



EVIDENCE

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EVIDENCE

Any statement about facts of a matter under inquiry/investigation or a document or something for the inspection of the court, in the court of law under oath.

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TYPES OF EVIDENCE

1. **Oral Direct Evidence**
2. **Circumstantial(Indirect) Evidence**
3. **Hearsay/Oral Indirect Evidence**
4. **Documentary Evidence**
5. **Material evidence**



ORAL DIRECT EVIDENCE

When a person who himself has seen, heard or perceived something, gives his statement about it in the court directly.



CIRCUMSTANTIAL EVIDENCE

When the circumstance or
some place or something proves a fact
indirectly (Indirect Evidence).



HEARSAY EVIDENCE

When a person says that he has heard something from people and not seen, heard or perceived by himself directly(not valid).

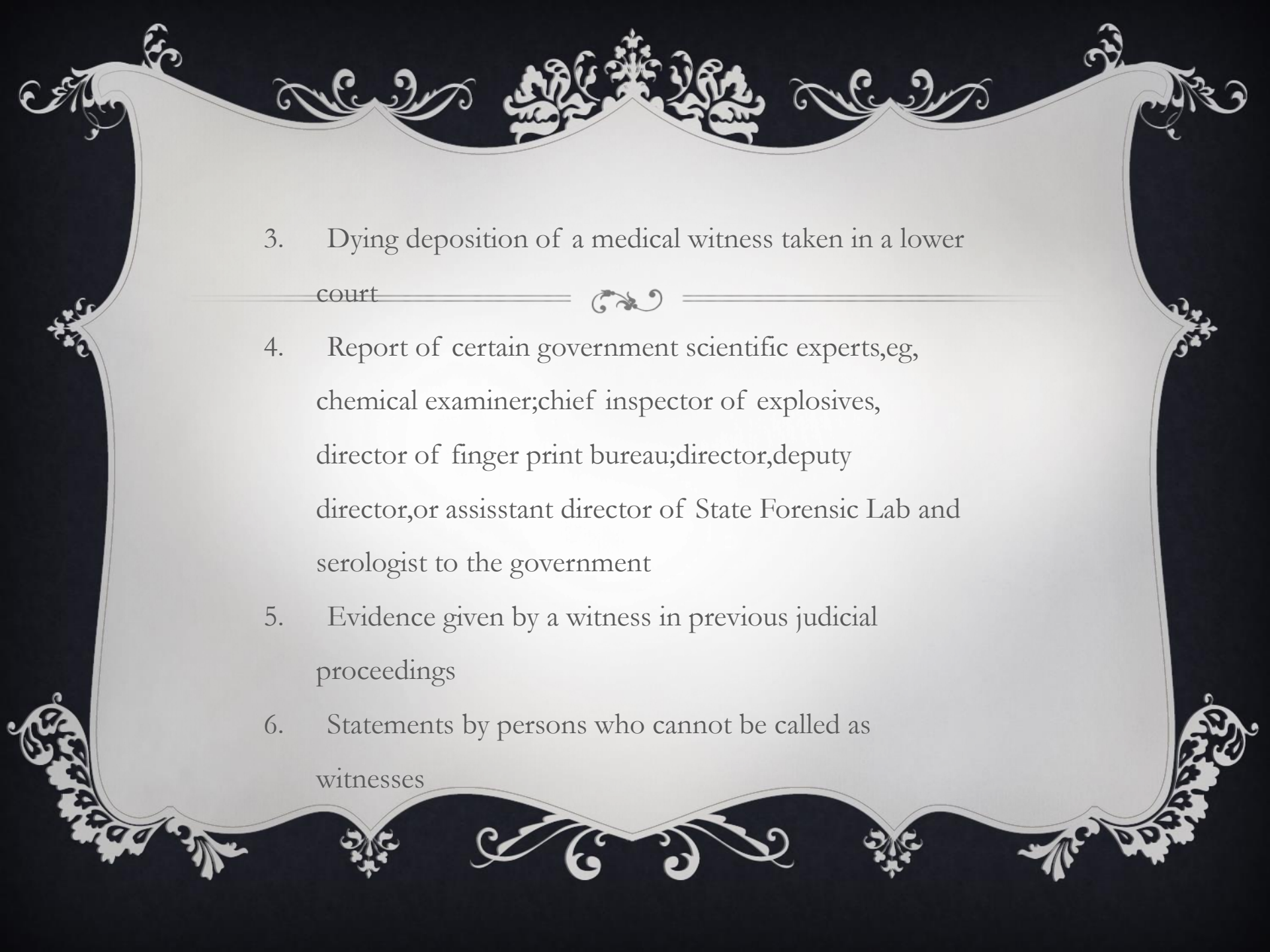


DOCUMENTARY EVIDENCE

When something is in writing, painting, sketch or photographic form, for inspection of the court (Medical Certificate, Medicolegal Report, Death Certificate, Age Certificate, etc).

ADMISSIBILITY OF DOCUMENTARY EVIDENCE WITHOUT ORAL EVIDENCE

- Although it is desirable that oral evidence must always be direct, yet, there are circumstances when this is either not possible or strictly necessary.
- In such cases, the person who has actually witnessed a particular incident, or heard, or perceived a thing in any other manner, need not himself come and state what he has seen, heard or perceived. His report, observation or statement is accepted as such.
- These **exceptions** are:
 1. Dying declaration
 2. Expert opinion expressed in a treatise



3. Dying deposition of a medical witness taken in a lower court

4. Report of certain government scientific experts, eg, chemical examiner; chief inspector of explosives, director of finger print bureau; director, deputy director, or assistant director of State Forensic Lab and serologist to the government

