Obaidul Huq Chowdhury's

The

Evidence Act

[I of 1872]

Fourth Edition
2004

DLR

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The
Evidence Act
[I of 1872]

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2004

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Preface
to the 4th edition

It is needless to point out that the Evidence Act, 1872 is a very important publication of DLR Law Book Series.

Everybody knows that the Evidence Act is the Instrumental Law Book for the civil & criminal practitioner. The 3rd edition was published in February 1999. The entire stock was sold out long before. With the growing and incessant demand for the book, DLR has ventured to publish the 4th edition with comprehensive feature and updated civil & criminal case laws of the Supreme Court reported in the Law Journals viz DLR, BLC, PLR, MLR and BLD. The usefulness and popularity of the publication is evidenced from the facts that it gives us the impetus to publish this edition without further delay although DLR has to face impediments like escalation of price of printing materials and other costs related thereto. For that there appears some undesirable delay in bringing out this edition.

Utmost care has been taken to insert the amendments of the sections uptill now and incorporation of uptodate case laws in the right place. In the last part of the book, an exhaustive index has been put in in order to help the reader to locate the desired thing in shortest possible time minimising labour and saving of time. The noble ideas with which our late lamented Founder Editor, Mr Obaidul Huq Chowdhury took the arduous task of drafting this publication with his earnest endeavour and missionary zeal is eloquently reflected to make this attractive and comprehensiveness in this edition.

We express our warm thanks to Mr Md Abdus Sattar, M Com LLB, Advocate, Supreme Court, High Court Division who has revised

and enlarged this edition in a record time. Thanks are also due to the staff for prompt composing, proof reading and printing, especially Mr Kamal Hossain, Computer-in-Charge to bring out the edition quickly.

We will be happy in receiving suggestions from our learned and esteemed readers so as to enable us to make the next edition more perfect, useful and updated also. Pointing out any printing mistake, inadvertent error or omission, if any, will be very much appreciated.

Dhaka
November, 2004
3K, Thai A^+ P 70gm MO

Publisher

Preface
to the 3rd edition

The popularity of this publication is well known which is evident from the fact that the previous edition, in its entirety, has been sold out within a short time.

Editing of a publication is a delicate job, especially when it becomes popular. As we know the Evidence Act is one of the important pillars of the whole process of legal profession. It is also the handy and key book for Civil and Criminal Lawyers. Being imbued with its growing demand and for the sake of moral obligation to make the publication updated we endeavour to publish the Third Edition although DLR is currently facing manifold problems.

Since the publication of the last edition in 1990 we have come across a large number of cases in the DLR and BLC and BLD which are worth reporting and, as such, we have endeavoured to incorporate those cases and amendments in this edition in order to cater to the needs of the learned Readers. We do hope that this edition will be much useful to the members of the legal profession and the public as a whole.

The price of the publication has been kept at a moderate level, almost the same price as that of the previous editions keeping in view the needs of the Junior Lawyers so as to encourage them to purchase Law books more and more.

We express our warm thanks to Mr Md Abdus Sattar, M Com LLB, Advocate Supreme Court, High Court Division who has revised and enlarged this edition in a record time.

We also record our sincere thanks to Mr Rahmatullah Sarker, Advocate, Supreme Court who has taken pains to improve the quality

of the book making it mistake free and bringing the book within the desired comprehensiveness.

We dedicate this attractive and comprehensive publication to our revered Founder Editor of DLR, Late Janab Obaidul Huq Chowdhury who had compiled the book originally.

Thanks are also due to the staff for prompt composing, proof reading and printing to bring out the publication in a record time. In spite of our best efforts there might be some errors or omissions for which we shall be thankful if those are brought to our notice. We will be looking forward to receiving any meaningful suggestions from our learned Readers and those will be kept in view in the next edition. We would feel our labour well paid, if the learned Readers find this publication useful.

Dhaka
February 1999

Publisher

Preface
to the 2nd edition

The compilation of a publication of legal matters in Bangladesh is a hazardous task because the demand of law books in our country is comparatively less. The first edition of the book was published in 1974. The book has been out of print since 1980. However, with the growing and incessant demand for the book, the DLR has ventured to publish the second edition.

It is needless to point out that the Evidence Act is one of the pillars of both Criminal and Civil Law. Having regard to the importance and comprehensive exposition of a law like Evidence Act and since there is a growing demand for an authentic book in the market and keeping in view that the updating task of law books is necessary, it is a humble endeavour to publish the second edition. The usefulness and popularity of the 1st edition is evidenced from the fact that it warrants to make another edition. With the humble apology of DLR to its readers, it is conceded that because of preoccupation with other works and impediments like escalation of price of printing materials, there has been some delay in bringing out this edition.

In preparing the edition, utmost care has been taken in all respects, particularly insertion of the amendments of the sections until now since the 1st edition and incorporation of up-to-date case laws of Supreme Court reported in the DLR. This edition has been considerably expanded and enriched with new annotations and without changing the basic structure of the first edition. The topics have been arranged analytically with incorporation of synopsis of important topics. The reference to amendments in the last part of the book will help in minimising labour and saving of time to locate all those.

