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CONSTITUTION OF BRUNEI DARUSSALAM

(Order under section 83(3))

SYARIAH COURTS EVIDENCE ORDER, 2001

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CONSTITUTION OF BRUNEI DARUSSALAM

(Order under section 83(3))

SYARIAH COURTS EVIDENCE ORDER, 2001

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order –

PART I

RELEVANCY OF FACTS

CHAPTER I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Syariah Courts Evidence Order, 2001 and shall commence on such date or dates to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette.*

(2) Different dates may be appointed under subsection (1) for different provisions of this Order or for different purposes of the same provision.

(3) The long title of this Order is "An Order relating to the law of evidence for the Syariah Courts".

Application.

2. This Order shall apply in accordance with *Hukum Syara'* in all Syariah Court judicial proceedings.

Interpretation.

3. (1) In this Order, unless the context otherwise requires –

"'adil" means a Muslim who performs the prescribed religious duties, abstains from committing capital sins and is not perpetually committing minor sins;

" *'ariyah*" means giving a beneficial loan of any article free of charge or without consideration without affecting the ownership, provided that the article is to be returned;

"*baligh*" means a person who has attained the age of puberty in accordance with Hukum Syara';

"*bayyinah*" means evidence which proves a right or interest including *qarinah*;

"computer" has the meaning ascribed thereto by section 30(8);

"Court" means the Syariah Subordinate Court, the Syariah High Court or the Syariah Court of Appeal, as the case may be, as established under section 6(1) of the Syariah Courts Act (Chapter 184);

"disproved", a fact is said to be "disproved" when, after considering the matters before it, the Court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist;

"document" means any matter expressed, described, or howsoever represented, upon any substance, material, thing or article, including any matter embodied in a disc, tape, film, sound track or other device whatsoever, by means of –

(a) letters, figures, marks, symbols, signals, signs, or other forms of expression, description, or representation whatsoever;

(b) any visual recording (whether of still or moving images);

(c) any sound recording, or any electronic, magnetic, mechanical or other recording whatsoever and howsoever made, or any sounds, electronic impulses, or other data whatsoever;

(d) a recording, or transmission, over a distance of any matter by any, or any combination, of the means mentioned in paragraph *(a)*, *(b)*, *(c)*, or by more than one of the means mentioned in paragraphs *(a)*, *(b)*, *(c)* and *(d)*, intended to be used or which may be used for the purpose of expressing, describing, or howsoever representing, that matter.

Illustrations

A writing is a document.

Words printed, lithographed or photographed are documents.

A map, plan, graph or sketch is a document.

An inscription on wood, metal or stone is a document.

A drawing, painting, picture or caricature is a document.

A photograph or a negative is a document.

A recording, tape of a telephonic communication, including a recording of such communication transmitted over a distance, is a document.

A photographic or other visual recording, including a recording of photographic or other visual transmission over a distance, is a document.

A matter recorded, stored, processed, retrieved or produced by a computer is a document.

"evidence" includes –

(a) *bayyinah* and *syahadah*;

(b) all statements which the Court permits to be made before it by witnesses in relation to matters of fact under inquiry: such statements are called oral evidence;

(c) all documents produced for the inspection of the Court: such documents are called documentary evidence.

"fact" means and includes

(a) any thing, state of things or relation of things capable of being perceived by the senses;

(b) any mental condition of which any person is conscious.

Illustrations

(a) That there are certain objects arranged in a certain order in a certain place is a fact.

(b) That a person heard or saw something is a fact.

(c) That a person said certain words is a fact.

(d) That a person holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense or is or was at a specified time conscious of a particular sensation, is a fact.

(e) That a person has a certain reputation is a fact.

"fact in issue" means any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follows.

Illustrations

A is accused of an offence of *khalwat* with *B*.

At his trial the following facts may be in issue that *A* and *B* were together in a closed room; that *A* and *B* were together in a vehicle parked in a secluded place.

