

(e) A is charged with the murder of E. The fact that B prosecuted A for libel and that A was convicted and sentenced to imprisonment is relevant as a fact in issue.

(f) A is tried for the murder of E. The fact that B prosecuted A for libel and that A was convicted and sentenced to imprisonment is relevant and under Article 21 as showing the motive for the fact in issue.

NOTES

Person not a party to earlier lis—Findings not binding. [PLD 1995 Lah. 541]

58. Fraud or collusion in obtaining judgment, or incompetency of Court may be proved. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under Articles 54, 55 or 56, and which has been proved by the adverse party was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.

Opinion of third Persons when Relevant

59. Opinion of experts. When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand-writing or finger impression[*], the opinion upon that point of persons specially skilled in such foreign law, science or art, or in question to identity of handwriting or finger impression[**] are relevant facts.

Such persons are called experts.

[*] After the word "impression", the words "or as to authenticity and integrity of electronic documents made by or through an information system". [In terms of S. 29 of Electronic Transactions Ordinance, LI 2002, for the purpose of Ordinance LI 2002 the Qanun-e-Shahadat Order, 1984 shall be read subject to the amendments specified in the schedule to this Ordinance LI of 2002, Inserted by Ordinance LI of 2002, w.e.f. September, 2002]

[**] For the words "are relevant facts" the words "or as to functioning, specific programming and operations of information systems, are relevant facts" [In terms of S. 29 of Electronic Transactions Ordinance, LI 2002, for the purpose of Ordinance LI 2002 the Qanun-e-Shahadat Order, 1984 shall be read subject to the amendments specified in the schedule to this Ordinance LI of 2002, Subs. by Ordinance LI of 2002, w.e.f. 11th September, 2002]

Illustrations

(a) The question is, whether the death of A was caused by poison.

The opinion of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(b) The question is, whether A, at the time of doing a certain act, was by reason of unsoundness of mind incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.

NOTES

1. Mode for proving the signature or handwriting. Under Articles 59, 61, 78, 81 and 84 of the Qanun-e-Shahadat there are other modes (than the Handwriting Expert's opinion) for proving the signature or handwriting of any person viz.

- (i) by admission or examining the person who signed the document (Art. 78 and 81);
- (ii) by examining the person before whom the alleged document is signed (Art. 79)

4. Evidence—A party can succeed on the strength of his own evidence, both oral and documentary and could not avail of the weakness of the opponent. [1989 CLC 2277] Witness closely related to accused—Testimony found consistent—Trustworthy and inspiring confidence—Reliable. [1993 PSC (Cri) 723]
5. Opinion about character. Proving character of a person strong and convincing evidence is required to be brought on record. [PLJ 2005 S.C. 257]
6. Opinion of forensic witness. Opinion of a forensic witness, in terms of Article 59 of Qanun-e-Shahadat relating to authenticity or integrity of electronic document made by or through any information system is also admissible. [PLD 2007 Kar. 448] Positive report of forensic science laboratory cannot be discarded only due to the dispatch of crime empties on the day of recovery. [PLD 2008 Lah. 277]
7. Medical evidence. Medical evidence furnished by doctor and chemical examiner when in contradiction with oral testimony of related and interested witness to be believed. Benefit of doubt given to accused. [PLD 2008 Kar. 182]
8. Dumb witness. Under Article 59 Evidence of a dumb witness can be recorded through an expert in which Court can form an opinion of specifically skilled person brought to his notice. [2008 P.Cr.L.J. 1666]
9. Handwriting expert. Evidence of handwriting expert is to be treated at par with any other witness. Opinion advanced by expert is a piece of circumstantial evidence which seeks to corroborate the other evidence available on record. [2008 YLR 952] Thumb-impression not available for examination, it is not safe to rely on the report of handwriting expert. [2010 MLD 978] Court is still equipped with legal authority to compare the signatures of the parties itself. [2010 MLD 1162] Opinion of Handwriting Expert is not sufficient for reaching a definite conclusion such opinion has only corroborative value and, unless independent corroboration is available conviction cannot be based on the sole testimony of the Handwriting Expert. [2010 P.Cr.L.J. 1832]

60. Facts bearing upon opinions of experts. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Illustrations

- (a) The question is, whether A was poisoned by a certain poison.
The fact that other persons, who were poisoned by that poison, exhibited certain symptoms which experts affirm or deny to be the symptoms of that poison, is relevant.
- (b) The question is whether an obstruction to a harbour is caused by a certain sea-wall.
The fact that other harbours similarly situated in other respects, but where there were no such sea-walls, began to be obstructed at about the same time, is relevant.

61. Opinion as to handwriting when relevant. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Explanation. A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person, or when he has received documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Illustrations

The question is, whether a given letter is in the handwriting of A, a merchant in London.
E is a merchant in Peshawar, who has written letters addressed to A and received letters purporting to be written by him, C is B's clerk, whose duty it was to examine and file B's correspondence, D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising him thereon.
The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant though neither B, C or D ever saw A write.

