

(b) The question, is whether 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 a 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 performed by him for the purpose of forming his opinion.

Character When Relevant

66. In civil cases character to prove conduct imputed irrelevant. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except insofar as such character appears from facts otherwise relevant.

67. In criminal cases previous good character relevant. In criminal proceedings the fact that the person accused is of a good character is relevant.

68. Previous bad character not relevant, except in reply. In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.

Explanation 1. This article does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2. A previous conviction is relevant as evidence of bad character.

NOTES

Previous bad character. It is no disproof of good character that a man has been suspected or accused of a previous crime. Safe course to find the verdict exclusively on evidence duly received and on inferences logically to be drawn from such evidence. [PLD 2005 S.C. 63]

69. Character as affecting damages. In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.

Explanation. In Articles 66, 67, 68 and 69, the word "character" includes both reputation and disposition; but except as provided in Article 68, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

Chapter IV

OF ORAL EVIDENCE

70. Proof of facts by oral evidence. All facts except the contents of documents, may be proved by oral evidence.

NOTES

1. Question of fact. Mere oral self-serving statement of one of the defendants and a chance witness is insufficient. [PLD 1991 Lah. 262]

2. Proof of fact. "Proof", a branch of adjective law, is the sufficient reason for assenting to a proposition as true. This is done by production of evidence, the law relating to which is to all legal practice what logic is to all reasoning, whatever subject it may be concerned about. No rule of law requires that a particular fact must be proved through production of documents only. [1990 CLC 729] Mere oral self-serving statement of one of the defendants is insufficient to prove question of fact. [PLD 1991 Lah 262] Man may lie in order to support their cause but document cannot. [PLD 1996 Lah 171] Oral evidence must be direct. [1996 P.Cr.L.J. 1076] Law insists for a direct evidence of the primary source and it would be inadmissible if comes from an indirect source. [PLD 1996 Lah 402] When any transaction is drawn and executed in form of a document no oral evidence can be allowed to be produced to prove the same unless it is shown that original document had been lost. The secondary evidence cannot be allowed unless conditions laid down in Art. 76 satisfied. [2004 YLR 1113]

3. Oral evidence. When a document is admitted or its execution is proved then contents of the same or always considered to be proved or admitted. No oral evidence to disprove contents of such document is admissible in terms of Article 70 of Qanun-e-Shahadat. [PLD 2007 Lah. 83] Oral evidence cannot be given preference over documentary evidence. [2010 SCMR 473]

71. Oral evidence must be direct. Oral evidence must, in all cases whatever, be direct; that is to say:

If it refer to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard it must be the evidence of a witness who says he heard it;

or by any other sense or in any other manner, it