"*hadd"* means any criminal punishment or penalty as ordained by *Al-Quran* or *Sunnah Rasullullah Sallallahu Alaihi Wassalam*;

"*Hukum Syara*" means the laws of any sects which the Court considers valid;

"*jinayat*" means an act prohibited by *Hukum Syara'*, whether the act affects life or property or any other thing;

"Judge" means a Syar'ie Judge appointed under sections 9(1), 10(1) and 11 of the Syariah Courts Act (Chapter 184) and includes the Chief Syar'ie Judge;

"*kafalah*" means consolidating the liabilities of the guarantor with that of the person guaranteed in an obligation to a right such as debts, such debts are therefore under the liabilities of both of them;

"mahjur '*alaih"* means a person forbidden in accordance with *Hukum Syara'* to administer his property;

"*mahr"* means *mas kahwin* which is something compulsory given by a husband to his wife by reason of solemnization in accordance with *Hukum Syara'*;

"*marad al maut*" means illness which ordinarily causes death;

"Minister" means the Minister of Religious Affairs;

"*mudda'ii*" means a person who prosecutes or claims a right;

"mudda'a 'alaih" means a person who is prosecuted or claimed in respect of a right;

"*mudharabah*" means a person who hands over his property to someone else to be commercialised and share the profits among themselves;

"*mumaiyiz*" means a child who has attained the age of being capable to differentiate a matter;

"*muzakki*" means a person who on the order of the Court gives information with regards to a witness whether he is '*adil* or not;

"not proved", a fact is said to be "not proved" when it is neither proved nor disproved;

"proved", a fact is said to be "proved" when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists;

"*qisas*" means retaliation or similar penalty to punish offences of murder or causing bodily harm to anybody;

"*syahadah*" means true statement in Court by applying the word "*asyhadu"* or its synonymous words in any language to conclude a person the case or interest upon another person, and on conviction it shall be binding on the Judge;

[S 16/2014]

"*syahadah ala al syahadah*" means evidence in the form of *syahadah* which may be given by a person "*syahid"* (*syahid furu'*) or *syahadah* given by another *syahid* (*syahid asal*) who requests him to do so;

"*syahid*" means a person who gives evidence by *syahadah*;

"*syahid asal*" means a person requesting any other person to give *syahadah* on his behalf;

"syahid furu"" means a person who gives *syahadah* on *syahadah* given by the *syahid asal* who requests him to do so;

"Syariah Court" means the Syariah Subordinate Court, the Syariah High Court or the Syariah Court of Appeal, as the case may be, as established under section 6(1) of the Syariah Courts Act (Chapter 184);

"Syar'ie Judge" means a Syar'ie Judge appointed under sections 9(1), 10(1) and 11 of the Syariah Courts Act (Chapter 184) and includes the Chief Syar'ie Judge;

"Syar'ie Lawyer" means a person admitted as Syar'ie Lawyer under section 27(1) of the Syariah Courts Act (Chapter 184);

"*tazkiyah al syuhud*" means inquiry conducted by the Court upon witnesses to determine whether those witnesses are '*adil* or not;

"witness" does not include the accused in criminal proceedings and the parties in civil proceedings;

"*yamin*" means statement made solemnly regarding matters that would occur or otherwise occur or confirming it by pronouncing Allah or one of Allah's attributes.

(2) All words and expressions used in this Order and not defined therein but defined in the Interpretation and General Clauses Act (Chapter 4), shall have the same meanings assigned thereto respectively to the extent that they do not conflict with *Hukum Syara'*.

(3) References in this Order to the date of commencement of this Order are to the date of commencement of the main substantive provisions of this Order.

Reference to Arabic script.

4. (1) To avoid any doubts as to the identity or definition of any of the words and expressions used in this Order and listed in the Schedule, reference can be made to the Arabic script with respect to words and expressions shown opposite such Arabic script in the Schedule.

(2) The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, from time to time amend the Schedule.

Text in Malay language shall prevail.

5. If any conflict or doubt arises as to the meaning or requirement of a provision under this Order, the text in the Malay language shall prevail.

Presumption.

6. (1) Whenever it is provided by this Order that the Court may presume a fact, it may either regard such fact as proved unless and until it is disproved, or may call for proof of it.

(2) Whenever it is directed by this Order that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved.

(3) When one fact is declared by this Order to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II

QARINAH

Definition of *qarinah*.

7. *Qarinah* is fact connected with the other in any of the ways referred to in *Hukum Syara'* or in the provisions of this Order.

Evidence may be given of facts in issue and *qarinah*.

8. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be *qarinah*, and of no others.

Explanation – This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to civil procedure.

Illustrations

(a) *A* is accused of beating *B*, his wife with a cane with the intention of torturing her.

