QANUN-E-SHAHADAT ORDER 1984

Different Stages of a Suit

❖ **Institution of a suit:**

The suit is instituted by presenting a plaint to the court or to such officers as the court appoints on this behalf. On such presentation the plaint is scrutinized to satisfy that it shows a cause of action, the relief claimed, sufficiency of court-fee limitation and the jurisdiction of the court. When the court is satisfied on the points noted above it admits the plaint and registers and numbers it.

❖ **Issue and service of summons:**

After admission of the plaint summons are issued to the defendants with a copy of plaintiff requiring him to appear and written reply the claim of the plaintiff.

❖ **Written statement:**

When service of summons is effected on the defendant he appears before the court on the date fixed and files a written statement of his defence dealing with each allegation of the plaint and admitting or denying each allegations.

❖ **Discovery:**

Every party is entitled to know the nature of his opponent's case and he is entitled to obtain admission from his opponent. The process by which the admissions are obtained is technically termed as discovery.

❖ **Issue:**

When the defendant has filed written statement and discovery has been made on behalf of the parties, issues are framed. The court examines the plaint. The written statement and strike issues which in other words mean points in dispute.

❖ **Evidence:**

After framing the issues the evidence of the parties is recorded according to the issues framed. The party on whom lies the onus of proof begins the evidence and the evidence of the opposite party is taken afterwards.

❖ **Arguments:**

❖ After taking the evidence the arguments of the parties are heard by the court.

Documentary evidence to be produced at or before the settlement of issues, Effect of non-production of documents, Rejection of irrelevant or inadmissible documents, Endorsements on documents admitted in evidence, Endorsements on copies of admitted entries in books and accounts and records are defined under Rule 1, 2, 3, 4 and 5 of Order XIII of Code of Civil Procedure 1908. Provisions under these Rules are:

Rule 1 Order XIII of Code of Civil Procedure 1908 "Documentary evidence to be produced at or before the settlement of issues"

(1) The parties or their pleaders shall produce, [at or before the settlement of issues], all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced : Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

Rule 2 Order XIII of Code of Civil Procedure 1908 "Effect of non-production of documents"

(1) No documentary evidence in the possession or power of any party which should have been, but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

(2) Nothing in sub-rule (1) shall apply to documents,-

(a) produced for the cross-examination of the witnesses of the other party, or

(b) handed over to a witness merely to refresh his memory.
The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Rule 4 Order XIII of Code of Civil Procedure 1908 "Endorsements on documents admitted in evidence"

(1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely : -

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted,

and the endorsement shall be signed or initialed by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

Rule 5 Order XIII of Code of Civil Procedure 1908 "Endorsements on copies of admitted entries in books, accounts and records"

(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (18 of 1891) where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished-

(a) where the record, book or account is produced on behalf of a party, then by that party, or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished. under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Production of document on which plaintiff sues, Statement in case of documents not in plaintiff's possession or power, Suits on lost negotiable instruments, Production of shop-book and Inadmissibility of document not produced when plaint filed are defined under Rule 13, 14, 15, 16, 17 and 18 of Order VII of Code of Civil Procedure 1908. Provisions under these Rules are:

Rule 14 Order VII of Code of Civil Procedure 1908 "Production of document on which plaintiff sues"

(1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

(2) List of other documents -Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

Rule 15 Order VII of Code of Civil Procedure 1908 "Statement in case of documents not in plaintiff's possession or power"

Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it i.

Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Rule 17 Order VII of Code of Civil Procedure 1908 "Production of shop-book"

(1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, 1891 (18 of 1891), where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) Original entry to be marked and returned- The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

Rule 18 Order VII of Code of Civil Procedure 1908 "Inadmissibility of document not produced when plaint filed"

(1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in tie list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

❖ **Judgment:**

After hearing the arguments of both the parties the court either pronounces the judgment at once or it reserves the judgment which is delivered later on the same day or other day so fixed.

❖ **Decree:**

After the judgment has been announced, a decree drawn in favour of the successful party.

❖ **Execution:**

Execution is the final stage of a suit. By execution is meant the process by which a decree is satisfied. The execution is initiated on the application of the successful party.

