

(2) Eg. a presumption of law is that an infant under 7 years cannot commit a crime (irrebuttable)  
 Arrebuttable - presumption of fact is that a child born during wedlock is legitimate

all presumptions of fact are rebuttable  
 eg. equivalent to circumstantial evidence

# EVIDENCE.

an irrebuttable presumption of law is conclusive evidence

1. What is the difference between *prima facie* and conclusive evidence? Give illustrations of each.  
*Prima facie evidence is that which can be rebutted. Conclusive evidence is that which cannot be rebutted.*
2. What different kinds of presumptions are there? Give examples.  
*Irrebuttable presumption of law, rebuttable presumption of law, presumptions of fact, the person alleging the affirmative.*
3. What is meant by the burthen of proof? On whom does it lie generally? Is it ever shifted? Illustrate?  
*Yes if defendant pleads affirmative plea eg. where a bond is given & deft pleads a release*
4. If the fact to be proved is what lands were conveyed by A to B is a written contract between A and B for the sale and purchase of the lands competent evidence to prove the fact?
5. In case a witness has made statement oral or written on some previous occasion contrary to his evidence can you always give evidence of such statement, and subject to what conditions; and how may you do it?  
*Yes but his attention must be called to the circumstances under which such statement was made*
6. If a person has been examined as a witness in Court can you produce the evidence given by him in any subsequent occasion you may desire it, irrespective of conditions, or under what circumstances may you do so?  
*Yes but his attention must be called to the circumstances under which such statement was made*
7. Must all facts be proved to a jury by a sworn testimony of witnesses or may it happen that the jury can decide a fact by the exercise of their own senses? If so, give an illustration?  
*No, unless always. Eg. where prisoner has clothes for stealing, and he had in his possession a quantity resembling a portion of that originally taken a comparison with the wheat found with a couple of persons belonging to the same party.*
8. Are there any limitations to the rights of a party to prove any fact material to the issue by any witness he can produce? If you know of any state them.  
*Communication under duress & extortion*
9. Are there any matters not provable by a single witness uncorroborated? If so what matters?  
*Yes Treason, perjury, and attestation of will, breach of promise of marriage*
10. Is it necessary that corroborative evidence should be in the form of testimony of a second witness? If not what else would be a corroboration?  
*No, circumstances would be a corroboration*
11. What general Statutes do you know of relating to the subject of evidence?  
*Cur. Evidence Act 193, County Stat. cap 46 and amendments*
12. If evidence be received on a trial and the Judge before trial is concluded is satisfied he erred in the reception of it is there any way by which he can clear the case of the pernicious effect of such evidence or must it be made ground for a new trial?  
*Yes can withdraw it from jury. See *Ferguson v Johnston* 19 and *Phillips v Stephenson* 21 KB*
13. If your adversary has a paper you want to put in evidence how can you get it, and if he refuses to produce it on trial what are your rights and under what conditions are they available to you?  
*Give notice to produce, if not produced you can give secondary evidence of contents*
14. What is necessary to be done by you to entitle you to use a certified copy of a registered deed in evidence?  
*It is necessary to have an affidavit that the deed is not under the control of the party and that he does not know where it may be found & to give at least 3 copies to the adverse party. The notice to be accompanied by a copy of the Act & copy and of the affidavit*
15. Is a memorandum in writing of any fact, made by a witness at the time of the fact receivable in evidence, or what use can be made of such a memorandum?  
*The memorandum itself is not admissible in evidence but witness may refer to it to refresh his memory*
16. In an action for negligent driving might the defendant properly be asked by his Counsel whether anything more could have been done by him than was done to prevent the collision which occurred and if not why not?  
*No witness can only give evidence of matters of fact not of opinion.*
17. Should a conviction grounded on the sole evidence of an accomplice be bad in law?  
*The unsupported evidence of an accomplice is highly inadmissible, but it is venial for a judge to tell a jury that they may convict on it.*
18. Translate the following maxim and give an illustration of its application to the law of evidence. *Omnia presumuntur contra spoliatores.*

means must

(7) Circumstantial evidence  
 a quantity resembling

X

Every presumption is made against a wrong doer!  
 Illustration: *Armori - Deboner*  
*Chisney Sweep case*

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