Qanun-e-Shahadat Order 1984

Zafar Iqbal Kalanauri[i]

INTRODUCTION

Qanun-e-Shahadat may be defined as a system of rules for ascertaining controverted questions o f fact in judicial inquiries. It bears the same relation to a judicial investigation as logic to reasoning. The object of every judicial proceeding is the enforcement of some right or liability which invariably depends upon ecrtain facts. The substantive law whether it be statute law or common law, merely defines what facts go to constitute a right or liability. Before a tribunal can pronounce as to the existence of a right or liability, it must ascertain the facts which, according to the rule of substantive law applicable to the case, arc the neccssary constituents of that right or liability. This duty o f ascertaining the facts which are the essential elements of a right or liability is the primary, and perfiaps the most difficult function of a court. The inquiry into these facts is regulated by a first task of a Judge being lo ascertain facts, the rules by which the inquiry before him is regulated should not, in their fundamentals, differ from those by which any other seeker after truth regulates his inquiries.

The Qarmn-e-Shahdat being adjectival law all questions of law of evidence must be dccidcd according to the law of forum *(Lex Fori)* in which the action is tried. Even where evidence is taken on commission or otherwise from abroad, its admissibility is determined by the law of evidence of the country where the action is being tried.

No person has vested right in procedure, Qanun-c-Shahadat being a law of procedure, it operates retrospectively.

The main object of the Qamm-c-Shahadat is to prevent indiscipline in admission of evidence by enacting a correct and uniform rule of practicc. If irrelevant facts ate admitted, they are likely to disguise truth than discover it.

The main principles emerging from the Order are:-

1. Evidence ruust be pinned down to matter in issue.
2. evidence must be tendered.
3. Hearsay evidence must be kept out.

The Qanun-e-Sbahadat Order m aybe divided into three partsi

1. Relevancy offacts.
2. Proof.
3. Production and effect of evidence.

Part I

Facts in issue and Relevant Facts.

Part I, specifics the fact that may he given in cvidcnce. For this purpose, facts are divided into (I) Facts in issue and (2) Relevant Facts, both of Ihese classes of facts have been defined in Article 2. Every right or liability which becomes the subject of litigation, always depends upon certain facts. A person who moves the machinery of the law by coming to court as a plaintiff has,, in order to get the relief claimed, to establish certain facts. If he fails lo prove any one of the facts which constitute the right or liability which he seeks to enforce against the defendant, or if the defendant disproves any one of these facts, the plaintiff must be non-suited. If he succeeds in proving all such facts, the coirn must award to him the relief that he claims. These facts, which are constituents of the litigated right or liability, are called "facts in issue" Article 2. What arc or may be facts in issue in a particular litigation is entirely a question of substantive law and those rules of procedure which deal with the striking of issues, (see O. XIV, R. 1, Civil Procedure Code}. The order unlike other systems of evidence, is not concerned with this question beyond stating the properties of such facts. Since facts in issue are the necessary ingredients of (he litigated right or. liability, they may be given in evidence as a matter of coursc (Articic 18). it often happens, however that direct evidence concerning these faces in issue is not available. In such a case, it docs not mean that these facts cease to be cnpable o f proof. Their existence may be established as satisfactorily by circumslantial evidence as by direct evidence. Many a murder has come to light and been proved to the satisfaction of the judge by circumstantial evidence, thrmgh there was not a single eye-witness to the occurrence.

a) Witnesses and their Competency,

That first topic- that die order touches in this connection is that of competency to testify. Every person who can understand the questions put to him and give ratiomil ainswers to them is competent to testily, Tender years. extreme old age, disease of mind or body, make a person incompetent to testify in their effect is to render him incapable of understanding the questions and answering them ratioialy. A convict for perjury or giving false evidence is incompetent to testify unless the court is satisfied about his repentance and mending his ways. The competence of a witness to be determined in accordance with qualifications prescribed by the injunctions of (Islam as laid down in the Holy Qur'an and Sunnah. A lunatic, in his lucid intervals is competent, unless he is prevented by his disease from understanding, the questions put to him and giving rational answers to them. (Article 3).

b) **Privileges** - Certain matters, on grounds of public policy, arc protected from disclosure and witnesses can not be compelled or permitted to answer questions relating to such matters:

1. No Judge 01 Magistrate can be compelled to answer any question as to his own conduct in court as such Judge or Magistrate or as to anything which came to his knowledge m court as such judge or Magistrate, (bough he may be examined as to other matters which occuircd in his presence whilst he was so acting (Article 4),

2. No person can be compelled to disclose any communication made to him or her during marriage by his wife or her husband. Even if such person docs not claim any privilege and offers to give evidence, he or she, as tiie case may be, can not be permitted to depose to the communication without the consent of die other party to marriage or the representative in interest of such party. Such consent is. however, not nceessary if the suit be between the parties to the marriage themselves or in cases in which one married person is prosecuted for any crime committed against the other (Article 5),

3. No one can be permitted to give any evidence derived from unpublished official records relating to any affairs of state, without the penrcission of *the* head of Ihe department concerned (Article 6).

4. No public officer can be compelled to disclose arty communication made to him in official confidence if he considers that the public interests would suffer by the disclosure (Article 7).

5. No Magistrate or police officer can be compelled to disclose how he got any information as to the commission of any offcncc; nor can Revenue Officcr be compelled to say whence he got any information as to the commission of any offence against the public revenue (Articlc 6),

6. No legal practitioner can be permitted without his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment, or to disclose any advice given by him to hi$ clicnt in the course and for the purpose of such employment (Article 9). The rule also applies to interpreters, clerks and servants of legal practitioners (Article 10) but it does not protect from disclosure:-

i. Any communication made in furtherance o f any illegal purpose, and
ii. Any fact observed, showing that a crime or fraud has been committed since the commencement of the employment (Article 9).

If the client calls the legal practitioner as a witness, he will be deemed to have consented to such disclosure only if he questions the legal-practitioncron a matter which, but for such questions, he would not be at liberty to disclose, (Article 11). The client can not be compelled to disclose any confidential communication between himself and his professional legal adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communication as may be necessary to explain any evidence which he has given (Article 12).

7. No one, who is not a party to the suit, can be compelled to produce his title-deeds to any property* or any document in virtue of which he holds any property as mortgagee or pledgee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking their

production or some person through whom he claims, (Article 15). And no one can be compelled to produce documents in his possession, which another person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person agrees to their production (Article 14).

8. The mere fact that the answer to a question will tend to criminatc the witness* or to expose him to a criminal prosecution or a penalty or forfeiture, is no reason for his refusing to answer the question it'it relates to a relevant fact. But the witness, in such a case, may ask the court to excuse him from answering Such questions, and if the court then compels him to answer, the answer will not subject him to any arrest or prosecution or be proved against him in any criminal prosecution cxccpt perjury (Article 15).

