

as to illustration (f): the question is, whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;

as to illustration (g) : a man refuses to produce a document which would bear on a contract of small importance on which he is sued. but which might also injure the feelings and reputation of his family;

as to illustration (h) : a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked ;

as to illustration (i) : a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it,

## **CHAPTER X OF THE EXAMINATION OF WITNESS**

**130. Order of production and examination of witnesses:** The order in which witnesses are produced and examined shall be regulated by the law and practice, for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the Court.

**131. Judge to decide as to admissibility of evidence:** (1) When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant, and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant and not otherwise.

(2) If the fact proposed, to be proved is one of Which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking.

(3) if the relevancy of one alleged fact depends upon an other alleged fact being first proved, the Judge may in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

### **Illustrations**

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under Article 46.

The fact that the person is dead must be proved by the person proposing to prove the statement, before evidence is given of the statement

(b) It is proposed to prove, by a copy, the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced.

(c) A is accused of receiving stolen property knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property

The relevancy of the denial depends on the identity of the property. The Court may in its discretion, either require the property to be identified before the denial of the possession is proved or permit the denial of possession to be proved before the property is identified.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact-in-issue. There are several intermediate facts (B, C and D), which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact-in-issue. The Court may either permit A to be proved before B, C or D is proved, or may require proof of B, C and D before permitting proof of A.

**132. Examination-in-chief, etc.:** (1) The examination of a witness by the party who calls him shall be called his examination-in-chief.

(2) The examination of a witness by the adverse party shall be called his cross-examination.

(3) The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

**133. Order of examinations:** (1) Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

(2) The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine that matter.

**134. Cross-examination of person called to produce a document:** A person summoned to produce a document does not become a witness by the mere fact that he produces it and cannot be cross-examined unless and until he is called as a witness.

**135. Witnesses to character:** Witnesses to character may be cross-examined and re-examined.

**136. Leading questions:** Any question suggesting the answer which the person putting in wishes or expects to receive is called a leading question.

**137. When leading questions must not be asked:** (1) Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the Court.

(2) The Court shall permit leading questions as to matters which are introductory or undisputed, or which have in its opinion, been already sufficiently proved.

**138. When leading questions may be asked:** Leading questions may be asked in cross-examination.

**139. Evidence as to matters in writing:** Any witness may be asked, whilst under examination, whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which in the opinion of the Court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation: A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

### **Illustration**

The question is, whether A assaulted B.

C deposes that he heard A say to D—"B wrote a letter accusing me of theft, and I will be revenged on him". This statement is relevant, as showing A's motive for the assault, and evidence may be given of it though no other evidence is given about the letter.

**140. Cross-examination as to previous statements in writing:** A witness may be cross-examined as to previous statements made by him in writing or reduce into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

**141. Questions lawful in cross-examination:** When a witness is cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(1) to test his veracity,

(2) to discover who he is and what is his position in life or

(3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

**142. When witness to be compelled to answer:**

if any such question relates to a matter relevant to the suit or proceeding, the provisions of Article 15 shall apply thereto.

**143. Court to decide when question shall be asked and when witness compelled to answer:** If any such question relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the Court shall decide whether or not the witness shall be compelled to answer it, and may if it thinks fit, warn the witness that he is not obliged to answer it. In exercising its discretion, the Court shall have regard to the following considerations: —

(1) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously effect the opinion of the Court as to the credibility of the witness on the matter to which he testifies ;

(2) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

(3) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;

(4) the Court may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

**144. Question not to be asked without reasonable grounds:** No such question as is referred to in Article 143 ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation, which it conveys, is well founded.

**Illustrations**

(a) An advocate is instructed by an attorney that an important witness is a dakait. This is a reasonable ground for asking the witness whether he is a dakiat.

(b) An advocate is informed by a person in Court that an important Witness is a dakait. The informant, on being questioned by the advocate, given satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a dakait.

(c) A witness, of whom nothing whatever is known, is asked at random whether he is a dakait. There are here no reasonable grounds for the question.

(d) A witness, of whom nothing whatever is known, being questioned as to his mode of life and means of living, gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a dakait.

**145. Procedure of Court in case of question being asked without reasonable grounds:** If the Court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any advocate, report the circumstances of the case to the High Court or other authority to which such advocate is subject in the exercise of his profession.

**146. Indecent and scandalous question:** The Court may forbid any question or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court unless they relate to facts-in-issue, or to matters necessary to be known in order to determine whether or not the facts-in-issue existed.