It has also been endeavoured to explain and illustrate all principles with comparative exposition of case laws and other discussions. The

earnest endeavour and the missionary zeal and the noble ideas with which the late lamented Editor took the arduous task of making exposition of this important branch of law is eloquently reflected and demonstrated in this edition of the book.

Mr S Rahmatullah Sarker, Advocate, Supreme Court of Bangladesh, was assigned with the task of revision and compilation of the book. He has done this task thoroughly with much care and ability. DLR also appreciates the assistance rendered by Mr Md Abdus Sattar, M Com LLB for his valuable suggestions to make the book a standard one and for preparation of the index.

Our sincere thanks are due to Mr Kamal Hossain Computer-in-Charge to bring out the edition quickly.

The DLR will be thankful to its learned readers, if this edition can meet their demand. Any suggestion or pointing out any printing mistake, inadvertent error or omission will be very much appreciated so as to make further improvement in the future editions.

Dhaka
August 1990

Publisher

Preface
to 1st edition

This is another publication of our Law books series and two others closely connected and indeed looked upon as constituting one inseparable part on criminal law, namely, the Penal Code (XLV of 1860) and the Criminal Procedure Code (V of 1898), are respectively being followed up with as much speed as is practicable.

These are very important books and are much in need of, specially by the new entrants to the Profession. All these books are being provided with case law decisions covering the last quarter of a century and whenever found possible other decisions of Pakistan origin have been added.

There being an acute scarcity of law books in the country, we, in our humble way, are bringing out as many as possible and we hope that all the important books will appear in course of time.

All the amendments necessitated with the emergence of Bangladesh as a new state have been duly inserted in appropriate places.

A few words we may add as to the very high cost of paper and all other printing materials which have been naturally reflected in the price of books. We have tried to follow a moderate line in this respect having regard to the present abnormal situation in the country.

Dhaka
August, 1974

Publisher

The

Evidence Act

[I of 1872]

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DLR	=	Dhaka Law Reports
BLC	=	Bangladesh Law Chronicles
BLD	=	Bangladesh Legal Decisions
MLR	=	Mainstream Law Reports
BCR	=	Bangladesh Case Reports
BSCR	=	Bangladesh Supreme Court Reports
BSCD	=	Bangladesh Supreme Court Digest
BLT	=	Bangladesh Law Times

Indian Law Journals :

AIR	=	All Indian Reporter
DAIR	=	Digests to All India Reporter
SSC	=	Supreme Court Cases
SCD	=	Supreme Court Digest

Citations of Law Journals

DSCC	=	Digest of Supreme Court Cases
SCJ	=	Supreme Court Journal
SCR	=	Supreme Court Reports

Pakistan Law Journals:

PLD	=	Pakistan Legal Decisions
SCMR	=	Supreme Court Monthly Review
MLD	=	Monthly Law Digest
NLR	=	National Law Reporter
PSC	=	Pakistan Supreme Court Cases
CLJ	=	Civil Law Judgments
PLJ	=	Pakistan Law Journal
YLR	=	Yearly Law Reports

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The

Evidence Act

[I of 1872][1]

[15th March, 1872]

Preamble : Whereas it is expedient to consolidate, define and amend the law of Evidence; It is hereby enacted as follows :—

Case Law

Facts recited in a preamble are admissible in evidence as *prima facie* evidence of their truth. (Maxwell's Interpretation of Statutes 12th Edn. P9).

Preamble of a statute may be referred to as an aid to the interpretation of the statute itself, but it cannot be the basis of construing the provisions of the statute. *Bangladesh vs Md Misfor Ali 34 DLR (AD) 304.*

The statute, if expressed in clear and unequivocal terms, will override the preamble. *104 IC 661.*

The question of interpretation of the Preamble of an Act arises only when there is ambiguity with regard to the words of the section, when the section is clear on the point it is not necessary to consider the preamble. *Nuruddin Khan vs Kuti Barubibi 4 DLR 619: (Maxwell's Interpretation of Statutes, 9th Edn P 48, 229).*

The preamble of a Statute is a good means of finding out its meaning, and a key to the understanding of it; and, as it usually states the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted to solve any ambiguity, or to fix the meaning of words which may have more than one; or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt. *Maxwell's Interpretation of Statutes 8th Ed. 40; 41 PLR 272: 69 CLJ 273.*

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1. For Statement of Objects and Reasons, see Gazette of India, 1868, page 1574; for the draft or preliminary Report of the Select Committee, dated the 31st March, 1981, see ibid., 1871. Part V, page 273, and for the second Report of the Select Committee, dated the 30th January, 1972, see ibid. 1872, Part V page 34; for discussions in Council, see ibid., 1868, Supplement, pages 1060 and 1209. ibid, 1871. Extra, Supplement, page 42, and Supplement, page 1641, and *ibid.*, 1872, pages 136 and 230. The Act has been declared to be in force in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (I of 1900).