Unlike many ancient, and even some modem, systems, the order does by down the competence and number of witnesses required, to prove a particular fact, in any case, shafl be determined in accordance with injunction oi'Jsfam as laid down in the Holy Quran and Sunnat. (Article 17)

c) Relevant facts.

The Qanoon-e-Shahadat Order provides that in order to prove the existence or non-existence of facts in issue, certain other facts may be given in evidence. The name “Relevant raciv’ is given by the order to such fads (Article 18). It takes one full chapter of fifty articles tor the order to define relevant facts (Articles 19 to 69) This part of Ihe order is its distinctive characteristic, distinguishing it from all other systems m the world. In other systems, the law tacitly refers to logic and general experience for relevancy, assuming that the principles of reasoning are known to its judges, every fact which is logically probative is relevant (hough, as we will just have occasion to see, not necessarily admissible. The order, however, makes relevancy a matter of law. jjaid an appc:il to logic to establish (he relevancy of a particular fact is irrelevant, unless the argument te founded on any such inconsistency probability or improl>ability as is referred to in Article *24.* Under (he Qanoon»e-ShEihadat Order admissibility is equal to facts declared relevant by Aniclcs 19 to 69 minus tacts expressly declared inadmissible though relevant under Articles 19 to 69.

Relevancy and admissibility ore neither synonymous nor co-extensive. Nor is one included in the other. Every fact declared to be relevant by the order is not admissible in evidence. A statement mad'; by a client to hiis legal adviser or by a husband to his wile may come under half a dozen Articles of relevancy, but the statement is not admissible, being excluded by an express rule on the point. Similarly, there are several facts which are receivable in evidence and therefore admissible, though it is impossible to call them "relevant” in the sense in which the word is used in the order. Thus facts which may be given in evidence to confirm or impeaeh the crcdit of a 'witness are admissible, though they are not relevant under the third chapter of the order which exhaustively defines relevancy. Qanoon-c-Shahadat order specifics five instances of connection which may exist between Ihe evidential feet and the facl to be proved, in order to make the former relevant.

a) Facts connected with the fact to be proved Articles 19-29.
b) Statements about the fact lo be proved Articles 30-53.

c) Decisions about the fact to be proved Articles 54-5S,
d) Opinions about the fact to be proved Articles 59-65.
e) Character o f the persons who are conccrned with the fact lo be proved Articles 66-69.

The sub-divisions merely indicate the view-poiru from which relevancy is looked at. The general mles governing these sub-divisions may pcrh&jis be niore accurately expressed in negative forms, thus, the correct rule relating to these sub divisions may be expressed in this form (i) Nothing connected with the fact to be proved is- relevant unless it is connccted with the latter in any of the ways mentioned in Articles 19-29. (it) Nothing said about the fact to be proved is relevant unless the statement falls within the terras of any or more of the Articles 30-53. (iii) Nothing dccidcd about (he fact co be proved is relevant unless the decision is o f the kind mentioned in Articles 54-58. (iv) No opinion about the lac-t to be proved is relevant unless the opinion is of a person and about the matter mentioned in Articles 59-65. (v) Character is relevant except in the cases mentioned in Articles 66-69.

d) **Facts connected with the fact to be proved.**

Relevant facts Tailing within this category arc dealt with in Articles 19-29,

Theses facts are- •

i. Facts concerned with a fact in issue so as to form part of the same transaction; Article 19.
ii. Facts constituting the occasion, cause or effect of, or opportunity or state of things for the occurrence of, the fact sought to be proved weather, it be a fact in issue or another relevant fact; Article 20.
iii. Facts evidencing motive preparation or conduct; Aitide 21,
iv. Explanatory vr introductory facts; facts supporting rebutting an infercncc suggested by a fact in issue or smother relevant fact, facts showing identity or fixing time or place of a feet in issue or relevant fact; and facts showing relation o f parties; Articlc 22,
v. Facts and statements of conspirators in reference to their common intention; Article 23.
vi. Facts inconsistent with, or making highly probably or improbable the existence of, a fact in issue or relevant fact; Articlc 24.
vii. Facts affecting the amount of damages; Articlc 25.
viii. Facts showing a transaction by which, or an instance in which, a nght or custom was asserted, recognized, etc. Article 26.
ix. Facts showing state of mind or body when such state is in issue or relevant; Articles 27 & 28.
x. Facta showing the existence of any course of business according to which the act in question would have been done Article; 29.

e) **Statements about the fact to be proved.**

The general rule which governs the relevancy of statement which is known hy the “hearsay” rule, is that what statement about the fact in question is irrelevant. To this general rule there

arc. three exceptions. These are (i)admissions, (ii) statements as to certain matters, and under certain circumsltinces, by persons who can rot be called as witnesses, and (iii) statements made under spcciul circumstances.

f) **Admissions**—Articles 30 to 45 enact the rules relating to what arc known, as “self-regarding" statements, A self-regarding statement is in the “self-serving" from or a “self-harming” form. A statement is in the “self-serving” form when it is in favour of (the person making it and in the "self-harming" form when it is against the interest of such person, The rule of relcvancy regarding such statements is expressed by declaring that a statement in "self-haming" form is admissible but a statement in a “self-serving" fonn is not generally admissible. The reason tor this rule is obvious, There can be no guarantee of the truth of a statement when it is made with a view to serve one’s own interest. The truth of a self-handing statement is, however guaranteed by that human instinct which makes a man reluctant to make any statement against his own interest. The Qanoon-c-Shahadat reproduces this rule by declaring that an admission may be proved as against the person who makes it. or his representative in interest but not by, or on behalf of the person who makes it or by, or on behalf of, his representative in interest, unless:

1) The admission is such that, if the person making it were dead, it would be relevant as between third persons under Article 32 or

ii) The admission relates to a relevant state of mind or body, if made at or about the time when that state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable; or

iii) The admission is relevant under some other rule of relevancy; Article 34.

The Qanoon-e-Shahadat defines the terra ‘'admission'’ (Articlc 30) and the person by whom it may be made. An admission may be made by a party, by the Agent or predecessor in interest of a party, by a person having joint propriety or pecuniary interest in the suhject-matter, (Article 31) or by a reference, (Articlc 33). As regards the evidential value of admissions, the order declares that they are merely relevant and not conclusive unless the party to whom they were made has acted upon them and thus altered bis position to his detriment, so as to be able to put forward a case o f estoppel,

g) **Confessions**—Articles 37 to 43 deal with Confessions. The order does not define a “confession”, but inchidcs it in admissions of which it is a specifes, A confession is relevant as an admission, (Article 34) unless it is made:

i. To a person in authority in consequence of some inducement, threat or promise held out by him In reference to the charge against the accused; (Articlc 37),
ii. To a Police Officer; (Article 38).

iii. To any one at a time when the accused is in the custody of a Police Officer and no Magistrate is present (Article 39).