5. Evidence given by a witness in previous judicial proceedings

6. Statements by persons who cannot be called as witnesses



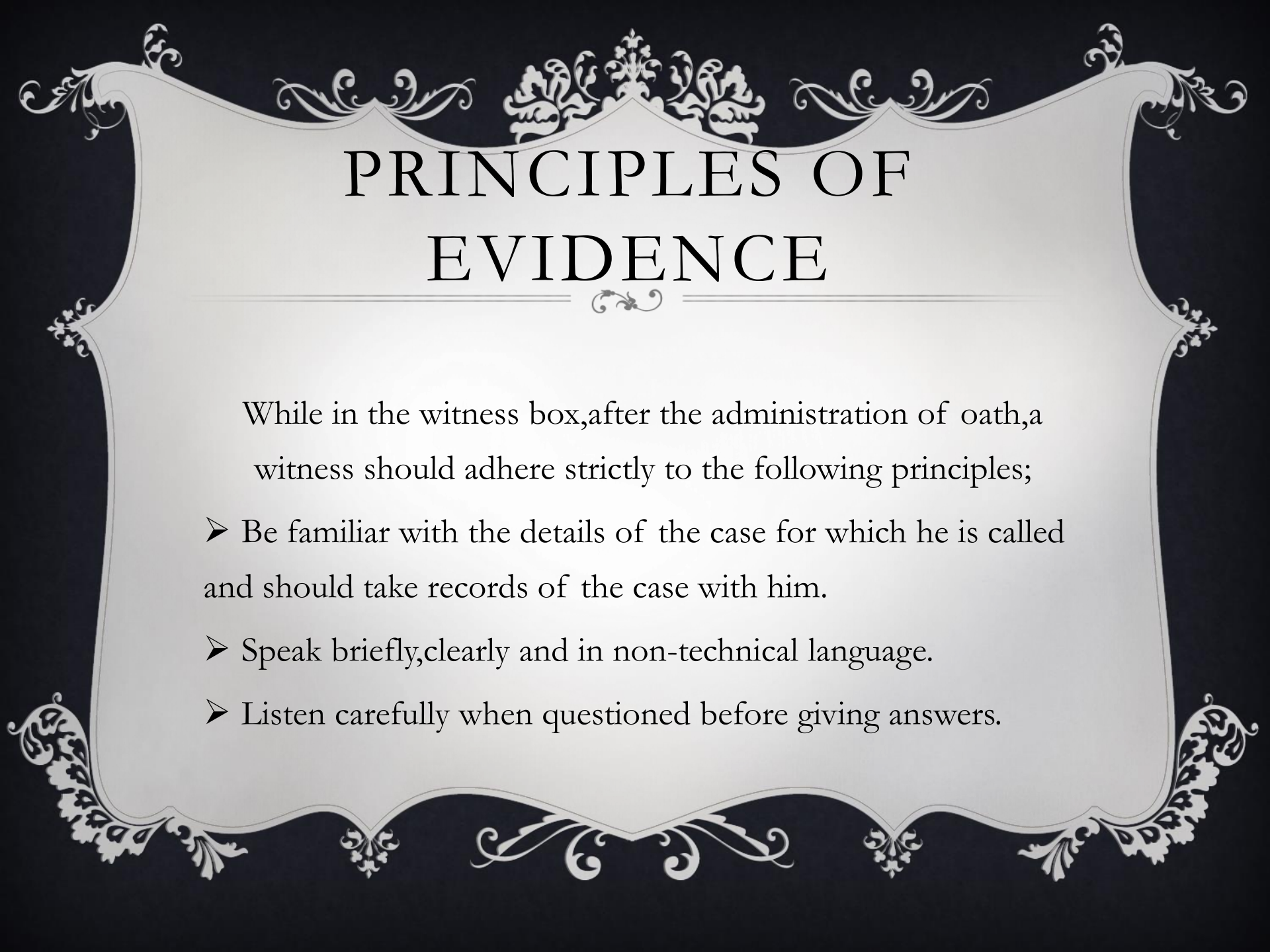
MATERIAL EVIDENCE

When some matter or material is placed in court for inspection (like bullet, empty cases of cartridges, dagger, axe, stick, etc).



TRACE EVIDENCE

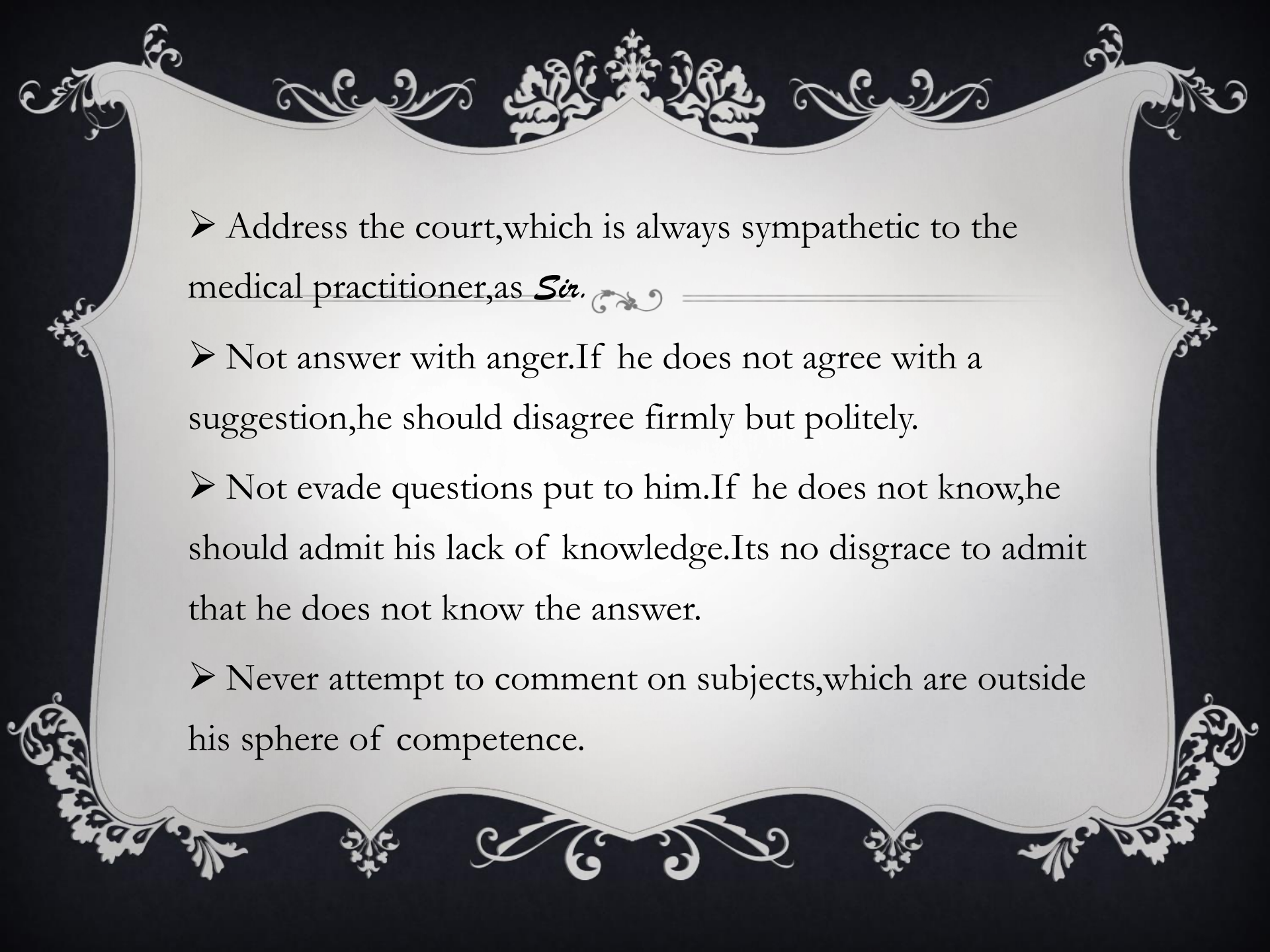
Physical evidence that is found in small but measurable amounts, such as strands of hair, fibers, or skin cells.