Framing of Issues

When one party affirms and other party denies a material proposition of fact or law, then only issues arise.

Material Propositions: Those are Proposition of fact and Proposition of law. Those propositions of fact or law which a plaintiff must specifically allege in order to show a right to sue or a defendant must specifically allege in order to constitute his defence in such suit.

Rule 1 (3) of Order XIV of C.P.C, which reads as infra:
” Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.”

Kinds of Issues

According to Rule 1(4) of Order XIV of C.P.C, issues are of two kinds.
a) issues of fact,
b) issues of law.

ORDER XVI : SUMMONING AND ATTENDANCE OF WITNESSES

1. List of witnesses and summons to witnesses

(1) On or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(2) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(3) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(4) Subject to the provisions of sub-rule (2), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf.]

The Qanun-e-Shahadat Order 1984

It repealed the Evidence Act of 1872.

An objective law.

compendium of rules of procedure/practices according to which the court is to record evidence of the parties.

prescribes rules, methods with regard to evidence of parties.

- All Articles or the Order 1984 are substantially and subjectively mere reproduction of all sections of the repealed Act with exceptions of Article 3, Article 4 to 6 (with reference to Hudood)
- Addition of Article 44 and addition of a proviso to Article 42 if compared with corresponding sections of the repealed Act.

- **“Courts-Martial” covered under the Army Acts besides a tribunal or other authority exercising judicial or quasi-judicial powers**
- **or**
- **jurisdiction have been included.**

- **The repealed Evidence Act, 1872 was not applicable to“affidavits” but in the Qanun-e-Shahadat Order, 1984, affidavits are not immune from its application.**
- **Only the proceedings saved are the proceedings before an Arbitrator, thereason thereof is obvious that award, if any, announced by the Arbitrator is subject to strict scrutiny under the Arbitration Act, 1940.**

The Tribunals especially in cases where they are required to adjudicate upon the civil rights of the parties are under an obligation to act judicially and are bound to follow the fundamental rules of evidence and fair play which are embodied in the principles of natural justice.

Definition of Evidence

According To Salmond:
“Evidence may be defined as any fact which possesses probative force.”
Meaning of Probative force
A probative force means the quality by virtue of which the Court presumed that one fact is evidence of another fact.

History of QSO

- Consolidated law of evidence ‘Indian Evidence Act 1872’ (IEA)
- Drafted by Sir James Fitzjames Stephen
- Adopted by Pakistan in 1947
- In 1984, QSO replaced IEA

Basic Principles of IEA & QSO

- As symbolic representation of common law, IEA was founded on three main principles
  1. Evidence must be confined to matter in issue
  2. Hearsay evidence must not be admitted
  3. Best evidence must be given in all cases
- QSO in addition to the above principles incorporated some principles and rules of Islamic law of evidence

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

Slides:

QANUN-E-SHAHADAT ORDER 1984

The Qanun-e-Shahadat Order replaced the Evidence Act (I of 1872). (The Qanun-e-Shahadat hereinafter referred to as Order) The purpose of enactment of the Order is said to consolidate the law of evidence so as to bring it in confirmatory with the injunctions of Islam as laid down in the Holy Quran and Sunnah.

Qanun-e-Shahadat

It was enacted in the days when General Muhammad Zia-ul-Haq was the President of Pakistan and there was a move to make the laws in confirmatory with injunctions of Islam.

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

Slides:

QANUN-E-SHAHADAT ORDER 1984 ....Contd

Qanun-e-Shahadat

The decision of every case civil or criminal depends upon evidence and application of the principles of the law of evidence is necessary. It has to be applied in almost in every matter that's come before the Court and its usefulness in civil and criminal cases is the same. The Order is applicable in the whole of Pakistan and applies to all judicial proceedings, or before any Court, including a Court Martial, a Tribunal or other authority exercising judicial or quasi judicial powers or jurisdiction, but does not apply to proceedings before an Arbitrator.