At *A's* trial the following facts are in issue –

A's beating *B* with the cane.

A's s hurting *B* by such beating.

A's intention of torturing *B.*

(b) *A*, a party to a suit does not comply with a notice given by *B* the other party to produce for *B's* inspection a document referred to in *A's* pleadings. This section does not enable *A* to put such document on his behalf in such suit, otherwise than in accordance with the conditions prescribed by the law for the time being in force relating to civil procedure.

Relevancy of facts forming part of same transaction.

9. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are *qarinah*, whether they occurred at the same time and place or at different times and places.

Illustration

A is accused of beating his wife *B*. Whatever was said or done by *A* or *B* or the bystanders at the beating so shortly before or after it as to form part of the transaction is *qarinah*.

Facts which are the occasion, cause or effect of facts in issue.

10. Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened or which afforded an opportunity for their occurrence or transaction, are *qarinah*.

Illustrations

(a) The question is whether *A* committed *hirabah* on *B.*

The facts that shortly before the commission of the *hirabah B* went to a supermarket with money in his possession and that he showed or mentioned the fact that he had it to third persons are *qarinah*.

(b) The question is whether *A* murdered *B.*

Marks on the ground produced by a struggle at or near the place where the murder was committed are *qarinah*.

(c) The question is whether *A* poisoned *B*.

The state of *B's* health before the symptoms ascribed to poison and habits of *B* known to *A*, which afforded an opportunity for the administration of poison, are *qarinah*.

Motive, preparation and previous or subsequent conduct.

11. (1) Any fact which shows or constitutes a motive or preparation for any fact in issue or relevant fact is *qarinah*.

(2) The conduct of any party or of any agent to any party to any suit or proceeding in reference to such suit or proceeding or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is *qarinah* if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1 – The word "conduct" in this section does not include statements unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Order.

Explanation 2 – When the conduct of any person is relevant any statement made to him or in his presence and hearing which affects such conduct is *qarinah*.

Illustrations

(a) The question is whether a certain document is the will of *A*.

The facts that not long before the date of the alleged will, *A* made inquiry into matters to which the provisions of the alleged will relate, that he consulted lawyers in reference

to making the will, and that he caused drafts of other wills to be prepared of which he did not approve are *qarinah*.

(b) *A* is accused of a crime.

The fact that after the commission of the alleged crime *A* absconded or attempted to conceal things which were or might have been used in committing it are *qarinah*.

Facts necessary to explain or introduce relevant fact are *qarinah*.

12. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened or which show the relation of parties by whom any such fact was transacted, are *qarinah* in so far as they are necessary for that purpose.

Illustrations

(a) The question is whether a given document is the will of *A*.

The state of *A's* property and of his family at the date of the alleged will may be *qarinah*.

(b) *A* is accused of a crime.

The fact that soon after the commission of the crime *A* absconded from his house, is *qarinah* under section 11 as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went, is *qarinah* as tending to explain the fact that he left home suddenly.

Things said or done by conspirator in reference to common design.

13. Where there is reasonable ground to believe that 2 or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any

one of such persons, in reference to their common intention after the time when such intention was first entertained by any one of them, is *qarinah* as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

When facts become *qarinah*.

14. Facts become *qarinah* –

(a) if they are inconsistent with any fact in issue or relevant fact;

(b) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations

(a) The question is whether *A* committed a crime at Kuala Belait on a certain day.

The fact that on that day *A* was at Muara is *qarinah*.

The fact that near the time when the crime was committed, *A* was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it is *qarinah*.

(b) The question is whether *A* committed a crime.

The circumstances are such that the crime must have been committed either by *A, B, C* or *D*. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either *B, C* o r *D* is *qarinah*.

In suits for damages facts tending to enable Court to determine amount are *qarinah*.

15. In suits in which damages are claimed, any fact which will enable the Court to determine the amount of damages which ought to be awarded is *qarinah*.

Facts relevant when right or custom is in question.

16. Where the question is as to the existence of any right or custom, the following facts are *qarinah* –

(a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognized or exercised or in which its exercise was disputed, asserted or departed from.

Facts showing the existence of state of mind or of body or bodily feeling.

17. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are *qarinah* when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1 – A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists not generally but in reference to the particular matter in question.

Explanation 2 – But where upon the trial of a person accused of an offence the previous commission by the accused of an offence is *qarinah* within the meaning of this section, the previous conviction of such person shall also be *qarinah*.