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PRINCIPLES OF EVIDENCE

While in the witness box, after the administration of oath, a witness should adhere strictly to the following principles;

- Be familiar with the details of the case for which he is called and should take records of the case with him.
- Speak briefly, clearly and in non-technical language.
- Listen carefully when questioned before giving answers.

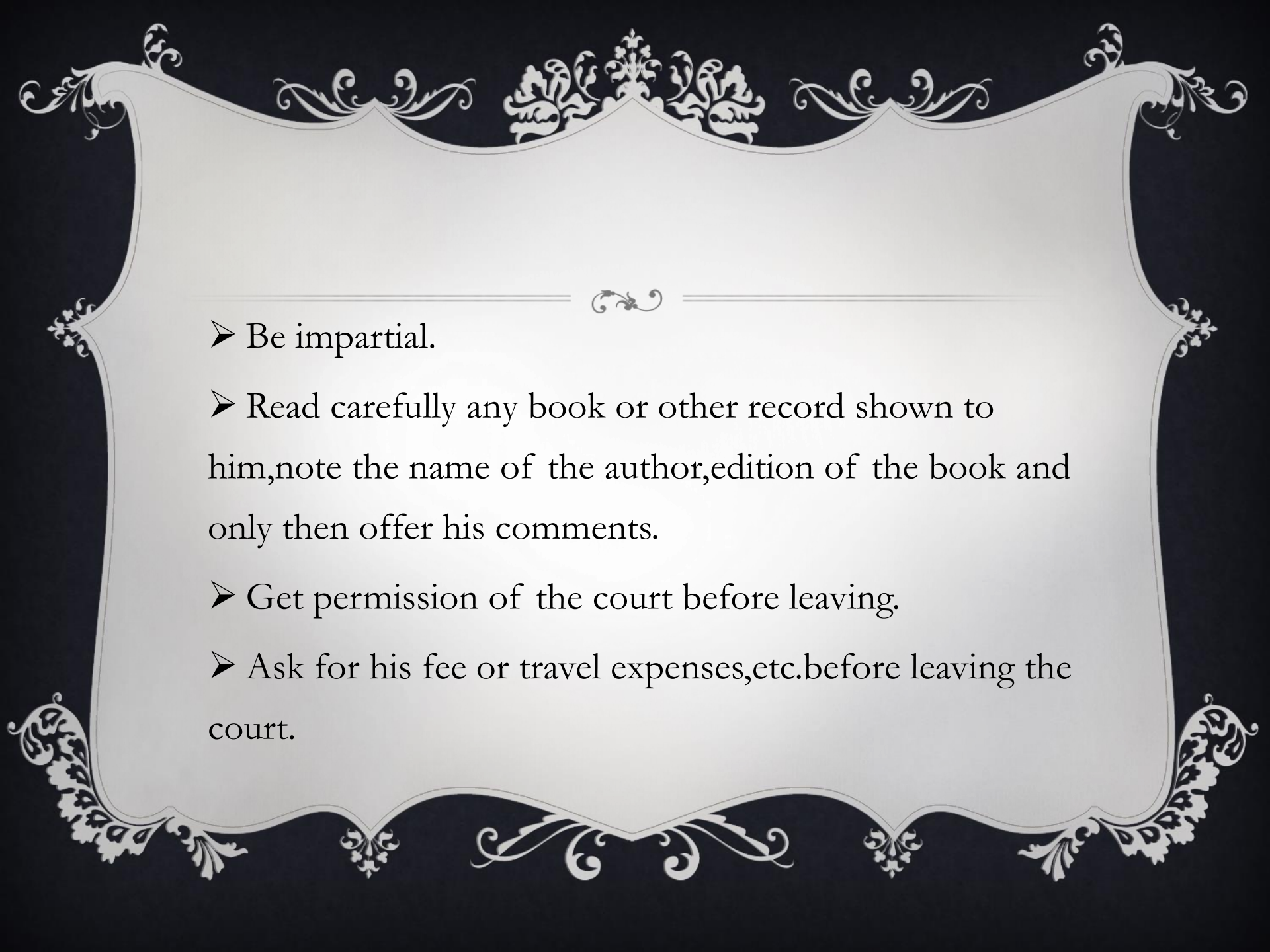
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➤ Address the court, which is always sympathetic to the medical practitioner, as *Sir*.