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

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JUDICIAL PROCEEDINGS

Judicial proceedings means discharge of duties exercisable by a Judge in a judicial proceedings in Court. For a judicial proceeding it is necessary to bear a judicial mind to determine what is fair and just in respect of the matter under consideration. It includes any proceedings in the course of which evidence is or may be legally taken on oath.

Qanun-e-Shahadat

A proceeding in order to judicial must relate in some way to the administration of justice or to the ascertainment of any right or liability. It was held by the Lahore High Court in the reported case of Mrs. Rani v. Commissioner of Wealth Tax Lahore 1993 PTD 206 that proceedings before income authorities were judicial in nature and authorities were exercising quasi judicial if not judicial powers.

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

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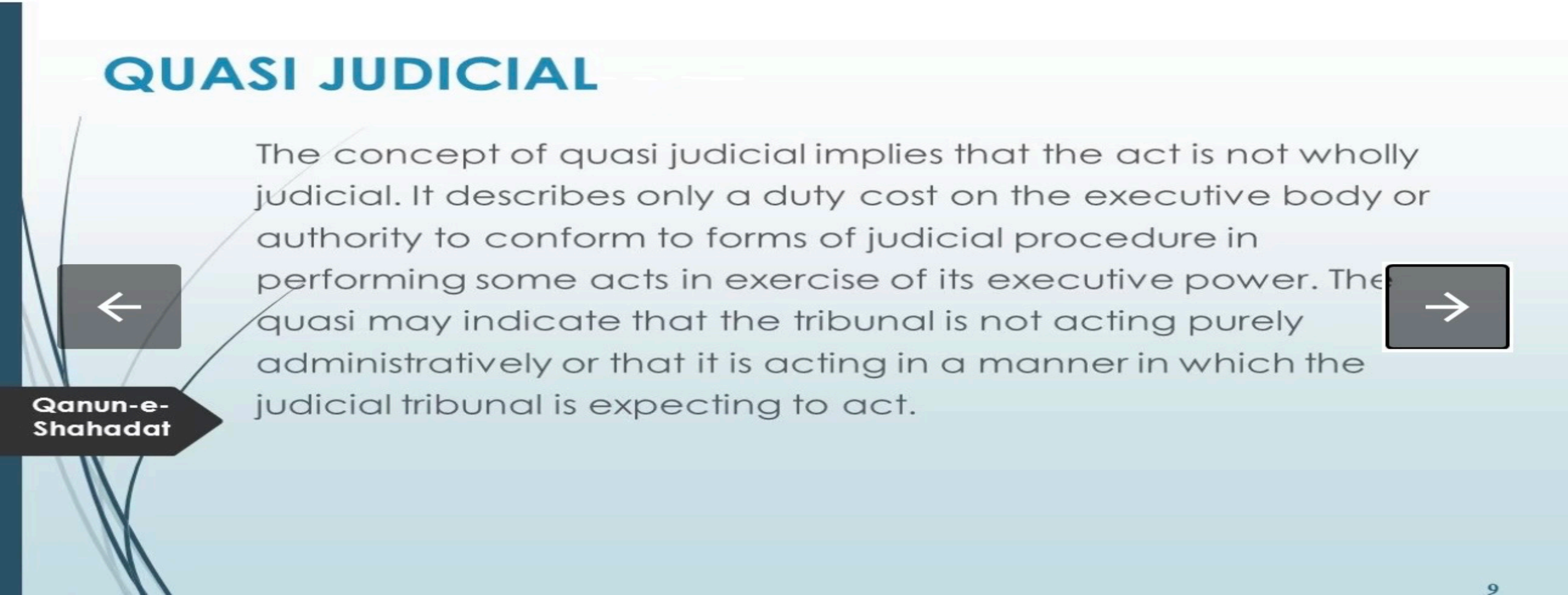

