LAW OF EVIDENCE

UL – 16 - 4TH SEMESTER, Three Year Unitary LL.B.
FL-17 -6th SEMESTER Five Year BA LL.B./B.Com LL.B./ BBA LL.B. (Hons.)

Course Objectives:

Every student of law has to be necessarily equipped and need to possess a thorough knowledge of the significance of trial process in the litigation scenario in their pursuit to become successful legal professionals furthering rule of law in a constitutional democracy. The Indian Evidence Act, 1872 enacted during the colonial times had been the fulcrum of the substantive and procedural reflections of law relating to evidence, generating a sensible understanding of the concept, content and application of rules of relevancy, admissibility and appreciation of evidence in the trial process. The Bharathiya Sakshya Adhiniyam, 2023, which replaced Indian Evidence Act, 1872, aims to consolidate and to provide for general rules and principles of evidence for fair trial while addressing foundational aspects comprehending contemporary developments in technology in the arena of law and justice. Equally important is to know the judicial interpretations of various provisions which formed part of the old law which had been retained in the new law as it has withstood the times and has the tenacity to endure for long.

Unit I

History and development of law of evidence- decolonisation of law relating to evidence- salient features of Bharatiya Sakshya Adhiniyam, 2023 - definitions- legal and logical relevancy- Relevancy and Admissibility- Best evidence rule- Fact, fact in issue and relevant fact- Kinds of evidence- Evidence and proof- Concepts- Constitutional protections and adducing of evidence- Relevancy of facts- *Res gestae* –common intention- identity and identification- Facts not otherwise relevant become relevant- facts to determine amount of damages- proof of right or custom- Circumstantial evidence- principles –Motive, preparation, conduct, occasion, cause, opportunity, conduct, state of mind, body, bodily feeling- similar facts. Facts delineating accidental occurrences and intentional act- doing an act in course of a business.

Unit II

Exclusion of hearsay evidence and exceptions- Admissions –Principles and applicability- Confessions- kinds of confessions, valid confession, principles, exceptions- Confession to Police and Police Custody – Recovery pursuant to authoring concealment - Applicability and evidentiary value- Confession by co accused and its explanations – contrasting with approver's testimony- Applicable provisions of Bharatiya Nagarika Suraksha Adhiniyam, 2023 - Statements by persons who cannot be called into court as witnesses – Dying declaration – Statements made under special circumstances- How much of a statement is to be proved – Bankers Book Evidence Act - Relevance of judgements of Courts or Tribunals as evidence- General Principles- Exceptions to admissibility of judgements- Opinions of Third persons - Expert opinion and its relevance in different contexts - Areas of expertise and skill where expert testimonies are reckoned - Facts bearing such opinion - Judicial attitude towards expert testimonies – Opinion as to rights, custom, usages, tenets, relationships and its applicability in relevant aspects in IPC etc.- Character evidence- civil and criminal cases- principles, applicability, exceptions and evidentiary value- Character of parties, accused, third parties, witnesses- evidence of character of victims of sexual offences pertaining to previous sexual experience regarding issues of consent and its applicability in relevant aspects in Bharatiya Niyama Sanhita, 2023.

Unit III

Facts admitted need not be proved- Judicial notice - Rule against Hearsay Evidence- Oral and documentary evidence- Primary evidence – explanations - Secondary evidence- kinds – conditions regarding admissibility- Admissibility of electronic or digital records in this context- Rules regarding admissibility of electronic evidence- Cyber laws and electronic evidence- Advanced use of Scientific, technological knowhow and admissibility of such evidences – Admissibility of electronic evidences– Judicial Trend in appreciation of such evidences. Proof of execution of documents- Attestation- Verification of Handwriting, signatures and digital signatures to prove execution – Kinds of documents and electronic records- Certified copies of public documents and electronic records-Presumption as to genuineness of documents including digital and electronic records, digital signatures - Exclusion of oral by documentary evidence- Ambiguity in documents

Unit IV

Burden of proof- concept- Application at different levels- Standard of proof- General and special exceptions- Kinds of Presumptions – Presumption of law, fact and conclusive proof - Presumptions and burden of proof- - Presumption as to legitimacy of child and presumption as to matrimonial offences- dowry death – abetment to commit suicide by a married woman - Presumptions as to life and death - Presumptions as to absence of consent in rape – Presumption as to certain Offences –Reversal of burden of proof - Estoppel- Scope, principle, kinds, applicability- Waiver and presumption.

Unit V

Trial- Relevance of evidence taken before trial- competency and compellability of witnesses- Privileged communications - Categories, scope and exceptions - Production and Examination of witnesses – Production of documents- applicable provisions of CPC and Bharatiya Nagarika Suraksha Adhiniyam, 2023 - Examination of witnesses and various categories of examinations- Rules pertaining to various examinations in various contexts of offences- Corroboration and contradiction- Principles and mechanics- Hostile witnesses- Witness protection programme- S. 398 Bharathiya Nagarik Suraksha Niyam, 2023 - Leading questions- Refreshing memory- Compulsion to answer questions- Improper admission or rejection of evidence- Judge's power to intervene in trial.

Suggested readings include the following.

1. Bharathiya Sakshi Adhiniyam, 2023, Bare Act
2. Bharathiya Nagarik Suraksha Adhiniyam, 2023 Bare Act
3. Bharathiya Nyaya Sanhitha, 2023, Bare Act
4. Information Technology Act, 2002, Bare Act
5. S.S. Wagh*, Basic Law of Evidence: The Bharatiya Sakshya Adhiniyam*, 2023 (2024)
6. M.Monir, *Textbook on The Bharatiya Sakshya Adhiniyam*, 2023 (2024)
7. Vageshwari Deswal, Saurabh Kansal, Shruti Goyal, *Taxmann Law and Practice Series (Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS), Bharatiya Sakshya Adhiniyam (BSA)* (2024)
8. Batuk Lal, *The Law of Evidence* (2024)
9. Yuvraj P Narvankar, Electronic Evidence in the Courtroom A Lawyer's Manual (2022)

10. Lexis Nexis *Ratanlal & Dhirajlal The Law of Evidence*, (2022)
11. B M Prasad & Manish Mohan*, Sir John Woodroffe and Syed Amir Ali's Law of Evidence* (4 Volumes), (Lexis Nexis Butterworths , 20th edn., 2017)
12. Dr Shakil Ahmad Khan, *Ratanlal and Dhirajlal's Law of Evidence*, (Lexis Nexis Butterworths 26th edn., 2019)
13. Abhinandan Malik, *V.P. Sarathi's, Law of Evidence*, (EBC 7th edn., 2017)
14. Avtar Singh, *Principles of The Law of Evidence*, (2018)
15. Dr. V.Krishnamachari, *Law of Evidence,* (7th edn., Gogia & Co., 2017)
16. Justice U.L. Bhat. *Lectures on The Indian Evidence Act*, (2016)
17. Justice U.L. Bhat*, Relevancy, Proof and Evaluation of Evidence in Criminal Cases,* (2013)
18. *C.D. Field's Commentary on Law of Evidence* (13th edn., 2013)
19. Dr.Jaisingh P. Modi, *A Textbook of Medical jurisprudence and Toxicology*, (LexisNexis Butterworths, 25th edn., 2016)
20. Law Commission*, 198th Report on Witness Identity and Protection and Witness Protection Programme,* (2006)