➤ Not answer with anger. If he does not agree with a suggestion, he should disagree firmly but politely.

➤ Not evade questions put to him. If he does not know, he should admit his lack of knowledge. It is no disgrace to admit that he does not know the answer.

➤ Never attempt to comment on subjects, which are outside his sphere of competence.

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- Be impartial.
 - Read carefully any book or other record shown to him, note the name of the author, edition of the book and only then offer his comments.
 - Get permission of the court before leaving.
 - Ask for his fee or travel expenses, etc. before leaving the court.

ADMISSIBILITY OF EVIDENCE

It is subject to the conditions that evidence must be;

- Relevant
- Confined to the matters in an issue
- It is the best evidence
- Hearsay evidence is not admitted
- A witness has to present the evidence whether direct, indirect or opinion of an expert to court of law in person and orally or in the form of a document.



PURPOSE OF EVIDENCE

- To lay down before the court of law entirely what the medical practitioner knows about the case.
- He should never omit any portion for any reason.



WITNESS

A **witness** is a person who gives sworn testimony(evidence)in a court of law in terms of facts and/the inferences that can be drawn therefrom.



TYPES OF WITNESSES

➤ **Common/Ordinary Witness**

➤ **Expert/Skilled Witness**

➤ **Hostile Witness**

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COMMON/ORDINARY WITNESS

One who gives sworn testimony regarding facts, eg, what he actually saw or heard. He cannot

1. draw any inference from the observations made by him
2. express any opinion on the observations made by others, and
3. volunteer a statement.

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EXPERT/ SKILLED WITNESS

Is a person who is especially skilled in foreign law, science, or art. His professional training or experience enables him to draw inference from or express an opinion on observations made by him or others. He can also volunteer a statement if he feels that justice is likely to be miscarried because the court failed to elicit an important point.

Examples of Expert Witness: hand writing expert, finger print expert, ballistic expert, chemical examiner, medical personnel skilled in special branches of medicine.

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HOSTILE WITNESS

One who purposely makes statements contrary to facts or to what he has already said in a lower court or in the same court on a previous occasion.

RECORDING OF EVIDENCE IN COURT

After a witness is administered oath in accordance to his belief, evidence is recorded in four steps which are as follows:

1. **Examination-in-chief;**the witness is first examined by the side which has called him(direct examination)
2. **Cross examination;**the witness is examined by the opposing counsel or the other side
3. **Re-examination;**the witness may be re-examined by the first party/counsel
4. Court Questions

EXAMINATION-IN-CHIEF

- **In private cases** the counsel(lawyer) for the side who has called the witness asks questions regarding the matter before the court.
- **In criminal cases or government prosecutions**,the public prosecutor asks questions of his interest and the witness answers.
- **The object** is to place/reveal before the court all the facts of the matter under investigation and if the witness is an expert witness,his interpretation of these facts.
- At this stage **no leading questions** are allowed except in those cases where the witness is declared hostile by the judge.