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

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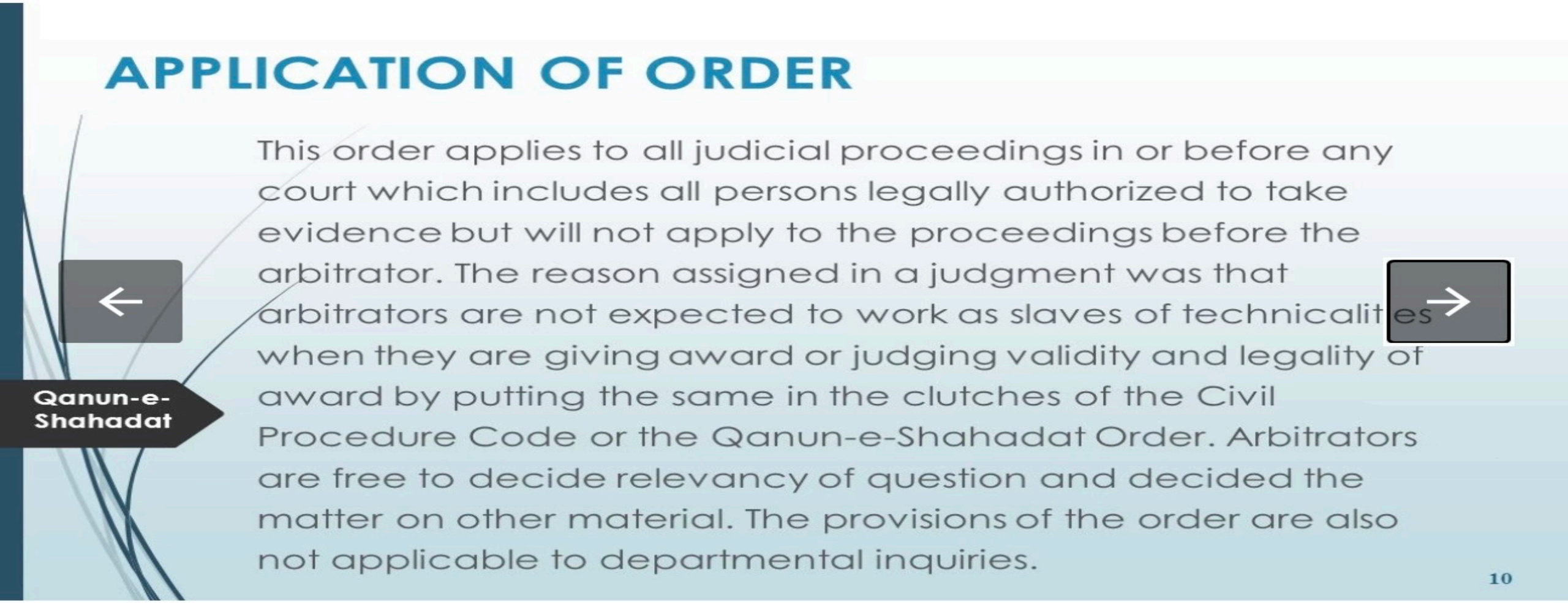

