

2. "Person related"—Evidence of 'Asl (ascendant) in favour of Far' (descendant and vice versa is not admissible with exception). [PLD 1991 FSC 186] "All persons" includes non-Muslims. [1997 P.Cr.L.J. 1696] Person related—Not disqualified to testify as witness. [PLD 2001 S.C. 67] Competency to testify—Conditions (i) capacity to understand; (ii) rationally answer the questions; (iii) possession qualifications prescribed by Injunction of Islam as laid down in the Holy Qur'an and Sunnah. [PLD 2001 S.C. 67]
3. "Tender age"—Does not specify any particular age—Capacity of a witness to understand things rationally and then to reply accounts. [1993 PSC (Cr.) 736] Accused not adult—Onus on him to prove. [1993 PSC (Cr.) 787] Observing intellect of a child in the shape of written question and answer is not the requirement of the law. Court is quite competent to give its observation with regard to the intellect of the witness meaning thereby that the only requirement is the satisfaction of the Court. [2002 P.Cr.L.J. 41] Under Article 3 the test of competence of a witness is that he understands the questions and gives rational answers, it is not necessary that he should answer all the questions correctly. Witness quite intelligent and replied the question put by the trial Court in a rational manner, his ignorance about house number or telephone number cannot be considered as his disqualification to be a competent witness. [2009 MLD 307]
4. Perjured witness—Witness—Perjured—Incompetent. [1992 P.Cr.L.J. 2130]
5. Relationship—Party related not disqualified to testify as witness. [PLD 2001 S.C. 67] Evidence of servants and tenants not discarded. [PLD 2001 S.C. 67]
6. *Tazkiyah al Shahood*—Tazkiyah al Shuhood—Guidelines. [PLD 1992 FSC 390] Requirement can be fulfilled at the end of testimony. [1992 P.Cr.L.J. 1536] Tazkiyah al Shahood—Obligatory only in cases punishable with Hadd/Qisas not with Tazir. [PLJ 1999 S.C. 105]
7. Quantum of evidence. It is quality and not quantity of evidence which merits consideration. If prosecution is satisfied that its case can be proved by producing single witness then there would be no compulsion for it to produce all those witnesses mentioned in FIR. [PLJ 2005 Cr.C. (Pesh) 196]

4. Judges and Magistrates. No Judge or Magistrate shall, except upon the special order of some Court to which he is subordinate, be compelled to answer any questions as to his own conduct in Court as Judge or Magistrate, or as to anything which come to his knowledge in Court as such Judge or Magistrate but he may be examined as to other matters which occurred in his presence whilst he was so acting.

Illustrations

- (a) A, on his trial before the Court of Session, says that a deposition was improperly taken by B, the Magistrate. B cannot be compelled to answer questions as to this, except upon the special order of a superior Court.
- (b) A is accused before the Court of Session of having given, false evidence before B, a Magistrate. B cannot be asked what A said, except upon the special order of the superior Court.
- (c) A is accused before the Court of Session of attempting to murder a police-officer while on his trial before B, a Sessions Judge, B may be examined as to what occurred.

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Question of fact specifically alleged need not to be proved if not controverted. [1991 SCMR 2042]

5. Communications during marriage. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married, nor shall he be permitted to disclose any such communication unless the person who made it, or his representative-in-interest, consents, except in suits between married person, or proceedings in which one married person is prosecuted for any crime committed against the other.

6. Evidence as to affairs of State. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Explanation. In this Article, "official record relating to the affairs of State" includes documents concerning industrial or commercial activities carried on directly or indirectly, by the Federal Government or a Provincial Government or any statutory body or corporation or company set up or controlled by such Government.

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Article 6 is that public interest must be paramount and private interest must give away when there is any conflict between public and private interest. [2007 YLR 954] Court authorized to decide whether privilege claimed is well founded or not. [2007 YLR 954] Affairs of State. [PLD 1992 S.C. 492] Power of Special Court under O. XVII of 1977 has similarity with that exercised by Court under Art. 8 [PLD 1992 S.C. 492] The underlying object of Article 6 of the Qanun-e-Shahadat is to prevent evidence which is derived from any unpublished official record relating to an affair of State, from being given, without permission of the head of the Department concerned, and to relieve the party withholding to produce such evidence from the presumption that could be raised against it under Article 129 of the Qanun-e-Shahadat (the old section 114 of the Evidence Act). The object is founded on the old English common law rule of Crown Privilege or Privilege on the basis of public policy which prevents matters of State over which a veil of secrecy is required to be enforced and maintained, from being laid bare or made public, and thus severely endangering State or public interest. This privilege should not be confused with the law touching privilege connected with other matters, such as legal professional privilege; privilege barring self-incrimination; Constitutional or statutory restrains against disclosure of information or material. Privilege on the basis of public policy forms a class apart and deserves to be treated as such. [PLD 1992 S.C. 492]

7. Official communications. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

Explanation. In this Article, "communications" includes communications concerning industrial or commercial activities carried on, directly or indirectly, by the Federal Government or a Provincial Government or any statutory body or corporation or company set up or controlled by such Government.

8. Information as to commission of offences. No Magistrate or police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Explanation. In this Article, "Revenue-officer" means any officer employed in or about the business of any branch of the public revenue.

9. Professional communications. No Advocate shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate, by or on behalf of his client, or to state the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment.

Provided that nothing in this Article shall protect from disclosure;

- (1) any such communications made in furtherance of any illegal purpose; or

(2) any fact observed by any advocate, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment, whether the attention of such advocate was or was not directed to such fact by or on behalf of his client.

Explanation. The obligation stated in this Article continues after the employment has ceased.

Illustrations

(a) A, a client says to B, an advocate "I wish to obtain possession of property by use of a forged deed on which in request you to sue".

The communication, being made in furtherance of criminal purpose, is not protected from disclosure.

(b) A, being charged with embezzlement, retains B, an advocate, to defend him. In the course of the proceedings, B observes that an entry has been made in A's account book charging A with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by B in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

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Scope—Provision of Article 9, Qanun-e-Shahadat not only secures the secrecy of professional communication but prohibits in express terms an advocate from disclosing any information, communication, instruction and advice made to him, or received, obtained, and tendered by him during the course of his professional engagement and said prohibition is not limited to the knowledge of events or things acquired by him but also extends to facts observed by him in the course and for the purpose of his professional employments. [PLD 2009 S.C. 28] Investigating authorities cannot use machinery available to them for the purpose of investigation to compel an advocate engaged by a client to disclose whereabouts of his client when the whereabouts and identity of client are under investigation. Investigating authorities cannot compel petitioner to disclose identity of his client on the grounds that he is representing his client before some other forum or in some other case. Identity of client is privileged communication under Article 9 of Qanun-e-Shahadat Order, 1984. [PLD 2015 Lah. 243]

10. Article 9 to apply to interpreters, etc. The provisions of Article 9 shall apply to interpreters, and the clerks or servants of advocates.

11. Privilege not waived by volunteering evidence. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in Article 9, and, if any party to a suit or proceedings calls any such advocate as a witness, he shall be deemed to have consented to such disclosure only if he questions such advocate on matters which, but for such question, he would not be at liberty to disclose.

12. Confidential communications with legal advisers. No one shall be compelled to disclose to the Court, tribunal or other authority exercising judicial or quasi-judicial powers or jurisdiction any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

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Confidential communication—A letter was written by counsel to his client in connection with professional duty. Neither counsel nor client could be compelled to disclose. Not fair for the complainant who was client to send to the Court, letter of his advocate explaining factual position about the case which was written in sheer good faith. [PLD 1990 Kar 173]