

NOTES

Presumption as to rule of law. Under Article 2(7) and (8), the Court may draw a particular inference from a particular fact or particular evidence unless and until the truth of such inference is disproved. Presumptions mentioned in Articles 90 to 95 of the Qanun-e-Shahadat or obligatory whereas presumptions mentioned under Article 96, 97, 98, 100 and 129 are permissive in nature and Court might and might not raised a presumption. [PLD 2007 Kar. 1] No presumption is attached to a registered document regarding its execution where the document was challenged as forged one. [1992 CLC 807]

Chapter II

OF WITNESSES

23. Who may testify. All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind:

Provided that a person shall not be competent to testify if he has been convicted by a Court for perjury or giving false evidence;

Provided further that the provisions of the first proviso shall not apply to a person about whom the Court is satisfied that he has repented there after and mended his ways;

Provided further that the Court shall determine the competence of a witness in accordance with the qualifications prescribed by the injunctions of Islam as laid down in the Holy Quran and Sunnah for witness, and, where such witness is not forthcoming, the Court may take the evidence of a witness who may be available.

Explanation. A lunatic is not incompetent to testify, unless he is prevented by his lunacy from understanding the questions put to him and giving rational answers to them.

NOTES

1. **Child witness**—Under Article 3 of Qanun-e-Shahadat, 1984, a child under the age of 8/9 years, if gives statement which indicates that said witness understood the questions and gave answers intelligently and rationally, then same could not be ignored merely due to tender age of the witness. [2011 MLD 873] Evidence of child witness to be assessed with care and caution, it is not safe to rely upon unless corroborated. [PLD 1995 S.C. 1] Child's evidence—Not inadmissible. [1992 P.Cr.L.J. 101] Child witness—What the law requires is not the factor of age but the intelligence. [1995 P.Cr.L.J. 803; 1998 P.Cr.L.J. 1680] A good witness. [1992 KLR (Cr.L.) 498]. Conviction could be recorded on the sole testimony of a child, provided the same had been consistently corroborated by circumstantial evidence. Great care and caution was to be observed during examination of a child witness, particularly in case of major punishment. [2013 P.Cr.L.J. 708, 2010 SCMR 247, PLD 1995 S.C. 1 rel.] Child of tender age, by reason of his/her youth, is not absolutely disqualified as witness. No precise age prescribed which determines the question of competency of a person to give evidence. In case of child witness it is immaterial whether he/she can understand and answer in rational manner questions put to him/her. No general rule of universal application can be laid down that in no case evidence of child witness be believed. [2014 P.Cr.L.J. 1803 (DB)]