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

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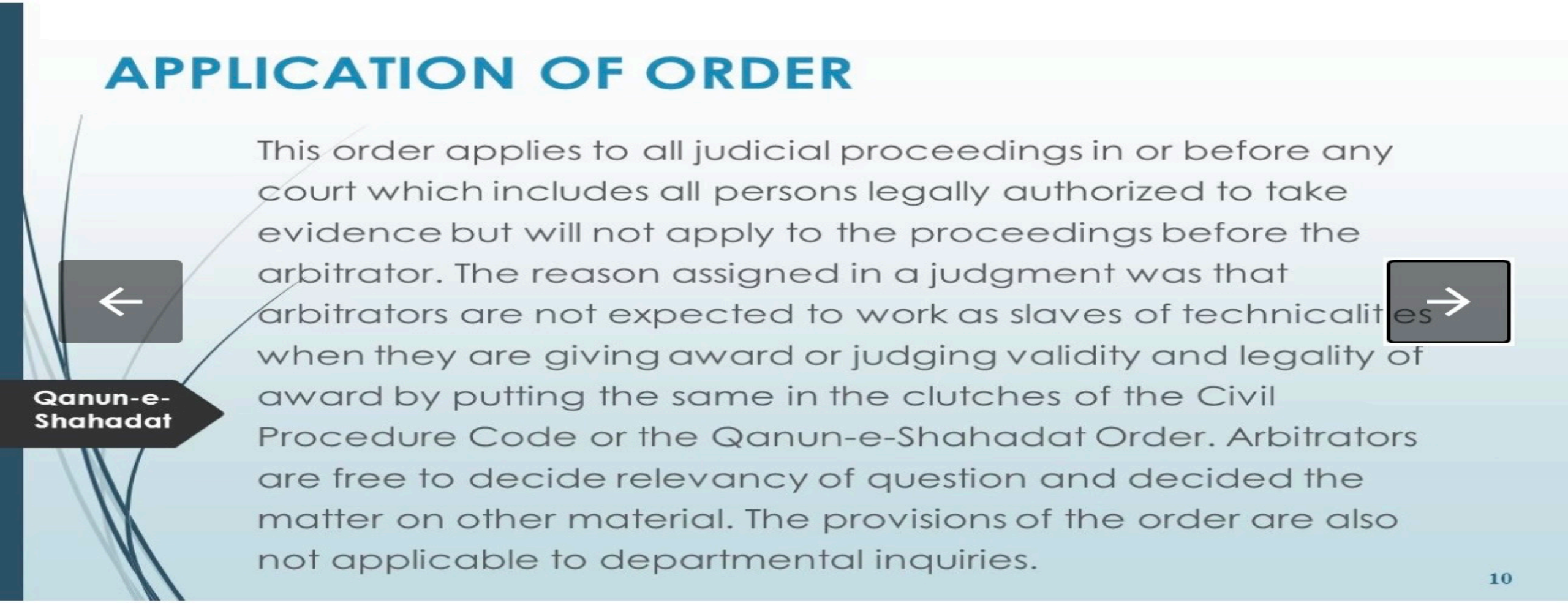

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

Slides:

WHO MAY TESTIFY ....Contd

In all other matters, the court may accept or act on the testimony of one man and one woman. The court has to determine the competence of a witness in accordance with the qualifications prescribed by the injunction of Islam as laid down in The Holy Qur'an and Sunnah.

The word used is Tazkiyah, which means mode of inquiry adopted by a court to satisfy itself as to the credibility of a witness or clearing a witness from acquisition or suspicion caused upon him by the opposition party by holding an inquiry by a Qazi openly or secretly.

Qanun-e-Shahadat

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

Slides:

WHO MAY TESTIFY ....Contd

This provision is not mandatory but directory in nature and non-compliance of Article 3 is an irregularity which can be cured. In Hadd matters Tazkiyah-Al-Shuhood is a condition precedent to impose the sentence of Hadd. There should be one Muzakki (a person who testifies about the trustfulness of the witness).

It is responsibility of the court to satisfy about the credibility of the witness and for that purpose that court can hold inquiry open or secrete. In this regard the court frames a questionnaire to collect information. In the cases where Tazkiyah-Al-Shuhood are not undertaken the punishment of Qisas cannot be awarded, however punishment can be award by way of Tazeer.

Qanun-e-Shahadat

Islamic Rules in QSO

- Competency (Article 3 & 17)
- Number and gender of witnesses (Article 17)
- Tanzkiyat al-shahood for Hudood and Qisas
- Exclusion of accomplice's evidence in cases of Hudood (Article 16)
- Shahada ala al-shahadah (Article 71)
- Legitimacy and paternity (Article 128)
- Oath as another mode for determination of cases (Article 163)

Relevancy, Admissibility & Reliability

- Relevancy is a legal concept, not logical related to those facts which could be presented before the courts (Articles 18 to 69)
- Admissibility deals with the presentation of relevant facts before the courts and their exclusion on public policy (Articles 4 to 15)
- All admissible facts are relevant, but all relevant facts are not necessarily admissible
- Reliability of evidence/witness is not a legal concept and founded on logic and common sense
- Admissible evidence may or may not be reliable

Exclusion of Hearsay Evidence

- Justifications: Not on oath; w/o cross examination; no one is responsible for perjury & possibility of addition/subtraction
- Oral evidence must be direct (Article 71)
- Not precise in connotation & possesses limited and extended implications
- Res gestae
- Extra judicial admission & confession
- Dying declaration & other statements (Article 46)
- Statement made before another court (Article 47)
- Statements under special circumstances (Articles 48 to 51)