➤ If the witness is an **expert witness** then he places **his own interpretation/gives his own opinion** regarding the facts of the matter.

➤ There is **no time limit**.

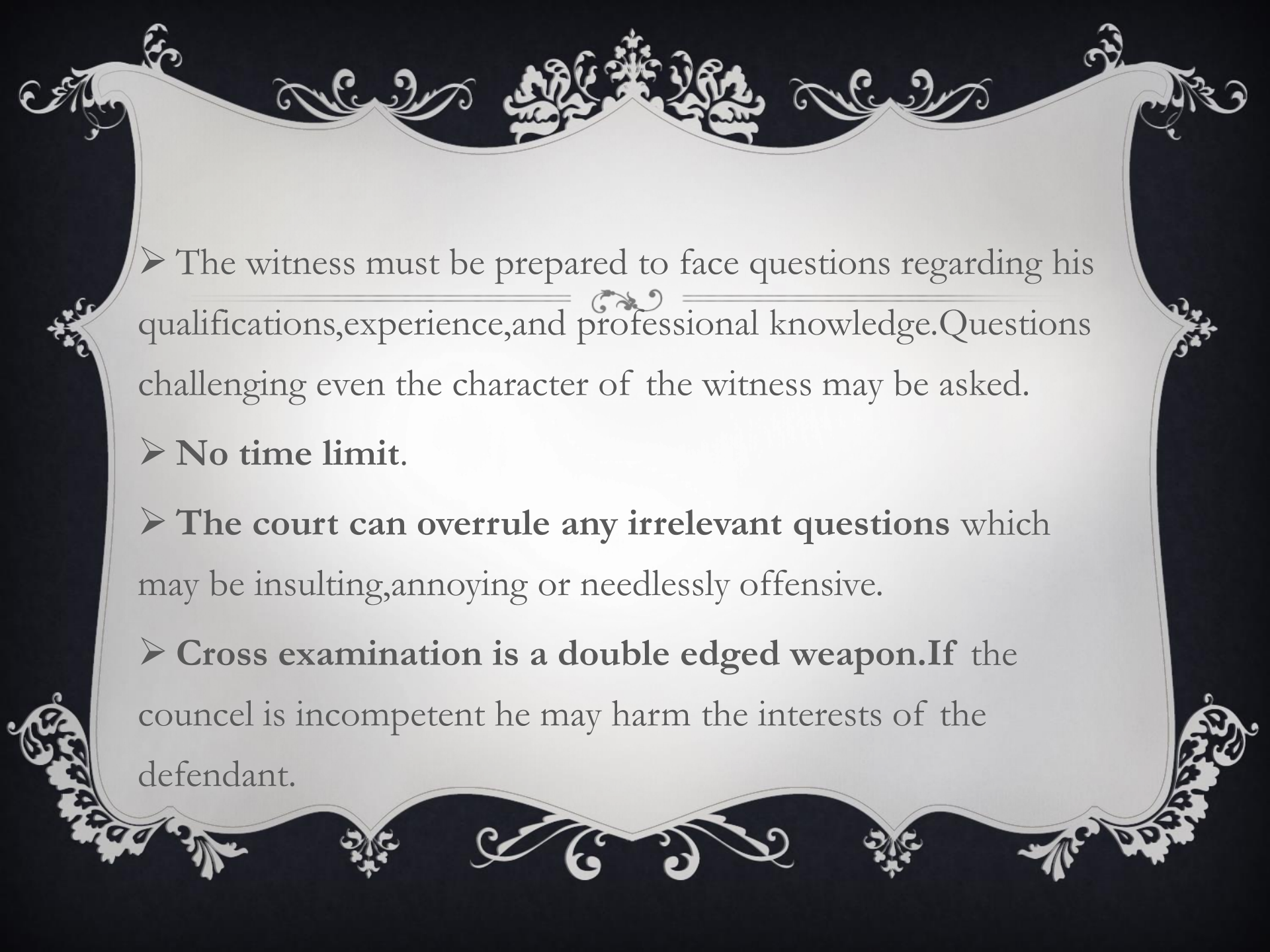
➤ The **judge** can ask questions during examination to clear doubts.