A confession made in the circumstances mentioned in (i), (ii) and (iii) above bccomes admissible if it leads to the discovery of a relevant fact but in such a case only that part of the

confession becomes provable which distinctly relates to the faet discovered (Article 40). A confession k evidence only against its maker; but if the maker, bysides implicating himself, involves anodjer person who is being jointly tried with him for an nffence, Che confession may also be taken info consideration as circumstantial evidence against the tarter (Article 43),

b). Statements by persons who can not be calkd as witnesses.—The second exception to the rule against hearsay makes relevant certain statements made by persons who are dead, or can not be found or produced without unreasonable delay or expense. The conditions determining the relevancy of statements under this rule arc—

1. That the statement must relate to a fact in issue or relevant fact, and
2. That the statement must fall under any one of the following classes.

i) A statement as to any of the circumstances of the transaction which resulted in the death of the maker, (when it relates to cause of death) (dying declaration)

ii) A statement made in the ordinary course of business;

iii) A statement which is against the pccuniajy or proprietary interest of the rnaker, or which exposes him to a criminal prosecution or a suit for damages;

iv) A statement giving the opinion o f the person before the commencement of the controversy, as to the existence of any public right or c-uscom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware;

v). A statement, made before the commencement of the controversy, as to the relationship of persons, alive or dead, if the maker of the statement has special means of knowledge on the subject;

vi). A statement, made before the commencement of the controversy, as to the relationship of persons deceased, made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family jpedigrec, or on any tombstone; family portrait etc;

vii). A statement in any will, deed or other document relating to any transaction by which a right or custom was creatcd, claimed, modified, rccognized, asserted or denied, or which was inconsistent with its existence.

viii). A statement made by a number of persons and expressing their feelings, or impressions; (Article 46).

ix). Evidence given in a judicial proceeding or before a person authorized by law to lake u, provided that-

a) The proceedings was between the same parties or their representatives in interest;

b) The adverse parry in the firsl proceeding had the right and opportunity to cross- cxamine, and
c) The questions in issue were substantially the same in the first proceedings as in the proceeding in which the deposition is sought to be given in evidence (Article 43).

i) Statement made under special circumstances.— Statements becoming relevant on account of their having been made under special circumstances, fall under the following catcgones:-

i. Entries made in books of account regularly kept in the course buisness (Article 48*)*
ii. Entries made in public or official records made *by* a public servant in the discharge of his official duties. (Article 48).
iii. Entries made in published maps or charts generally offered for public sale, or in maps and plans made under the auchority of Government; (Article 50),
iv. Statement as to facts, of a public nature contained in a recital in any enactment of notification; (Article 51).
v. Sialements as to foreign law books purporting to be printed or published by the Government of the foreign counlry, or in reports o f decisions of that country, (Article 52),

In order to be relevant under this class, the statement must relate to a fact in issue or a relevant feet (Article 53).

j) Decisions about the fact tn be proved. Judgments, orders or decrees of courts of Justice are irrelevant, unless;

i. The existence ul the judgment, decrcc or order is fact in issue or relevant under some other rule of relevancy; (Article 57).
ii. The judgment, decrcc or order bars a trial or inquiry; (Article 54).
iii. The judgment, order or decree was made by a court in (he exercisc of its probate, matrimonial, admiralty or insolvency jurisdiction; (Article 55).
iv. The judgment, order or decree relates to a matter of a public nature relevant to the inquiry (Article 56).

If a judgment is passed by a court in the exercise of its prohate, matrimonial, admiralty, or insolvency jurisdiction, and the judgment confers upon, or takes away from, any person any legal character, or declares any person to be entitled to any such character, it is conclusive proof of the conferment, declaration or taking away of that legal character. If any such judgment declares any person to be entitled to any specific thing, not as against any specified perron but absolutely, the judgment is conclusive proof of the fact that the thing was the property of the person at the time from which thejudgment declares that it had been or should be his property (Article 55). When a judgment is given in evidcncc against a party, he may show that the judgment was passed by a court not competent to pass it, or that it was obtained by fraud or collusion (Articlc 58).

k). **Opinions about the fact to be proved**. The general rule is that opinion, whether on a matter of fact or law, is irrelevant. There are, however, many a matter which become relevant in judicial inquires, arid on which opinion can be formed by a person on!y by undergoing a course of training in the subject Obviously, therefore, on matters requiring spccial skill and knowledge, the court should not be denied tiie assistance of experts in coming to a right conclusion. Consequently Qanoon-e-Shahadat makes the opinion of "experts'* relevant on questions of foreign law, or of scicnec or art, or of identity of handwriting or fioger impressions (Articlc 45).

Facts which support, or are inconsistent with, the opinions of experts art also made r elevant (Article 60).

In addition to the opinion of experts, Opinion is relevant in the following cases:-

i) Opinion as to the handwriting of a person, if the person giving the opinion is acquainted with the handwriting of the person in question; (Article 61).
ii) Opinion as to she existence of any general right or custom, if the person giving the opinion is likely to be aware of the existence of such right or custom, (Article 62).
iii) Opinion as to usages, tenets, etc. and as to wards and terms used in particular districts, if the person giving the opinion has special means of knowledge on the subject, (Article 64),
iv) Opinion expressed by conduct, as to the existence of any relationship, by a person having spccial means of knowing the relationship; (Article 64). When opinion is relevant, the grounds on which such opinion is held are also relevant (Article 65).

l) Character of the persons who are concerned with the fact to be proved. Character is relevant id the following cases:-

i) Good character o f the accused; (Article 67).

ii) Bad character of the accused, only in reply to evidence of *good* character, or where his bad character becomes a fact in issue, (Articlc 68).

iii) Character of the plaintiffs good of bad, where according to substantive law, it affects the amount of damages to be awarded to him ; (Articlc 69). A previous conviction is relevant as evidence of bad character, if bad character becomes relevant (Article 63), Where evidence of character is giver under the above rules, the evidence must relate only to general reputation or general disposition, and not to particular order showing reputation or disposition (Article 69).