Examinations & Leading Questions

- Examination-in-chief and cross-examination on relevant facts only (133)
- Leading questions are put in cross-examination (135)
- Leading questions may be put by leave of the court in examination in chief and re-examination on introductory, undisputed, sufficiently proved matters (136)
- Hostile witness may have to face cross-examination type questions by the party bringing it to the court (150)

Evidential Value & Corroboration

- The courts have to evaluate the evidence
- Accomplice w/o corroboration (16) & confession of co-accused as circumstantial evidence (43)
- Dying declaration & judicial confession w/o corroboration
- Retracted confession & extra-judicial confession not w/o corroboration
- Evidence on numerous relevant facts (from motive to expert opinion) is considered as secondary, corroboratory, confirmatory but not treated as conclusive and absolute
- Admission not conclusive but may operate as estoppel

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

Slides:

ORAL EVIDENCE

Articles 70 and 71 deal with the oral evidence. Article 70 provides that all facts except the contents of documents may be proved by oral evidence.

Oral evidence means and includes statements which the court permits or requires to be made before it by witness, in relation to the matters of fact under inquiry. Article 71 provides that oral evidence must, in all cases be direct.

Qanun-e-Shahadat

It means that if a fact which could be seen it must be the evidence of a witness who says he saw it. If it refers to a fact which could be heard it must be the evidence of a witness says he heard it.

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

Slides:

ORAL EVIDENCE ....Contd

Order is a code complete in itself as to the mode of proof of facts by way of oral evidence. No rule of law requires that particular fact must be proved through production of documents only. It is rule of law of evidence that best available evidence should be brought before the court. Direct evidence alone is admissible under Article 71 whereas indirect evidence is not admissible in evidence.

Qanun-e-Shahadat

Kinds of Evidence under Qanun-e-Shahadat Order 1984

1. Original Evidence

(i) Original evidence is, in fact, primary evidence.

(ii) Original evidence relates to documents

(iii) In most of cases, original evidence is given more importance over oral evidence.

(iv)Written documents, which can be public or private documents, are usually produced as original evidence.

2. Un-Original Evidence

(i) Secondary evidence (Un-original evidence is, in fact secondary evidence.)

(ii) Insufficient Evidence (Therefore, it is not relied upon in most of cases.)

(iii) When can un-original evidence be given? (when original document is not available or is lost or is destroyed or is in possession of some person, who does not produce.

3. Direct Evidence

(i) Direct evidence can be oral evidence. In fact, Qanoon-e-Shahadat Order has provided that oral evidence should be direct in all cases.

(ii) Even direct evidence can be documentary evidence too.

(iii) Direct evidence is based on personal knowledge or observation.

(iv) Direct evidence cannot be based in inference or presumption.

4. Real Evidence

(i) Material or physical evidence

Real evidence is also termed as material or physical evidence.

(ii) Purpose of Real evidence

One purpose of real evidence can be to prove existence of some material object and real evidence can be to make inference about use of some material object in commission of some offence. And also to prove presence of any material object at some place or possession of some person can be purpose of real evidence.

5. Circumstantial Evidence

Evidence, which is based on inference and which is not based on personal knowledge or observation.

6. Personal Evidence

When some person himself sees any incident or situation and gives statement about it in court.

Refreshing Memory (Articles 155 through 157)

Articles 155 through 157

Expert opinion (Article 59)

Following persons are allowed to refresh their memory;

1. an expert witness;
2. witness who recollects the facts; and
3. Witness who does not recollect fact.

Leading Question

“A question that suggests the answer to the person being interrogated; esp. a question **that may be answered by a mere yes or no”**

Article 136 through 138

Cross Reference:

Article 132, 133, 150 and 143

Privileged Communication
Article 4 through 15

Admissions

Articles 30 through 36

Admission/Confession

Article 30 has defined admission and Article 31 has elaborated five kinds of persons who can make admission.