NOTES

1. **Comparison of signature**—Permissible. 1991 CLC Note 92 at p. 74. Opinion of Handwriting Expert—Not binding on Court. [1991 MLD 1070] Ordinarily to be considered as evidence of weak type. [1991 CLC Note 207 at p. 162] No adverse presumption against a party not applying. [1991 MLD 1070]
2. **Handwriting Expert.** In presence of overwhelming evidence, oral, documentary as well as circumstantial, it would be futile to examine the expert. [2005 SCMR 152] Such opinion though relevant, but for being weak type of evidence would not amount to conclusive proof. Expert's evidence, for being confirmatory explanatory of direct or circumstantial evidence, could not be preferred over available confidence inspiring evidence. [2014 MLD 1368] Opinion of handwriting expert is only what it states it is an opinion. Notwithstanding its such discretion, court has all requisite powers of undertaking exercise of comparing handwriting or signatures on its own and thereafter arriving at conclusion as to genuineness or otherwise of handwriting or signatures as the case may be. [2014 P.Cr.L.J. 334]
- Scribe.** Where scribe of a document was not available (had died) his signatures could be proved by producing any other person who was acquainted with signature handwriting of the deceased. [2014MLD 1364]
3. **Execution of document**—Can be proved by scribe as also by marginal witness. [1991 MLD 1037] Court on its accord can compare disputed signatures and draw opinion. [2012 YLR 291]
4. **Guarantor**—A guarantor is liable to the extent of guarantee executed by him for the loan advanced to debtor. [1991 CLC Note 92 p. 74]
5. **Disputed signatures.** Court on its accord can compare such signatures and draw opinion. [2012 YLR 291]

62. Opinion as to existence of right or custom, when relevant. When the Court has to form an opinion as to the existence of any general custom or right, the opinion, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation. The expression "general custom or right" includes customs or right common to any considerable class of persons.

Illustrations

The right of the villagers of a particular village to use the water of a particular well is a general right within the meaning of this Article.

63. Opinion as to usages, tenets, etc., when relevant. When the Court has to form an opinion as to

- the usages and tenets of anybody of men or family,
 - the constitution and government of any religious or charitable foundation, or
 - the meaning of words or terms used in particular districts or by particular classes of people.
- the opinions of persons having special means of knowledge thereon, are relevant facts.

NOTES

Relationship. Pedigree table alone and by itself is not a proof of relationship unless such relationship is independently proved through witnesses or other independent evidence. [2010 SCMR 822]

64. Opinion on relationship when relevant. When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided, that such opinion shall not be sufficient to prove a marriage in proceedings under the Divorce Act, 1869 (IV of 1869), or in prosecutions under Section 494 or 495 of the Pakistan Penal Code (Act XLV of 1860).

Illustrations

(a) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife, is relevant.

(b) The question, is whether A was the legitimate son of B. The fact that A was always treated as such by members of the family, is relevant.

NOTES

1. **Scope.** The import of Article 64 of the Qanun-e-Shahadat is that no one can be allowed to prove the case beyond the scope of its pleadings and any evidence read in contradiction or out of the purview of the pleadings shall be inadmissible or ignored by the Court. [PLD 2005 Lah 218] Article 64 requires that the person claiming the relationship with the deceased must appear in person and to prove his treatment towards the claimants and the opinion of the members of family and his friends towards the person claiming inheritance from the deceased. [PLD 2012 Pesh. 80]

2. **Opinion on relationship—When relevant—**Opinion of a person shall be relevant and admissible and shall not be hit by the rule of hearsay only when such a person is the member of the family of whose relationship is in issue or other has special means of knowledge on the subject. [PLD 2005 Lah 218] Person whose opinion is made evidence must be shown to have special means of knowledge on the subject. [1990 CLC 274] Much importance and credence cannot be given to the testimony of a person who is party to the litigation when his statement is not found in line with the plaint. [PLD 2005 Lah 218] Fact that witness not sure about the names of for fathers of parties not sufficient to disbelieve such witnesses. [2008 SCMR 452]

3. **Legitimacy.** Witnesses testifying about relationship must lay down the foundation of existence of their knowledge about the relationship such as being the family members or otherwise having special means of knowledge of relationship. [PLD 2002 Lah 10]

4. **Pedigree table—**Cannot be a proof of relationship such as the one falling under the purview of this Article. [PLD 2005 Lah 218] Production of pedigree table is not sufficient unless identity of the persons mentioned therein is duly corroborated by satisfactory evidence. [2005 YLR 2170]

65. **Grounds of opinion when relevant.** Whenever the opinion of any living person is relevant the grounds on which such opinion is based are also relevant.

Illustration

An expert may give an account of experiments

giving his opinion