m) Oral Evidence.-All facts, except moments of documents, may be proved by oral evidence, (Article 70) which must in all cases be "direct". (Article 71).
The "direct evidence" means the evidence of the person who perceived the fact to which he deposes. Thus, if the fact to be proved is one that could be seen, the person who saw the fact must appear in cuurt to depose to it; and if the fact to be proved is one that could be heard, the person who heard it must appcar in court to depose to it, and if the fact to be proved is opinion, the person who holds the opinion miust appear in court lo depose to it, unless the opinion is that of an expert expressed in a treatise commonly offered for sale, in which case the opinion may be proved by the production of the treatise if the expert is dead or can not be callcd without

unreasonable delay or expense or if a witness is dead or can not be found or has become incapablc of giving evidence, or his attendance car nol procured without an amounl of delay or expenses, a party shall haw right to produce Shahuda-ala-al-Shahada by which a witness can appoint two witnesses on his behalf in eases of Hudood, (Arliclc 71). In defining ‘'direct evidence” in the manner stated above, the Order impliedly enacts what is callcd “the rule against hearsay”; since cvidcnce as to a fact which could be seen, by a person who did not see it, is not “direct" but hearsay and so is the cvidcnce as to a .statement, by a person who did not hear it. This rule against hearsay is a deduction front what in English law is known the ‘'best evidence rule”. The maxim that the “best evidence must be given of which the nature of the case permits". The rale is founded on the consideration that evidence which *ex nvfura rei* supposes a better evidence behind in the party’s own possession or power carries Iittle or no value.

n) Documentary Evidence:

i) Primary fcvidence: The contents of a document must be proved by “primary evidcncc’, (Article 73) which means the production of the document itself for the inspection of the court. This rule also a deduction from the “best evidence rule”.

ii) Secondary Evidence: “Secondary Evidence” is generally in the form of compared copies, certified copies or copies jwade by such mechanical processes in themselves ensure accuracy. Oral accounts of the contents of a document by a person who has himself seen it are also good secondary evidence. Counterparts of documents arc primary evidence as against the patties executing them but only secondary evidence as against the parlies who did not execute them. (Article 74). Documents must, generally, be proved by primary evidence ; but in certain cases, e.g . where the documents is lost or destroyed, or is not easily producible or movable, or consists of numerous' documents, *or* is a public document or provable under some law by a certified topy, the cxistencc, condition or contents of the document may be proved by secondary evidence. A written admission as to the existence, condition or contents of a document may be given in evidence as secondary evidence. Secondary evidence is also admissible when the document is in the possession of the other party or some one else, and is not produced after notice (Article 16). The giving of notice to produce is a condition precedent to the admissibility of secondary evidence, but in certain eases-, e.g., where the document to be proved is itself a notice, or is in the possession of a person not subject to the process of the court, or where the adverse party has obtain the original by force or fraud, or has it in court or was expected lo know that he would be required to producc it, or where he has admitted its loss, the nolice lo produce need not be given. (Articlc 77).

o). Proof of Excutioun**-**—Qanun-e-Shahadat Order draws a distinction between proof of the contents of a document and proof of its execution or authorship. The rules mentioned above relate to the mode of proof of the contents of documents. For the purposes of proof of the execution of a document, the order divides the documents into two classes, viz., documents not required by law lo be attested and those required by law to be attested.

If a document is alleged to bo signed or written by a particular person, the signature or writing must be proved to be in the alleged person's handwriting. (Article 78). This rule does rot prescribe any particular mode of proof of handwriting, and the provisions as to the manner in which a signature or writing may be proved occur in scattered placcs in the order. Any mode of proof which does not offend against the "best cvidcncc rule", may be adopted to prove the signature or writing. Tfdie document is one that is required by Iaw to be Attested, at least one attesting witness must be callcd to prove its execution. (Article 79). This rule may, however, be relaxed where (1) none o f the attesting witnesses is available (Articlc 8O or (2) the document, not being a will, has been registered, and its execution is not specifically denied by the person by whom it purparts to have been executed, (Article 79). In cases (1) however, it must be proved diat the attestation of one attesting witness at least b in his handwriting and that the signature of the cxccutant is in his handwriting (Article 80). The fate of a document is not, however, entirely at the mercy of the attesting witnesses, since if the witness who is called to prove the document turns hostile to the calling, party or states that he docs not recollect execution, its execution may be proved by other cvidcnce; (Article 82). If a party to an attested document has admitted execution, the admission is sufficient proof of its execution by him and the document need not be proved at all. (Article 81)). While considering whether & document is written or signed by, or beers the Finger impression of, a person the court may compare the disputed signature, writing or finger impression with an adniitted or proved signature, writing or fmger impression, and for this purpose may order him to give a specimen of his signature handwriting or finger impression. (Articlc 84).

The contents of public documents may he proved by certified copies (Article 88). Documents forming the acts, of records of the ucis of sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial and executive, of any part of Pakistan or of private documents, documents forming part of the record of judicial proceeding, documents required to be maintained by public servant under any law; and registered documents the execution whereof is not disputed are public documents. (Articlc 85). All other documents ore private. (Articlc 86). Every public offiecr having the custody of a public document is bound to give to any person who is entitled to inspcct that document, a djrtilied copy of it on payment of the legal few thereIore and such copy so certified shall lbe called certified copy given in evidence in proofofthe contents nf the docmncnt. (Article 87). A special mode of proof is provided for ccrtain public documents, e.g., acts, orders and notification of the Federal Government and foreign public documents of any other law. (Article 89).

o) **Presumptions**.—After dealing with burden ofproof. The order notices some rules as to and instances of presumptions. The subject of presumptions is eloscly allied to the subject of burden of proof. All rules relating to burden of proof may be Stated in terms of presumptions, and all presumptions may be stated in terms of rules of burden of proof When the burden of proof of a fact is on a party, it may be said that there is a presumption as to the non-existence of that fact and where there is a presumption ns to the existence of a fact, the burden of proving the non existence of thal fact is on the party who asserts its non-existence. When a presumption operates in favour o f a party, the burden of proof is on the opponent; and when tbe burden of proof is on a party, there ia a presumption oprating in favour of the opponent.

The order does not deal with the subject of presumptions in one place. Thus, the three well known kinds of presumptions arc stated in Articlc 2, where the terms “conclusive proof”, "shall presume", and “may presume are defined. Presumptions as to documents arc staled in (Articles 90 to 100), some o f which are obligatory while others arc discretionary. One instance of a conclusive presumption is noliecd in (Article 55), while two other occur in (Article 128). Then there is (Article 129) which may be described as the residuary Article dealing with this subject and to which several instances or presumption are appended as illustrations.
A "presumption” is a rule of law, that courts shall or may draw a particular inference from a particluar fact or from particular inference unless and until the truth of such inference is disproved. There arc three classes of presumptions, viz., (i) presumptions of law, (ii) of fact, and (iii) mixed presumptions. A presumption of law is a rule or law that a particular inference shall be drawn by a court from a particular circumstance. The grounds on which presumptions of law rest are various. Some of these presumptions are natural presumptions which the law simply rccogniires and enforces. But in most of these presumptions the inference is only partially approved by reason; from motives or policy, attracting the facts which give rise *to it an* artificial effect beyond their natural tendency to produce belief. Some of the presumptions belonging to this class are absolute und conclusive. *cinrunorAy* called irrebuttable presumptions of law; while others are conditional, inconclusive or rebuttable. Irrebuttable presumptions of law arc inferences which the law makes so pre-emptorily that it will not allow them to be over turned by any contrary proof, however Strong. ‘'Fictions of law” arc closely allied to rebuttable presumptions o f law. A fiction of law arises where the law, for the advancement.ofjustice, assumes as fact and will not allow to be disproved, something which is fake, bur is nut impossible. The difference between fictions of law and irrebuttahle presumption of law consists in this; that the latter are arbitrary inferences which may not be true; while, in the case of fictions, the falsehood of the fact assumed is understood and avowed. The other kind of presumptions of law are commonly callcd rebuttable presumptions of law. These presumptions, like irrebuttable presumptions of law, are intendments made by law; but unlike them, they only hold good until disproved. The sceond class of presumptions consists of those which are commonly known as presumptions of fact.
A presumption of fact is rule of law that a fact otherwise doubtful may be inferred from a fact which is proved. The term “presumption of fact" is used tu designate an inference, affirmative or disaffirmativc of the existence of some fact, drawn by a judicial tribunal, by a process of probable reasoning from some matter of fact, either-judicially noticed, or admitted, or established by legal evidence to the satisfaction of the tribunal. The sources of presumptions of fact are (i) the common coursc of natural events, (ii) the common coursc of human conduct, and (iii) the common course of public and private business.

