

FREE JUDICIARY CLASSES
BSA 2023 #22

Course of Business

क्या Relevant

होता है?

Admissibility

Relevant

By Tansukh Paliwal





14. Existence of course of business when relevant.

When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

- ***Illustrations.***

- (a) *The question is, whether a particular letter was dispatched. The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place are relevant.*
- (b) *The question is, whether a particular letter reached A. The facts that it was posted in due course, and was not returned through the Return Letter Office, are relevant.*



Statements by persons who cannot be called as witnesses

26. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases, namely:—

उन व्यक्तियों के कथन, जिन्हें साक्ष्य में बुलाया नहीं जा सकता

26. वे दशाएं जिनमें उस व्यक्ति द्वारा सुसंगत तथ्य का किया गया कथन सुसंगत है, जो मर गया है या मिल नहीं सकता, इत्यादि।

सुसंगत तथ्यों के लिखित या मौखिक कथन, जो ऐसे व्यक्ति द्वारा किए गए थे, जो मर गया है या मिल नहीं सकता है या जो साक्ष्य देने के लिए असमर्थ हो गया है। या जिसदी हाजिरी इतने विलम्ब या व्यय के बिना उपाप्त नहीं हो जा सकती, जितना मामले हो परिस्थितियों में न्यायालय को अयुक्तियुक्त प्रतीत होता है, निम्नलिखित दशाओं में स्वयमेव सुसंगत है, अर्थात्:



119. Court may presume existence of certain facts.

(1) The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

- ***Illustrations.***

The Court may presume that—

- (a) *a man who is in possession of stolen goods soon, after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;*
- (b) *an accomplice is unworthy of credit, unless he is corroborated in material particulars;*
- (c) *a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration;*
- (d) *a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence;*
- (e) *judicial and official acts have been regularly performed;*
- (f) *the common course of business has been followed in particular cases;*

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- (g) *evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it;*
- (h) *if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him;*
- (i) *when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.*

(2) The Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:—

- (i) **as to Illustration (a)**—a shop-keeper has in his bill a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;
- (ii) **as to Illustration (b)**—A, a person of the highest character, is tried for causing a man's death by an act of negligence in arranging certain machinery. B, a person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

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- (iii) as to Illustration (b)—**a crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;
- (iv) as to Illustration (c)—**A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was a young and ignorant person, completely under A's influence;
- (v) as to Illustration (d)—**it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;
- (vi) as to Illustration (e)—**a judicial act, the regularity of which is in question, was performed under exceptional circumstances;



- (vii) as to Illustration (f)—**the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;
- (viii) as to Illustration (g)—**a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feelings and reputation of his family;
- (ix) as to Illustration (h)—**a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;
- (x) as to Illustration (i)—**a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

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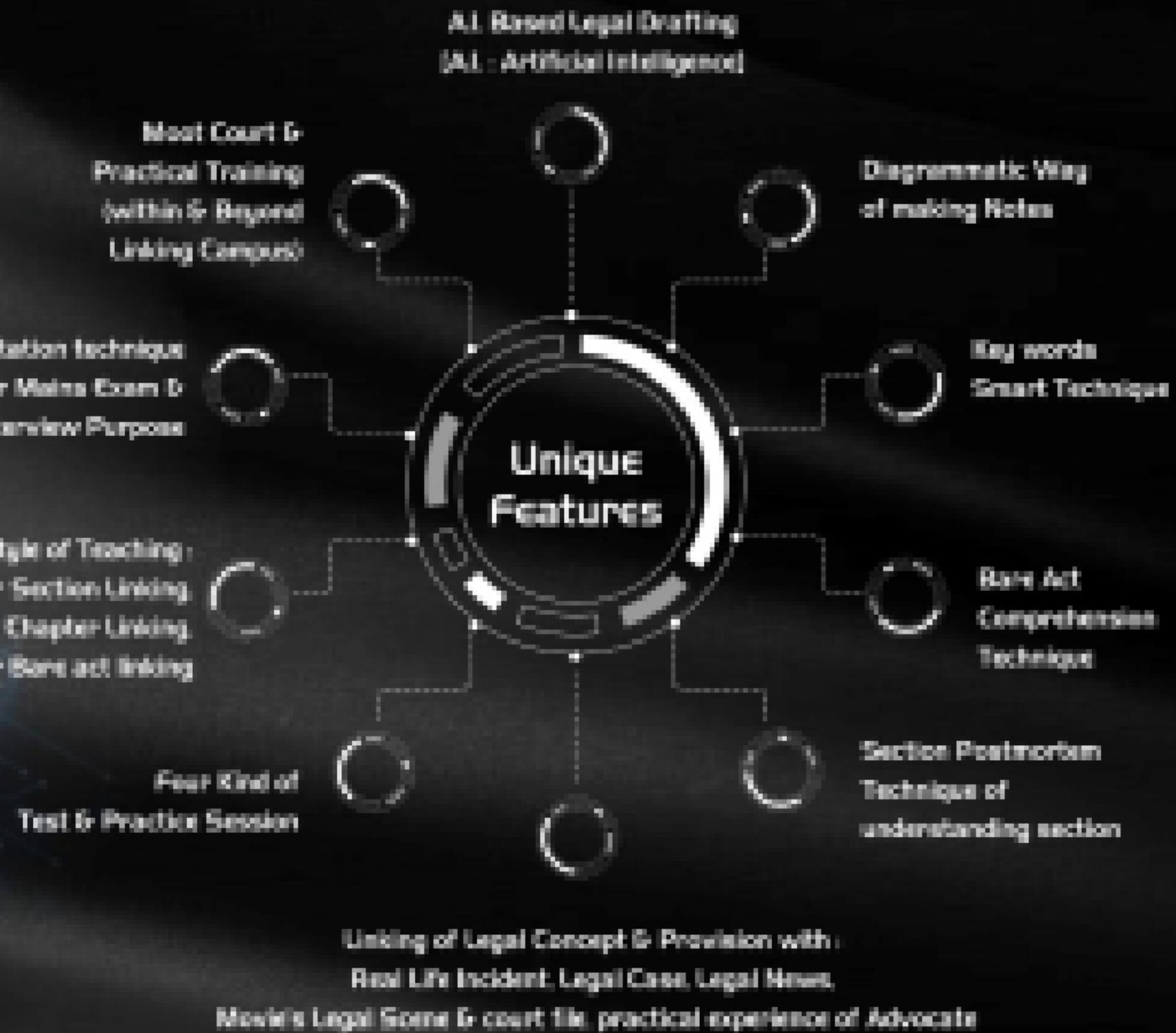


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