I. **a party to the proceeding;**

II. **an agent authorized by such party;**

III. **a party suing or sued in a representative character making admission while holding such character;**

IV. **a person who has a proprietary or pecuniary interest in the subject-matter of the suit during the continuance of such interest;**

V. **Article 31 says that if a person rom whom the parties to the suit have derived their interest in the subject-matter during the continuance of such interest.**

VI. **According to Article 32 a person whose position is necessary to prove in a suit, if such statements would be relevant in a suit brought by or against himself;**

VII. **According to article 33 when a person to whom party to the suit has expressly referred for information in reference to a matter in dispute;**

Article 34 lays down two rules

(a) an admission is relevant and may be proved against the person who makes it or his representative in interest;

(b) an admission cannot be proved in favor of the person making it or his representative in interest.

Exceptions which are:

(1) when it is of such a nature that, if the persons making it were dead, it would be relevant as between third person under Article;

(2) when it consists of a statement of the existence of any state of mind or body made at or about the time when such state of mind or body existed and is accompanied by conduct rendering its falsehood improbable;

(3) if it is prevalent otherwise than as an admission

Article 35 enacts that oral admission as to the contents of a document are equally excluded except in two cases;

(1) the party proposing to prove them show that he is entitled to give secondary evidence of the contents of such documents,

or

(2) According to article 35 the genuineness of the document produced is in question;

According to article 36 an admission is not relevant in a civil case it if it is made:

(1) upon an express condition that evidence of it is not to be given,

or

(2) under circumstances from which the court can infer that the parties agreed together that evidence of it should not be given;

Article 45 says that an admission is not a conclusive proof of the matter admitted, but it may operate as estoppel.

Confession (Article 37)has laid down the law of confession as

1. A confession is irrelevant,

(1) if it is obtained by any (a) Inducement, (b) threat, or(c) Promise;

(2) such inducement, etc., must have reference to the charge;

(3) such inducement, etc., must proceed from a person in authority;

(4) such inducement, etc., must be sufficient to give the accused avoid an evil of a temporal nature in reference to the proceedings against him;

However, according to Article 41 a confession made after the removal of the impression caused by such by inducement, threat, or promise, is relevant;

2. Article 38 says that a confession made to a police officer is not admissible

3. Article 39 says that a confession made by a person in police custody is not admissible, unless it is made in the presences of Magistrate;

4. According to Article 42 if confession is otherwise relevant, then it does not become irrelevant if it is made.

(1)under a promise of secrecy; or

(2) in consequence of a deception practiced on the accused; or

(3) when the accused was drunk; or

(4) in answer to questions which the accused need not have answered; or

(5) Because he was warned that he was not bound to make such confession, and the evidence of it might be given against him.

However, this article shall not apply to trials of Hudud cases.

Competency of Witnesses

Article 3 and 17 of the Qanoon-e-Shahadat Order, 1984

In general every person is competent to testify before court only parameter to determine the competency of the witness is satisfaction of the court that the person before the court is capable of giving testimony.

Exceptions

Incapacity to be rational ;Extreme old age; Tender age; Any bodily injury; Any mental injury; Perjury; Females in Haddod laws; Witness of accomplice in Hadood cases;

Touchstone to determine the competency of witness

- Quran and Sunnah is the only criteria to determine the competency of the witness.
- Concept of Tazkiya al Shahood
    1. Open inquiry as to competency of witness; or
    2. Secret inquiry in the competency of witness.

Number of witnesses

Number of witnesses in financial matters and in cases of future obligations

(2 males or one male and two female witnesses)

In criminal matters

(one male or one female is sufficient)

In Hadood cases

(case may be proved either by confession of accused or by testimony of two or four (varies from cases to case) is required)

Banker's Books Evidence Act, 1891

Electronic Transactions Ordinance 2002

Qanoon-e-Shadat order 1984 is a code of rules and laws which provides guidelines in the field of evidences, to the effect to finish ambiguity in cases and to bring the court at the right conclusion of justice.

Provides rules, kinds, types of evidences and the manner of recording evidences of witnesses as well as consideration of documents in evidence, etc.

According to inquisitorial principle, judge was to search for facts, listen to witnesses and experts, examine documents, and order to take evidence.

