. He offers to prove that he refused to sell them below their value. A may prove these statements, though they are

admissions, because they are explanatory of conduct influenced by facts in issue.

(e) A is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit. He offers to prove that he asked a skilful person to examine the coin, as he doubted whether it was counterfeit or not, and that the person did examine it and told him it was genuine. A may prove these facts for the reasons stated in the last preceding illustration.

Section 21 lays down as a general rule that admissions are relevant and may be proved against the person who makes them or his representative in interest. If persons are allowed to prove their statements, they will make the statement in their favour, such type of self-serving statement by party is irrelevant and cannot be regarded as evidence. The reason is that a man might bring evidence to prove the statement made by himself and take advantage from it.. An admission of the party previous to the suit is relevant under section 21. **An admission made by party in a plaint signed and verified by him may be used against him in other suits. In other suits, this admission cannot be regarded as conclusive, and it is open to party to show that it is not true.**

From the above illustrations it is clear that the general rule is that a person is not allowed to prove his own admissions.

Otherwise, as observed in **R vs Hardy, 1794**, every man, if he were in difficulty, or in view of one, might make declarations to suit his own case and then lodge them in proof of his case. This principle, however, is subject to some important exceptions, which allow a person to prove his own statements. These are as

follows -

**Exception 1 -1. Statements as dying declarations:**

Section 32 of the Evidence Act lays down that the statement of persons, who are dead, or who cannot be found or who otherwise cannot be called before the court, may be proved under the circumstances mentioned in the sub-clauses (1) to (8) of that section. In the situation described in Illustration (b), in a case between the shipowner and the insurance company, the contents of the log book maintained by the captain would have been relevant evidence if the captain were dead under Section 32. Therefore, the captain is allowed to prove the contents of the log book even in the case involving him and the shipowners.

**Exception 2 - Statements as to bodily feeling or mind -** It enables a person to prove his statements about his state of mind or body if such state of mind or body is a fact in issue or is relevant fact and if the statement was made at the time when such state of mind or body existed and further if the statement is accompanied with his conduct that makes the falsehood of the statements improbable. In Illustration (d), the statements of A that show that he refused to sell them below their value, are self serving admissions. However, it is acceptable because they reflect A's state of mind and were associated with a conduct of refusing to sell that makes their falsehood improbably. Section 14 only provides that such statements are relevant, whereas the Section 21 (b) demands that such statement must be proved on behalf of person making them.

**Exception 3** - The last exception allows a person to prove his own statement when it is otherwise relevant under any of the provisions relating to relevancy. There are many cases in which a statement is relevant not because it is an admission but because it establishes the existence or non-existence of a relevant fact or a fact in issue. In all such cases a party can prove his own statements or for example, where plaintiffs sought to establish their pedigree by proving that A and B were brothers, a statement to that effect made by one of the plaintiffs long before the controversy arose, were held relevant. The statement admissible under clause (3) is also relevant under sections 6 to 13 and 34 and 35 of the Evidence Act. The statement of A in a previous proceeding that B was a tenant of the property in dispute is an admission and can be used when in the later proceeding he denied that fact.

Section 22. When oral admissions as to contents of documents are relevant.—Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Section 22 lays down that the contents of the documents can be proved by the documents itself and not by oral evidence. The contents of a document capable of being produced must be proved by the instrument and not by parole evidence. They are however admissible under s. 65 and s. 66.

**SECTION 22 A:** When oral admissions as to contents of electronic records are relevant.—Oral admissions as to the contents of electronic records are not relevant, unless the genuineness of the electronic record produced is in question.

Once electronic evidence is properly adduced according to section 65B of the Evidence Act, along with the certificate of sub-section (4), the other party may challenge the genuineness of the original electronic record. If the original electronic record is challenged, section 22A of the Evidence Act permits oral evidence as to its genuineness only. Section 22A disqualifies oral evidence as to the contents of the electronic record, only the genuineness of the record may be discussed. In this regard, relevant oral evidence as to the genuineness of the record can be offered by the Examiner of Electronic Evidence, an expert witness under section 45A of the Evidence Act who is appointed under section 79A of the IT Act

**SECTION 23 :**Admissions in civil cases, when relevant.—In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

Explanation—Nothing in this section shall be taken to exempt any barrister, pleader, attorney or vakil from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Any admission given by a party cannot be proved against him when it is made on a condition of “ without prejudice”. When

one of the parties to the dispute writes to the other making an offer for settlement in certain terms he may stipulate that in case his offer is not accepted his letter is not to be used against him as an admission of liability.” Such letter of communications made “without prejudice” and is not accepted to be admissible as evidence. “Confidential overtures of pacification and any other offers or propositions between litigating parties, expressly or impliedly made without prejudice are excluded on grounds of public policy,” otherwise the clever may frustrate the spirit of law when he knows the weak points of the case of his opponent. For example, if parties are to be prejudiced by efforts to compromise, it will be impossible to attempt any amicable arrangement of differences. Admission or statements which are proved to be wrong or mistaken are not binding on the party making it. Lord Mansfield once observed that “all men must be permitted to buy peace without prejudice to them should the offer not succeed, such offers being made to stop litigation without regard to the question whether anything is due or not.” Thus the letter marked “without prejudice” protects subsequent and even previous letter in the same correspondence. Mr. Justice Phear in *Mohabeer Singh v. Dhujoo Singh* 20 W.R. 172. That learned Judge in the course of his judgment had said as follows: "An offer of compromise, the essence of which is that the party making it is willing to submit to a sacrifice, or to make a concession, is rejected, though nothing at the time was expressly said respecting its confidential character, only if it clearly appears to have been made on the faith of a pending treaty into which the party was led by the confidence of an arrangement being effected. In *Hari Krishna Agarwala vs K.C. Gupta* on 23 November, 1948 A great deal of argument has been addressed on the question whether the letter dated 11<sup>th</sup> May 1943,

marked "without prejudice" can be used in **evidence** against the plaintiff. The lower Court has taken the contents of that letter into consideration and has admitted that letter in **evidence**. But appellate court held that if an admission was made on an express condition that **evidence** of it is not to be given, then that admission is not relevant. If the words "without prejudice" are interpreted to convey an express condition that **evidence** of the admission is not to be given, then the first part of the **section** would govern the question of the admissibility of this letter. For the purpose of this case we can assume that the words "without prejudice" were intended by Shri Krishna to convey that if the offer was not accepted, no further use was to be made of the offer contained in the letter and on this interpretation, according to the first part of Section 23, Evidence Act, the letter may not be taken into account.