In a gcncnil view, such presumptions may be said to relate to things, persons, and the acts and thoughts and intelligent agents. With respect tlie first of these, it is an established principle that conformity with the ordinary course of nature ought always lo be presumed. Thus, the order and changes of the seasons, the rising, setting end course of the heavenly bodies, and the known properties of matter, give rise to very important presumptions relative to physical facts of things. The same rule extends to persons. Thus, the absence of those natural qualities, powers and faculties which are incident to the human race in general will never be presumed in any individual; such

as the impossibility of living long without food, the power of procreation within the usual ngesvthe possession of the reasoning faculties, the common and ordinary understanding of man, etc. To this head are reducible the presumptions which jurics arc sometimes called on to make, relative other duration ofhuman life, the time of gestation, etc.

Under the third class - namely, the acts and thoughts of intelligent agents come among others, all psychological facts; and here most important inferences are drawn from the ordinary conduct of man kind, and the natural feelings or impulses of human nature. Thus, no man will ever be presumed to throw away his property, as for instance, by paying money not due, and so it is. a maxim that every one must be taken to love his own off spring more than that of another person. The principal points o f distinction between presumptions of law and presumptions of fact arc; first, that whereas in the case ol a presumption fact a discretion, more or less extensive, as to drawing the inference is vested in the tribunal; in the case of presumptions law the law prc-emptorily requires a certain inference to be made whenever the facts appear which it assumes as the basis of that inference.

Secondly, as presumptions of law arc, in reality rules of law and part of the law itself, the court may draw the inference whenever the requisite facta are before it: while presumptions uf fact, however obvious, bcin£ inferences of fad, could not, at common law, be made without the intervention of judge. “Presumptions of mixed law and fact" hold an intermediate place between presumptions ol law' and presumptions of fact.

The tenns "presumptions of law" and “presumplions of fact” are nowhere mentioned or defined by the Qanun-e-Shahadat Order, but that this classification of presumptions has been substantially recognized by the order is apparent from (Article 2), where the terms ‘'conclusive proof', “shall presume” and “may presume” have been defined. The term “conclusivc proof designates those presumptions which in English law are callcd irrebuttable presumptions of law. the term “shall presume” indicates rebuttable presumptions of fact, 'The order mentions only (wo instances of irrebuttable presumptions of law in (Articles 55 & 128). Rebuttable presumptions of law arc enumerated in {Articles 90 to 95, 99 & 121), and in the form o f several rules of burden o f proof in Chapter VII.

The oder creates three instances of conclusive or irrebuttable presumptions of lew. These arc as follows:-

1) A judgment of a court of probate, insolvency, marimonial or admiralty jurisdiction is conclusive pruoi of the legal stains, character or right adjudged by it. (Article 55)
2) Birth during continuance of lawful marriage not earlier than the extension of six lunar months from the date of marriage or within *2* years of its dissolution, Thc woman remaining unmarried, is conclusivc proof of legitimacy, unless non-acccss between the spouses is proved at the probable time of conception. (Articlc 128) (applicable to muslim).

   Rebuttable presumptions of low, as pointed out, are jridicule in the order in several placcs by the expression “shall •presume”. Most of d»ese presumptions

relate to documents -which, have already been noticed in connexion with documents. Rules relating, to burden of proof also are, in a sense, statements of rebuttable presumptions of law.

Presumptions of fact are indicated in the order by the expression “may presume**. These presumptions, as pointed out above, are all discretionaiy and rebuttable, t hose which relate to documents have already been noticed in connection with documents. Other presumptions of this class are raised under (Arlicle 129). It is impossible tu enumerate presumptions of fact, as they are co-cxtcnsive with the whole field of natural reasoning, Some of the important presumptions of this class have been appended as illustrations to (Article 129). These arc;-

a). That a man who is in possession of stolen goods soon after a theft is cither the thief or the receiver of the stolen property knowing it to be stolen, unless he can account for his possession.

b). That an accomplice is unworthy of credit unless corroborated in material particulars.

c). That a bill of exchange was accepted or endorsed for good consideration.

d). That a thing or state tilings once shown to be in existence is stilt in existence.

e), That judicial and official acta have been regularly performed. 'Itiat the common course of business has been followed in particular cases.

f). That evidence which could be and is not produced would if produced, be unfavourable to the person withholding it.

g). That if a man refuses to answer a question which he is nol compelled to answer by law, die answer, ifgiven would be unfavourable to him.

h). That when a document creating an obligation is. in the hands of the obligor, the obligation has been discharged.

Some Other documents are proved merely by the presumption, genuineness which the Order attaches to them. This presumption of genuineness attaches lo the following documents;

1) Certificates, and certified copies and other documents which are declared'by law to be admissible as evidence o f any particular lace, provided such documents are properly certified, are substantially in the from prescribed, and purport to be executed in the manner directed by law in that behalf. {Article 90).

2) A recoid of evidence or confession taken in accords nee with Jaw and signed by the recording Judge or Magistrate. (Article 91).

3) Documents purporting to be documents directed by any law to be kept by any person, kept in the form required by law and is produced form proper custody. (Article 92).

4). Maps And ptaismade by the authority ol Government (Article 93).

5) Books printed or published under Ihe authority of the Government of *any country* and consisting of of the laws of that country, (Article 94).

6) Reports of decisions. (Article 94).

7) A power-of-Attonxy executed before and authenticated by a Notary Public, Pakistan Consul, nr Judge or MagtstJatc, ctc (Articlc 95)

8). Documents called for and not produced after notice to produce. (Article 99).