Contrary to this, parties and their counsels are primarily responsible for finding and presenting evidence and judge does not investigate facts according to adversary principle.

Qanun-e-Shahadat Order is subjectively the same as of Evidence Act with exception of Article 3, Article 4 to 6, addition of Article 44 and addition of a proviso to Article 42. Articles 163 to 166 were also added in the new law. It is said that almost all the provisions of the Evidence Act, 1872 with a few amendments have been kept intact because most of the provisions of Evidence Act, 1872 were not repugnant to Islamic principles of law.

Article 163 deals with acceptance or denial of claim on oath. When the Plaintiff takes oath in support of his claim the court shall, on the application of the Plaintiff call upon defendant to deny the claim on oath.

Article 164 deals with the evidence that has become available because of modern device etc. In such cases as the court may consider appropriate, the court may allow be produced any evidence that may be become available because of modern devices or techniques. The telegraphic messages can be produced in evidence.

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

Slides:

QANUN-E-SHAHADAT ORDER 1984 ....Contd

Video recording, audio cassette, video film can also be produced in evidence. The production of these materials is subject to prove that the same is genuine and not tempered one.

By insertion of Article 165 the new law was given overriding effect and by insertion of Article 166 the earlier Evidence Act, 1872 (I of 1972) was repealed.

The Order has 13 Chapters and 166 Articles. It has been noticed that sections 82, 93, 113, 119, 120 and 166 of the old act have not been incorporated in the new order. All other sections of the act were available in the new law.

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QANOON-E-SHAHADAT (LAW OF EVIDENCE)

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DOCUMENTARY EVIDENCE

Chapter 5 deals with the documentary evidence. Article 72 provides that the contents of the documents may be proved either by primary or by secondary evidence. Article 73 provides that primary evidence means the document itself produce for the inspection of the court.

Qanun-e-Shahadat

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

Slides:

DOCUMENTARY EVIDENCE ....Contd

Article 74 provides secondary means and includes certified copies giving under the provisions of Qanun-e-Shahadat Order, copies made from the original by mechanical process, copies made from or compared with the original, counter parts of documents as against the parties who did not execute them and oral accounts of the contents of a document giving by some person who has himself seen it.

A document its mere tender gets no evidentiary value unless its contents are proved according to law.

Qanun-e-Shahadat

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

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PRIMARY EVIDENCE

Primary evidence is the best available evidence and should be produced before the Court. It is the best or highest evidence. It is that kind of proof which in the eyes of law affords the greatest certainty of facts in question.

The primary evidence of the contents of the document is the document itself. Where original documents were lost, the forum adjudicating upon claim of parties take notice of copies of original documents subject to proof that the copies are made from the original.

Qanun-e-Shahadat

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

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SECONDARY EVIDENCE

Where existence of original document was not in issue and same was not available the secondary evidence can be produced. Secondary evidence can only be produced when original was either lost or was not in custody of the party wishing to produce the same.

The procedure is provided under Article 74 and 76. Article 74 provides what are secondary evidence and Article 76 provides cases in which secondary evidence relating to documents may be given. Where original document was not produced and permission from court for leading secondary evidence was not obtained, copy of said document was not admissible in evidence.

Qanun-e-Shahadat

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

Slides:

CONFLICT BETWEEN ORAL AND DOCUMENTARY EVIDENCE

In case of conflict, oral evidence would have no value in the face of documentary evidence, because man may lie in order to support their causes but documents cannot. Negative oral evidence loses its value in the presence of documentary evidence.

Qanun-e-Shahadat

QANOON-E-SHAHADAT (LAW OF EVIDENCE)

Slides:

DIRECT AND CIRCUMSTANTIAL EVIDENCE

In criminal matter direct evidence means ocular evidence which is the direct testimony of a witness. Direct evidence is a proof which goes directly to establish the involvement of the accused person in the commission of an offence. Whereas all other facts connecting a particular case indirectly constitute circumstantial evidence, which are subsidiary facts.

Qanun-e-Shahadat

Video recording, audio cassette, video film can also be produced in evidence. The production of these materials is subject to prove that the same is genuine and not tempered one.

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