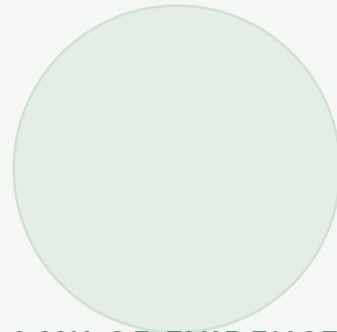




LAW OF EVIDENCE

UNIT - V

Witnesses • Examination • Privileges • Corroboration

Twenty slides in this unit

1. Competence 118–120

2. Privileges 121–132

3. Official / professional

4. s.122 spouses

5. Accomplice 133

6. s.134 number

7. Exam-in-chief 137

8. Cross 138 / 146

9. Leading questions 141–143

10. Hostile 154

11. Contradiction 145

12. s.165 judge

13. Corroboration 156–157

14. Improper questions

15. Cases competence

16. Cases hostile

17. Cases privilege

18. Takeaways

19. BSA map

20. Close

Competence – ss.118–120

All persons are competent unless the court finds they cannot understand questions or give rational answers (tender years, extreme old age, disease). A child who understands may testify.

s.118

The default is competence.

s.119

Dumb witnesses – writing or signs.

s.120

Parties and spouses are competent in civil cases; in criminal, the accused is competent but not compellable against himself in the old frame – pair with Art. 20(3).

Voir dire

Court tests a child before recording.

Privileges – ss.121–132

s.121

Judge or Magistrate not compelled on their conduct in court.

s.122

Communication during marriage – barred, with crime/violence exceptions.

s.123–124

Affairs of State and official communications.

s.126–129

Professional legal communications – advocate–client.

s.127–128

Interpreters and clerks of lawyers; waiver.

s.132

Witness not excused from answering on the ground of incrimination, but the answer may be protected from use – read with Art. 20(3).

Examination structure – ss.135–166

Order of production is the court's (s.135). Examination-in-chief, cross, re-examination (s.137). Cross may test truth and credit; leading questions belong mainly in cross (ss.141–143).

Chief

Non-leading; the story in the witness's words.

Cross

Leading allowed; credit, inconsistency, interest.

Re-exam

Explain what cross opened; no new matter without leave.

s.146

Questions as to credit, character for truth, or a previous conviction.

Hostile witness, contradiction, judge

s.154

Court may permit the party to cross-examine its own witness.

Hostile ≠ discarded

The useful part may still be accepted (Sat Paul; Khujji).

s.145

Cross on a previous writing – confront with the parts used.

s.155

Impeaching credit by bribery proof, inconsistent statement, etc.

s.165

Judge may ask any question and order any document – the active court.

s.136

Judge decides the admissibility chain as questions are put.

Corroboration and accomplices

s.133 says an accomplice is a competent witness and a conviction on an uncorroborated accomplice is not illegal. s.114(b) still warns that it is unsafe. Practice follows the warning.

s.133 vs 114(b)

Legal competence versus prudence.

What corroboration

Independent evidence connecting the accused with the crime – not a second accomplice echo (Rameshwar).

s.157

Former statement to corroborate, made at or about the time.

Sexual-offence history

Old 'need corroboration' rule has been pushed back; still quality-tested.

Witnesses and examination

Vadivelu Thevar (1957)

Quality of the witness, not the count.

Sat Paul (1976)

Hostile witness – usable residue.

Khujji v. State of M.P.

Hostile does not mean the whole story is false.

State of Rajasthan v. Kalki

Related witness is not a tainted witness per se.

Rameshwar (1952)

Accomplice corroboration – nature of independent support.

State of U.P. v. Deoman / later s.165 notes

Judge's power to question.

Improper questions and protections

ss.148-149

Court may forbid indecent, scandalous, or needlessly offensive questions.

s.151-152

Insulting and annoying questions.

Sexual-offence shields

CrPC / BSA / special Acts limit questions on past sexual history.

In-camera

Dignity of the victim-witness.

Child witnesses

Support persons, breaks, simple language.

s.147 / 153

When a witness must answer; contradiction on answers going to credit.

Leading questions – when allowed

ss.141–142

A question that suggests the answer.

Not in chief

Except on undisputed facts or a hostile witness.

Cross

Freely allowed.

s.143

Court can permit a leading question in chief for speed.

Child / aged

Court often relaxes form, not truth-testing.

Trap

A leading chief can wreck a key identification.

s.154 hostile – courtroom method

Ask the court for leave when the witness resiles from the s.161 / proof-affidavit story. Then treat as a cross-examinee.

Leave

Recorded in the order sheet.

Use

Contradiction + any residue that still rings true.

Not automatic discard

Sat Paul rule.

Prosecutor ethics

Do not declare hostile merely because the witness is inconvenient on one point.

Privileged professional list

Advocate s.126

Communications in the course of employment.

Crime/fraud exception

No privilege to plan an offence.

Client waiver

Express or implied by suing the lawyer.

Doctors

Not in s.126; other statutes / ethics may bind.

Journalists

No general IEA privilege.

State secrets s.123

Head of department objection; court still scans.

IEA → BSA map (Unit V)

IEA 118-120

Competence.

IEA 121-132

Privileges.

IEA 133-134

Accomplice / number.

IEA 135-166

Examination code.

IEA 154

Hostile.

IEA 165

Judge's questions.

Key takeaways

- 01 Competence is the default (s.118); privilege is the exception.
- 02 Chief – cross – re-exam is the spine; leading questions live in cross.
- 03 Hostile under s.154 does not wipe the testimony.
- 04 s.133 allows accomplice evidence; s.114(b) demands caution.
- 05 s.165 lets the judge search for the truth.
- 06 Cite *Vadivelu Thevar*, *Sat Paul*, *Rameshwar*, *Kalki*.

Order of examining a witness

Oath

Then chief.

Chief

Non-leading story.

Cross

Other side tests.

Re-exam

Repair only.

Court questions

s.165 anytime.

Recall

s.138 / court leave.

When you may declare hostile

Resiles from s.161

Classic.

Resiles from examination-in-chief start

Yes.

Merely incomplete

Usually no.

After leave

Leading + contradiction.

Residue

Can still convict on the true part.

Defence witness

Same tool in reverse.

Art. 20(3) and s.132

The accused cannot be compelled to be a witness against himself. A witness who is not the accused can be compelled to answer, with use-immunity under s.132.

Accused

Not a compellable prosecution witness against himself.

Co-accused

Complex; often tried together issues.

Witness

Must answer; protection is against later use.

Selvi

Forced narco is testimonial compulsion.

Corroboration catalogue

Accomplice

s.114(b) + Rameshwar.

Child

Quality tested; some corroboration comforts.

DD

Not legally required if clean.

s.27 recovery

Mahazar + panch.

Extra-judicial confession

Treat as weak; seek support.

Related witness

No extra rule; only caution.

Exam section pack – Unit V

118

Competence.

122 / 126

Spouse / lawyer privilege.

133 / 134

Accomplice / number.

137–138

Chief and cross.

154 / 165

Hostile / judge.

145 / 157

Contradiction / corroboration.

End of UNIT – V

Law of Evidence • Five units complete