The presumption of genuineness that attaches to the ducutnents mentioned above is an obligatory presumption and must be rnised by the court. There are certain other documents in regrad to which ihe court may, if it so likes, raise a presumption, though the court is not bound to do so, the presumption being permissive and not obligatory. Thus the court may presume.

1) That a properly certified copy of any judicial record of any foreign country is genuine and accurate. (Article 96}.
2) That book on a matter of public or general interest, or a published map or chart, was written and published by the person and at the time and place, by whom or at which it purports to have been written or published. (Article 97).
3) That a message, forwarded form a telegraph office to the person to whom such message purports to be addressed, correspondents with u message delivered lor transmission at the office from which the message purports lo he sent, though the court can not make any presumption as to the person by whom such message was delivered for transmission. (Article 97).
4) That a thirty years old document coming from proper custody was duly executed and by the person by whom il purports to be executed an attested. (Article 100).
5) This provision shall apply lo the certified copies of documents referred in Article 87, (Articlc 101).

p). Exclusion of oral by documentary evidence.- it goes without saying that documentary evidence is superior lo oral evidence. That being so, the i:be»t evidence rule" generally excludes oral evidence where documentary evidence existed. One instance of the application of this principle is that (he contents of a Uocumcnt to be proved by primary evidence. But the most important application of Ibis principle is to be found in Articles 102 *&*. 103 of the Qanun-e-Shahadat Order which make documentary evidence exclusive evidence of certain matters and conclusive evidence

of others. Whereas Article 102 excludes evidence in proof of ccrlain mailers, Article 103 excludes evidence in disproof of matters mcnlioned in a document. Article 102 excludes oral evidence of certain matters which arc required by law lo be reduced to the fomi of a document, and of the terms of all contracts, grants and dispositions of property where such terms have been reduced to writing. Thu mere circumstance that a fact is mentioned in a document doe* not exclude evidence in proof fact is mentioned in a document does not exclude evidence in proof or disproof o f tfkat fact, unlew the fact is a term of the contract grant or disposition which is the subject-matter o f the document. A contract, grant or disposition may itself be a matter required by law to be reduced to writing. Where that is die case, oral evidence of the matter will be excluded whether the terms of that contract. grant or disposition have or hove not been reduced to writing. Thus, in tlie provinces in vyhich the Transfer of Property act is in force, sales mortgages, gifts, etc., arc required by Saw to reduce lo be writing. Therefore such transactions can not be effected orally, and where, so effected, can not be proved by oral evidence. (Article 103). It makes oral evidence inadmissible to contradict., vary, add to, or subtle! from, the terms of a contract, grant or disposition of Property, if such terms., having been reduced to writing, have been proved by primiiry or by secondary evidence. This rule excludes oral evidence in contradiction, variation, et£., of a document only between the parties to the document or their representatives in interest. There arc six Provisos appended to Article 103, some ofwhich arc cxecptions to. anti others explanations of, t'le rule excluding oral evidence in contradiction, variation ctc.. o f a document.

1) There arc certain facts which afTett the validity o f a contract or transfer, rendc:ing it void or voidable, e.g., fraud, undue Influence, war.' of capacity or consideration, etc. Such facts may *be* proved by or.il evidence since, if proved, their effect ts not to contradict, vnrv, add to, or subtract from, the terms of the contract, blit to show that there was no valid, contract. 'I'he principle of th^ rule forbidding the admission of oral evidence in contradiction, variation, etc., ol' the term s o f a contract is nut therefore, uflecled by Ibis proviso.

2) If a document is silent on a rmjlJvr. h separate oral agreement as to ih«i maita may be proved, provided the oral agreement not inconsistent with the document. The degree of formality of (he document is a matter which must 5>e usken inlo consideration hi applying the proviso.

3) A separate oral evidence constituting a condition precedent to the uttisc-hing of any obligation under a written contract, grant or disposition may be proved.

4) A Distinct subsequent Dial agreement to rcscincS or modify a contract. grant or disposition may be proved, unlcss:-

   i) The contract, grunt or disposition ii a matter required by law to be reduced to writing, or

   ii) The contract, grant or disposition hus actually l>een registered whether it is required hy law (o be registered or noI.

5) Any usage or custom by which incidents not expressly mentioned iti *it* written contract are annexed to that contract may he proved. unless the annexing of suuh incident is expressly excluded by the document.

2) Facts showing in what manner the language of related to existing lUels may be proved,

q) Ambiguities in documents.—Ambiguities in documents are of two kinds. (I) patent and (2) latent. If the document is ambiguous on the facc of it. i.e.unintelligible or uncertain, the ambiguity is "patent"- If Ihe document is not uncertain or unintelligible 0n the face of it, but is ambiguous when read in the light of external cireumslances, the ambiguity is "latent". A patent ambiguity is subjective, in as much as it is due either to the writer's having no definite conception of the subject,or his failure to express himself by appropriate language. A latent ambiguity is objective, as it is an umbiguity in the description of the thing to which the document relates. The general rule governing the admission of oral evidence to, remove ambiguities in a document is that suth evidence is not admissible if the ambiguity is a patcnl ambiguity, but it is admissible if the ambiguity is a latent ambiguity. From this general rule the following deductions may be drawn:-

When the language of the document is, on its face, ambiguous or defective, evidence is inadmissible to show its meaning or to supply its defects, as the ambiguity is a patent ambiguity, (not enacted in Qanun-e-Shaliadat).

1) When the language of a document is plain and applies to existing facts, evidence is inadmissible to show that it was not meant to apply to such facts, Article 104 as there is no ambiguity at all in the document.
2) When the language of a document, though plain in itself, is unmeaning in reference to existing facts, evidence is admissible to show that *the* language was used in a peculiar sense, as the ambiguity is a latent ambiguity. (Articlc 105).
3) When the document was meant to apply only to one out of several persons or tilings, evidence is admissible to show to which of the persons or things it was intended lo apply (Article 100).
4) When the language of a document applies partty to one set of facts and partly to another, but the whole of it applies to neither, evidence may be given to.how to which of the two it was meant, to apply (Aiticlc 107).
5) Evideuce may be given to show the meaning of illegiable or nat coimnonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, or abbrcviations and words used ina partcular sense, (Article I08).
6) Evidence by third party of any fact tending lo show a contemporaneous agreement varying the tcrms of the document. (Arlielc 109),

r) Saving, of provisions of Succession Act., relating to wills. The special rules as to construction of wills are not effected by Ihe provisions of tsiis chapter. (Article 110).

Part II
ON PROOF
(Mode of Proof)

FACTS WHICH NEED NOT BE PROVED

Part II deals with the manner in which facts rcccivablc in evidence underPart I maybe given in evidence. It is a fundamental rule that unless Ihcrc is some assertion as to the cxistcncc of a fact, its existence must be- proved to the satisfaction of the court. Therefore, the party who wishes Ihc court lo believe in the cxistcncc of a fact, must prove it. To this rule, there arc, however, two exceptions.

