

A SHORT EDITION OF
PRINCIPLES AND DIGEST OF THE
LAW OF EVIDENCE

**BEING A COMMENTARY ON THE INDIAN
EVIDENCE ACT (1 of 1872)**

M. MONIR

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A COMMENTARY ON THE INDIAN EVIDENCE
ACT (1 OF 1872)

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WITH A FOREWORD

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**A Short Edition of
Principles and Digest
of the Law of Evidence**

DEDICATED TO
Shri Shiv Das Khanna
[1901—1983]

**TO
MEMBERS OF
THE NOBLE PROFESSION
OF LAW**

Publishers Note

****** Vide Criminal Law (Second Amendment Act, 1983 No. 46 of 1983) which came into force on 25th December 1983. New Sections no. 113-A and 114-A have been inserted in the Evidence Act 1872 and the same have been reproduced in Appendix I at page no. 790 of the book.

******* The Government of India has also amended the Indian Evidence Act to put the onus for proof of innocence on the accused person in cases involving terrorist activities. A new Section No. 111-A, has been added after Section 111. This press note dated 14 July, 1984 has also been reproduced in Appendix K at page No. 811 of the book.

Foreword

A judicial proceeding in a Court of Law involves the investigation into a right claimed or a liability sought to be enforced as between the parties before the Court. The right claimed or the liability sought to be enforced is defined by the substantive law and the manner in which and the method by which the investigation is carried on are governed by the adjective law, which deals with pleadings, procedure and proof. The Law of Evidence is the branch of adjective law, which deals with proof, which may, from a practical standpoint, be stated as the establishment of the essential facts relating to the right claimed or the liability sought to be enforced by proper legal means to the satisfaction of the Court. Evidence, as understood by the Law of Evidence, applicable to the courts of law, consists of the legal means exclusive of mere arguments by which truth respecting a question of fact is ascertained in a judicial proceeding. It is the function and province of the Law of Evidence to determine what constitutes legal evidence ; how is it to be established to the satisfaction of the Court ; by whom is it to be given and how is it to be given ?

In our country the Law of Evidence as applied in judicial proceedings before the Municipal Courts and the Courts convened under the Acts relating to the Defence Forces is mainly contained in the Indian Evidence Act, 1872, which is almost universally acclaimed as an outstanding and unique product of legal draftsmanship. This Act with its 167 sections supplies the technical know-how to a lawyer in building up and presenting his client's case to the court and serves as a guide to the court in its search for truth, for the provisions contained in it are the result of the application of the practical experience acquired in courts of law to the problem of enquiry into the truth as to controverted questions of fact.

A sound knowledge of the Law of Evidence is as essential to a successful lawyer as the knowledge of structural engineering is to the architect or the science of navigation is to the captain of a ship. It is not an uncommon experience in a court of law that a good case has failed because of a lack of adequate and necessary knowledge of the Evidence Act on the part of the lawyer entrusted with the conduct of the case.

Since after the enactment of the Indian Evidence Act, several books have been written on the Law of Evidence in India and some of them have gained the reputation and popularity which they rightly deserve as standard books on the subject. Most of them, however, which are meant primarily for the legal practitioner are not serviceable to the students both by reason of their bulk and

FOREWORD

the treatment of the subject. The present short edition of Monir's book on the 'Principles and Digest of the Law of Evidence' by Mr. H. S. Ursekar, M.A., LL. B., is an attempt to present a useful and handy book which will be serviceable both to the students as well as to the busy practitioners. The task, indeed, is a difficult one but appears to have been performed with a fair degree of success. Although he has revised and brought up to date the commentary on the sections incorporating in it the latest decisions, he has reduced the bulk of the book by nearly one third and has added information particularly useful to the students in the appendices at the end of the book. These include short notes on the English and American Law of Evidence and suggestions on the amendment of the Indian Evidence Act in certain matters dealt in it. I hope the industry and scholarship devoted by the editor in bringing out the present short edition meets with its due reward and it attains the same reputation and popularity which has been achieved by the parent book.

V. S. DESAI

Bombay High Court
BOMBAY

Preface to the Short Edition

Monir's "Principles and Digest of the Law of Evidence" is a legal classic. It was proposed to bring out an abridged and short edition for the busy practitioners and I deem it a distinct privilege to be called upon to do it.

In editing this edition I have combined the processes of retrenchment and recruitment. I have carefully boiled down the original commentary inclusive of the fresh material. I have summarised the principles of the Law of Evidence and sifted the case-law. Facts of some of the leading English cases have been set out. I have also striven to bring the book up-to-date by incorporating the latest case-law, both Indian and Pakistan. Pakistan amendments are shown at the relevant places. I have freely drawn upon English and American books, like Nokes, Gledhill, Wharton, Ladd and Evershed Committee's Report. The latest Indian books on the subject have also been consulted.

The original Introduction, covering thirty six pages, by the Author, is reproduced. Apart from the original Appendices, seven new Appendices on the English and American Law of Evidence and the Art of Cross-Examination Substantive and Adjective Law are the special features of this edition. Modern mechanical means, like the tape-recorder and the lie-detector, etc., have thrown open new avenues of tools of proof.

Every chapter is prefaced with a note on the scheme of the chapter. Every section is discussed under three heads, Principle, Scope and Commentary. I have thus endeavoured to carve a short, an up-to-date and a revised edition of this outstanding work. I hope it will be useful both to the Bench and the Bar.

I am deeply grateful to the Hon'ble **Mr. Justice V. S. Desai** of the Bombay High Court for contributing a Foreword to this Short Edition.

I am equally indebted to the Hon'ble **Mr. S. P. Kotwal**, Chief Justice of the Bombay High Court and to the Hon'ble **Mr. Justice V. D. Tulzapurkar** for their encouragement.

A word of appreciation is due to my daughter, Kumari Vidya, M. A., for her assistance.

H. S. URSEKAR

The Indian Evidence Act, 1872

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