➤ The court may **declare a witness as hostile** if he gives false statements deliberately and punish him under **perjury**.

➤ The **witness leaves the witness box** after due permission of the court when examination is declared complete by the counsel.

CROSS EXAMINATION

- In this stage, the counsel of the opposite side/accused (defence counsel) starts his examination of the witness.
- He tries to extract from the witness any facts that may appear to be favorable to his client and which he believes to be within the knowledge of the witness. He tries to extract statements of his interest from the witness which were deliberately left by the prosecution.
 - **Leading questions** are therefore **allowed**.
- The object is to weaken the evidence of the witness by showing that his details are inaccurate and conflicting and to discredit the witness, create contradiction in his statement so that the matter becomes doubtful as benefit of doubt always goes to the accused.



➤ The witness must be prepared to face questions regarding his qualifications, experience, and professional knowledge. Questions challenging even the character of the witness may be asked.

➤ **No time limit.**

➤ **The court can overrule any irrelevant questions** which may be insulting, annoying or needlessly offensive.

➤ **Cross examination is a double edged weapon.** If the counsel is incompetent he may harm the interests of the defendant.

RE-EXAMINATION

- After cross examination, **the prosecution** has the right to **re-examine the witness**.
- **The object** is(1)to clear up certain ambiguities,uncertainties and doubts created in cross examination ;and(2)to explain some matter in proper perspective so that undue emphasis or possible misinterpretation can be avoided.
- **Leading questions** are **not allowed**.
- **No new matter may be introduced** without the permission of the judge and consent of the opposing council(defence council) for which the defence council will have the right to **re-cross-examine the witness**.

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LEADING QUESTIONS

A leading question is one that suggests
its own answer.

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COURT QUESTIONS

The judge may ask any question to the witness at any stage of trial to clear up any doubtful points.

DYING DECLARATION

It is a statement, verbal or written, made by a person since deceased narrating the cause of his condition or the circumstances leading to his impending death.

- If time permits, the attending doctor should arrange for a magistrate to record it (from a person who is likely to die of criminal violence).
- If the patient's condition is so grave (in bride burning cases, injury to vital organs, criminal abortion, etc) that death or unconsciousness may supervene before the arrival of a magistrate, the doctor should record it himself bearing in mind the following points :

➤ The doctor has to issue two certificate

1.to certify that the patient is in **compose mentis**

2.to certify that when the declaration was concluded,

it was read to the declarant and accepted by him

as being correctly recorded.

➤ The declaration must be made orally but the person recording it should commit to writing it in the same words and indications of the victim.

➤ It should be signed by the victim(or left thumb impression).It should be signed by the doctor recording it as well as two neutral witnesses.

➤ The investigating police officer should not be present.

➤ Victim is not under oath at this time.

➤ The declaration should be sealed in an envelope and directly delivered to the area magistrate.

DYING DEPOSITION

It is a statement on oath made by a dying person to a magistrate in the presence of the accused and his lawyer who has the opportunity of cross examining him(the victim).

Before recording it,the doctor should certify that the patient is in **compose mentis**.

It legally carries more weightage than Dying Declaration because

1. It is recorded by the magistrate
2. It is recorded in the presence of the accused and his lawyer who have the opportunity to cross examine the victim

DIFFERENCE

Dying Declaration

1. Case must be criminal one of homicide and circumstances of death is the subject of declaration.
2. Can be recorded by any credible person and the attending doctor
3. Legal formalities of oath not necessary
4. Presence of accused and his council not necessary
5. It should contain only the statement of dying person

Dying Deposition

1. Can be recorded in any case when the witness is critically ill.
2. It can be recorded by magistrate only
3. Oath is an essential prerequisite
4. Presence of accused and his council necessary
5. It includes the statement of the dying witness and cross-examination by accused

6. No leading questions/
cross examination

7. Statement strictly
about the
circumstances of death

8. Becomes valid only
upon death of
declarant

9. After recording, it must
be sent to local
magistrate

10. It has lesser value than
deposition

6. Leading questions
allowed in cross
examination

7. It may be about any
matter/not strictly
death

8. It remains valid
even if declarant
survives

9. Formality unnecessary,
being recorded by the
justice himself

10. It has greater value
than declaration



THE END