There arc;-

1. A fcct which is admitted by the othcr party need not be proved. (Articlc 113).
2. Facts of which the court shall take "judicial notice" need not be proved, (Article 111),

a) Judiciol Notice.— Qanun-e-Shahdat Order gives a long list of facts of which courts shall take judicial notice; (Article 112) but it has been held that the list is not exhaustive and there there are several other facts of which thc courts may take judicial notice. These facts possess one common characteristic,namely, there are of such public notoriety that their formal proof is unnecessary. Included in the list of such facts are laws. Articles of War, the rule or the road on land or at sea. The course o f proceedings of legislatures; seals of certain functionaries; names, titles, functions and signatures of Gazetted Officers; names of the members and officers of the court including legal practitioners; the divisions of time; the geographical divisions o f the world; public festivals and holidays the territories under the dominion of Pakistan, the flags of foreign States, and thc commencement and termination of hostilities between the Pakistan and any other Slate or body o f persons. (Article 112),
Facts which are neither admitted nor are subject of judiciul notice must be proved. The subject of proof maybe divided into (1) proof of facts other than contents of documents and (2) proof of documents including proof of execution of documents, and (ii) proof of existence, condition and contents of documents.

b) Estoppel-— Estoppel by deed docs not exist in this country; estoppel by judgment or the rule of rcsjudicata is not a rule of evidence at all but a rule of pure procedure, and is not therefore noticed in the order; cxcepl with reference to the relevancy of judgments. Estoppel by representation or by matters in pais is the only form of estoppel dealt with by the order. The general rule of estoppel is enacted in these terms. "When one person has, by his declaration, order omission, intentionally caused or permitted another person to believe a thing to be true and to act upon sueh belief, neither he nor his; representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny Ihe truth of that thing". (Article 114). The order notices ccrtain estoppel by contract or agreement, which is merely a species of estoppel by representation. Thus, it is enacted that no tenant or licensee of immovable property shall be permitted to deny the title of his landlord or licensor, (Article 115) no acceptor of a bill of exchange shall he to deny that the drawer had authority to draw bill or to endorse it ((Article 116) and thal no bailee or licensee shall be permitted to deny that his bailor or licensor had, at the time

when ballmentor license commenced authority to make siich bailment or grant such license. (Articlc 116).

Part III
PRODUCTION AND EFECT OF EVIDENCE

Having covered the “facts which may be given in evidence”, (Part I) and "the mode or manner in which they must be given in evidence”, (Part II), the order proceeds to consider in Part III the subject of “'Production of Evidence”. This part to some extent indicates the scope and function of the various rules which are lumped together in the Part. The general questions considered in this part may be stated as follows:-

1) Whose duty is it to prove a particular fact? (Burden of proof).
2) When may a party be precluded from proving a particular fact? (Estoppel).
3) What arc the rules relating to the examination of witness? A subject which may be further sub-divided into the following qtjestions:-

   i. 1low ore witnesses to be examined?
   ii. How may the credited o f witnesses be impeached or confirmed?
   iii. What is the efl’ecl of improper admission or rejection of cvidencc?

a) Burden of Proof.—The first question, when a fact has to be given in evidence, that arises is “whose duty is it to prove that fact? This question is the subject matter of rules which are known by the name of rules relating to Burden of Proof. The order first formulates certain general rules on this subject and then considers the question of burden o f proof in particular cases. The general rules relating to burden of proof are:

   1) Whoever desires the court to give judgment as to any right or liability dependent on Ihe existence of facts which he asserts* must prove that fact. (Article J17).
   2) The burden o f proof as; to uny particular fact lies on that person who wishes Hie court lo believe in its existence. (Article 119).
   3) Tie burden of proofl ies on that person who would fail if no evidence at all were gis'en on cither side. (Article 118).
   4) The burden o f proof o f any fact necessary to be proved in order to enable any person to give evidence of any other latl is on Ihe person who wishes to give such evidence. (Article 120).
   5) The burden of proving facts which bring the case of an accused pereon within an exception or *a* proviso is on the accuscd. (Articlc 121).
   6) When any fact is especially within the knowledge of a person, the burden of proving that fac(is upon him (Article 122.).
   7) ofbnrtlen ofproofdealtwith by the order arc the tollowing

These rulos overlap each yther. Therefore more than one of thssc rules may be applicable to the circumstances of a particular case, and the same result may be arrived at by applying one rather than another of these rules. The Specific cses of burden of proof dealt with by the order arc the tollowing:-

1) If a man is shown to be alive within 30 yean, the burden of proving that he is dead is on the person who asserts it (Article 123), but if it is shown that the person in question

has not been heard of for seven year by those who would have naturally heard of him, the burden of proving that he is still alive is on the person who affirms it. (Artklc 124).

2) Where any persons are shown to have been acting as partners, landlord and tenant or principal and agent, the burden of proving that they have discontinued that relationship is on the, person who asserts this feet. (Article 125).
3) Where a person is shown to be in possession,, the burden of proving that he is not the owner is on the person alleging this fact. (Article 126).
4) Where one of the parties to a transaction stands to the other in a position of active confidence, the burden ol' proving good faith of the transaction is on thc party standing to the other in that position. (Article 127).

b) **Examination of Witnesses**.—The order in which witnesses should be produced is regulated by the rules of Civil and Criminal Procedure Codes, and in the absence of such rules, is in the discretion of the court. (Article 130). The court . may ask a party how the fact of which he proposes to give evidence , if proved, be relevant. If the relevancy or admissibility of some evidence depends upon proof of another fact. The later fact fac must ordinarily he proved first. In appropriate eases, however, the parly may give undertaking but the fact on which the relevancy admissibility of the proposed evidence depends will be later. (Articlc 13!). A witness is first examined by tbc party calling such witness, then by the opponent, and then again by thee party calling him. The first examination of a witness by the party calling him is called ''examination-in- chief"; examination by the opponent is called "cross-examination", and the second exarmjiation of the witness by the party calling him is called "re- examination". The examination-in-chief and cross-examination must both relate to relevant facts, though the latter not be confined to matters cleared in the former. Re-examination must be confined to die examination of matters referred lo in cross-examination, though, with the permission of the court, it may extend to new matters, in which case the other party has the right of cross-cxamination in regard to such new mattere. (Articles 132 & 133). Every witness is liable to be cross-cxamined, bul there is no right of cross-examination if a person is not sworn and is merely asked to produce a document, (Article 134). A party may. with Ihe permission of the court, put such questions to a witness of his own as may be put in cross-examination. (Article 156). Leading questions, i.e., questions which suggest the answer, (Article 136), though permissible in cross- examination, (Article 138) can not *be* asked in examination-in-chicf or re-examination if the other party objects. The court may, however, permit such questions, and shall permit them if they relate to introductory matters or lo matters which arc undisputed or sufficiently proved, (Article139). A witness may te questioned in cross-examination as to previous statements about relevant facts (Articles 140 & 149) and if the statement is in writing, the writing need not be shown to him, or proved before questioning him; but if it is intended to coniradict him, his intention must be drawn to the writing by which it is intended to contradiel him. (Article 140).