**147. Procedure of Court in cases of defamation libel and slander:** When a person is prosecuted or used for making or publishing an imputation of a defamatory, libellous or slanderous nature, the Court shall not, before it has recorded its findings on the issues whether such person did make or publish such imputation and whether such imputation is true, permit any question to be put to any witness for the purpose of injuring the character of the person in respect of whom such imputation has or is alleged to have been made or any other person, whether dead or alive, in whom he is interested, except in so far as any such question may be necessary for the purpose of determining the truth of the imputations alleged to have been made or published.

**148. Questions intended to insult or annoy:** The Court shall forbid any question which appears to it to be intended to insult or annoy, or which though proper in itself, appears to the Court needlessly offensive in form.

**149. Exclusion of evidence to contract answer to questions testing veracity:** When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but if he answers falsely, he may afterwards be charged with giving false evidence.

Exception 1: If a witness is asked whether he has been previously convicted of any crime denies it, evidence may be given of his previous conviction.

Exception 2: If a witness is asked any question tending to impeach his impartiality and answers it by denying the suggested, he may be contradicted.

### **Illustrations**

(a) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether, in a former transaction, he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty.

He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) A affirms that on a certain day he saw B at Lahore.

A is asked whether he himself was not on that day at Faisalabad. He denies it.

Evidence is offered to show that A was on that day at Faisalabad.

The evidence is admissible, not as contradicting A on a fact, which affects his credit, but as contradicting the alleged fact that B was seen on the day in question in Lahore.

In each of these cases the witness might, if his denial was false, be charged with giving false evidence.

(d) A is asked whether his family has not had a blood feud with the family of D against whom he gives evidence.

He denies it. He may be contradicted on the ground that the question tends to impeach his impartiality.

**150. Question by party to his own witness:** The Court may, in its discretion, permit the person who calls a witness to put any questions to him, which might be put in cross-examination by the adverse party.

**151. Impeaching credit of witness:** The credit of a witness may be impeached in the following ways by the adverse party or with the consent of the Court, by the party who calls him:

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be un-worthy of credit;

(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence ;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;

(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.

Explanation: A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reason for his belief, but he may be asked his reasons in cross examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

### **Illustrations**

(a) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.

Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.

The evidence is admissible.

(b) "A" if indicated for the murder of B.

C says that B, when dying, declared that A had given B the wound of which he died.

Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence,

The evidence is admissible.

**152. Questions lending to corroborate evidence of relevant fact admissible:** When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he testifies.

### **Illustrations**

A, an accomplice, gives an account of robbery in which he took part He describes various incidents unconnected with the robbery which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

**153. Former statements of witness may be proved to corroborate later testimony as to same fact:** In order to corroborate the testimony of a witness, any former statement

made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the facts; may be proved.

**154. What matters may be proved in connection with proved statement relevant under Article 46 or 47:** Whenever any statement, relevant under Article 46 or 47, is proved, all matters may be proved either in order to contradict or corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

**155. Refreshing memory:** (1) A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the Court considers it likely that the transaction was at that time fresh in his memory.

(2) The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he read it he knew it to be correct.

(3) Whenever a witness may refresh his memory by reference to any document, he may with the permission of the Court, refer to a copy of such document:

Provided the Court be satisfied that there is sufficient reason for the non-production of the original.

(4) An expert may refresh his memory by reference to professional treatises.

**156. Testimony to facts stated in document mentioned in Article 155:** A witness may also testify to facts mentioned in any such document as is mentioned in Article 155, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

### **Illustrations**

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business, if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

**157. Right of adverse party as to writing used to refresh memory:** Any writing referred to under the provisions of the two last preceding Articles must be produced and shown to the adverse party if he requires it, such party may, if he pleases, cross-examine the witness thereupon.

**158. Production of documents:** (1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any objection shall be decided on by the Court



(2) The Court, if it sees fit may inspect the document unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

(3) If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and if the translator disobeys such direction, he shall be held to have committed an offence under Section 166 of the Pakistan Penal Code (Act XLV of 1860).

**159. Giving, as evidence, of document called for and produced on notice:** When a party calls for a document which he has given the other party notice to produce and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.

**160. Using, as evidence, of document production of which was refused on notice:** When a party refuses to produce a document which he has had notice to produce; he cannot afterwards use the document as evidence without the consent of the other party or the order of the Court.

### **Illustrations**

A sues C on an agreement and gives B, notice to produce it. At the trial A calls for the document and B refuses to produce it. A gives secondary evidence of its contents, B seeks to produce the document itself to contradict the secondary evidence given by A, or in order to show that the agreement is not stamped. He cannot do so.

**161. Judge's power to put questions or order production:** The Judge may in order to discover or to obtain proper proof of relevant facts, ask any question he places, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the Judgment must be based upon facts declared by this Order to be relevant, and duly proved:

Provided also that this Article shall not authorise any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under Articles 4 to 14, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the judge ask any question which it would be improper for any other person to ask under Article 143 or 144; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.

## **CHAPTER XI**