A witness may also be asked, in t-ross-cxamination, questions which tend:-

i) To test the veracity.
ii) To discover who he is and what is his position in life.
iii) To shake his credit by injuring his character, (Article 141).

If any such question relates to a relevant metter, the witness is bound to answer it, though, as already pointed out, the witness may ask to be excused to answer the answer tend to criminate him or to expose him to a penally or forfeiture, in which ease the answer, if compelled, would not subject the witness to any arrest or prosecution, or be proved against him in any criminal prosecution, exccpt that for pccjury. (Articles 15 &. 142). But if the question docs not relate to a relevant fact, and is asked merely to shake the credit of Ihe witness by injuring his character, the court has the discretion in allowing or disallowing the question. The court will exercise its discretion in favour of the question, if the truth of the imputation conveyed by it would seriously affect the opinion of the court as to the credibility of the witness; and against the question, if the truth ot the imputation would not affect or would affect only in a slight degree, the opinion of the court as to the credibility of the witness or if there is great disproportion between the importance of the imputation and the importance of the witness's evidence (Article 143). Counsel should not ask questions tending to impcach the character of a witness, unless he has reasonable grounds to believe that the imputation is well-founded, (Article 144) if be disregards Ihc rule, he is guilty of misconduct and his cass may be reported to High Court or the Bar Council for disciplinary action (Article 145).
Indecent or scandolus inquires are forbidden, unless thcy relale to facts in issue or the matters necessary to be known in order to determine whether or not the facts in issue existed; (Article 146) and so arc questions intended to insult or annoy, or needlessly offensive in form (Articlc 148).

If a question is asked merely to shake the credit of the witness by injuring his charachter, the answer to it is conclusive, in the sense that no cvidcncc to contradict it can be given. There are , however, two exceptions to this rule:-

i. If the witness denies a previous conviclion, he may be contradicted by proving the conviction.
ii. If ihe question is asked to impeach the impartiality of the witness. Said he denies the facts suggested, his answers may be contradictcd.

Of course, a witness giving false answers to questions asked with a view to shake his crcdit by injuring his character, may be prosecuted for perjury. (Aiticlc 149).

c) **Impeachmcni and Corroboration.**

a) The credit of a witness may be impeached in the following manner:-

i. By Ihe testimony of persons who swear that they know the witness to be unworthy. A person declaring a witness to be unworthy of credit may not give reasons in his examination-in-chief, but he may be questioned as to such reasons in cross-examination and the answers thus given are not liable to be contradicted, though if false, they muy fomi a proper foundation for his prsceution for perjury.
ii. proofof bribery, or offer of bribery or other corrupt inducement.
iii. proof of former statements inconsistent with that part of his evidence which is liable to be contradicted.

iv. In a case of rape, by proof of general immoral character of the proscctris (Artick J51).

b) A wilness may be corroborated by;-

i. Questioning him *on* to any olher fact which he observed at or near the time or place at which the relevant fcct in which he has testified, occurred;
ii. Proof of anv previous statement rclating to the fact made by him at or about the time when Ihc fact took place, or before any authority competent to investigate the fact. (Article 153).

The credit of a person whose sUiteEtient is admitted under Article 46 or 47, may be impeachcd or confirmed in the same manner as the credit ol' a witness actually examined. (ArtieJe 154).

d) **Refreshing Memory**,— A witness may refresh his memory by referring to any document made or read by him at the time of the transaction. or so soon afterwards that the transaction was at that time fresh in his memory. (Article 155). If the witness is sure that the facts were eorrecdy recorded in any such document as has just been mentioned, he may testify to those facts from the document though lie has no specific recollection of the facts. (Artick 156). When a witness may refer to a document for refreshing his memory, he may, if there is sufficient reason for the non-production of the original, refer to a copy of it with the permission of the court. The document by which a witness refreshes his memory must he produced and shown to the adverse party, who may cross-cxiuniitc the witness with reference to it. (Articlc 157).

A witness who is summoned to produce a document. must bring the document to court. The court has the power to inspect such document, unless it be a document referring to affairs of State, and to take cvidcnce to determine any objection to its production or admissibility. (Articlc J58).

If a party gives notice to the other party to produce a document and the document is produced, and inspected by the party calling for i!s production, he is bound to give it in evidence if the party producing so likes. (Article 159). On the other hand if a party does not producc a document which he is required by the other side to prodace, he shall not be permitted subsequently to give the ducument in evidence. (Articlc 160). The Judge, may ask of any witness any questions, relevant or irrelevant, and ihe court may order the production of any document. The parlies are not entitled to object to any such question or order, not to cross-examine the witness upon an answer made to any such questions. But neither the answers to such questions t;0r such documents can be made the basis of decision unless they are relevant. Further, the judge can not compel a witness lo answer any question or to produce any document, which the witness would be entitled to refuse to answer or produce if the question were asked, or the document called for, by the adverse party. The judge is also not entitled to ask any question which it would be improper for any other person to ask, nor to dispense with primary evidence where it can not, under the provisions of the order be dispensed with. (Article 161).

e) Effect of improper admission or rejection of evidence- The itnp»opcr admission or rejection of evidence is not a ground for reversal of the decision, unless the remaining evidence, after excluding the improperly admitted cvidence is insuffiicent to sustain the

decision, or the improperly rejected evidence, iif admitted, would have varied the deci.sion (Articlc 161!).

f) **Acceptance or denial of claim on oath**. (Article 161), but such provisions not to apply in criminal including Hudood cases

g) **Miscellaneous.** Production of evidence that has become available because of modem devices etc. (Articlc 164) i.e. Information Technology (Electronic Transaction Ordinance, *2002* may also be referied). Otder to be over-ride other laws. (Article 165). Thc Evidence Act ,1872 stands repealed. (Articlc 166).

Cunclusion.— In the preceding pages an attempt has been made to eplain the scheme and arrangement of the order and to give a bird eye view of its main provisions.

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[i] **Mian Zafar Iqbal Kalanauri,** Mediator & Advocate Supreme Court of Pakistan, Adjunct Faculty of Law at SACHOL, Lahore University of Management Sciences (LUMS), SAF Center, #3 3rd Floor, 8-Fane Road Lahore 54000, Pakistan, Cell: (92) 300- 4511823 & 314-4224411 E-mail: kalanauri@gmail.com ; Web: http://www.zafar kalanauri.com