Illustrations

(a) The question is whether *A* had been guilty of cruelty towards *B*, his wife.

Expression of their feelings towards each other shortly before or after the alleged cruelty are *qarinah*.

(b) *A* is tried for a crime.

The fact that he said something indicating a general disposition to commit that particular crime is *qarinah*.

The fact that he said something indicating a general disposition to commit crimes of that class is not *qarinah*.

Facts bearing on question whether act was accidental or intentional.

18. When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is *qarinah*.

Illustration

A is assigned as *amil* to receive *fitrah* from the public. It is *A's* duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The facts that other entries made by *A* in the same book are false, and that the false entry is in each case in favour of *A* are *qarinah*.

Existence of course of business when become *qarinah*.

19. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is *qarinah*.

Illustrations

(a) The question is whether a particular letter was dispatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post office, and that that particular letter was put in that place, are *qarinah*.

(b) The question is whether a particular letter reached *A*.

The facts that it was posted in due course and was not returned by the Postal Services Department are *qarinah*.

IKRAR

Definition of ikrar.

20. *Ikrar* is a statement made by a person orally, in writing or by gesture, that he is under some obligation to another person in respect of some right, and which is made and under any circumstances hereinafter mentioned.

Admissibility of *ikrar*.

21. (1) An *ikrar* made by a person is binding on the person making the *ikrar*. When the *ikrar* is admitted by the Court it shall not be withdrawn except in a case of the offence of *zina* punishable on conviction by *hadd* penalty.

(2) An *ikrar* made outside Court is only admissible if made before 2 witnesses who are '*adil*.

(3) A representative *ikrar* in a proceeding on behalf of the person granting the representation made before a Judge is admissible.

***Ikrar* final proof on the person making *ikrar*.**

22. An *ikrar* is a final proof on the person making the *ikrar* and is not a proof on any other person including the same accused person in the same charge with the person making the *ikrar*.

Explanation – Ikrar of an accomplice is admissible as evidence but it shall not become a basis for conviction of his accomplice unless it is corroborated by other evidence.

Conditions of *ikrar*.

23. (1) An *ikrar* shall be made by a person who is *'akil* and *baligh*.

(2) Unless otherwise provided, the following *ikrar* are inadmissible –

(a) *ikrar* of a minor who is not *baligh*;

(b) *ikrar* of a lunatic and a mentally retarded person *(ma'tuh)*; and

(c) *ikrar* of a *wali* or *wasi* for a person under his custody or responsibility.

(3) An *ikrar* by a *mumaiyiz* minor who has been authorized by his *wali* or guardian to carry on a business or deal with the public shall be regarded as *ikrar* of an adult and shall be valid.

Explanation – An *ikrar* made by such minor who has been authorized to do business or deal with the public shall be admissible as *ikrar* of an adult in respect of matters relating to the business and dealings such as debts, trusts, *'ariyah*, *mudharabah* and others, but is inadmissible in matters relating to *mahr*, *jinayat* and *kafalah*.

(4) A party who benefits from an *ikrar* need not necessarily be a person who is *'akil* and *baligh*.

Explanation – If a person making an *ikrar* states that the good or property is for the benefit of a minor who is not *mumaiyiz*, his *ikrar* is admissible and the person making the *ikrar* shall be bound by his *ikrar*.

(5) An *ikrar* shall be made absolutely and voluntarily without force and any imputation.

Explanation – An *ikrar* made by threat, inducement or promise is inadmissible.

(6) The person making an *ikrar* shall do his *ikrar* solemnly.

(7) The person making an *ikrar* shall be acknowledged and identified.

(8) The person making an *ikrar* shall take note of the matters in his *ikrar*.

(9) The person making an *ikrar* shall be a person who is not *mahjur 'alaih*.

(10) *Ikrar* made under the state of intoxication is not admissible in cases punishable with *hudud* or *qisas* penalty.

[S 16/2014]

(11) *Ikrar* made by a deaf or dumb person in Court if he can write or sign which can be understood is admissible except in *hudud* or *qisas* cases.

[S 16/2014]

(12) *Ikrar* made under the circumstances of *marad al maut* concerning the right of another person against him is admissible in accordance with *Hukum Syara'*.

Ikrar to convict offence of *zina*.

24. *Ikrar* in a case of the offence of *zina* punishable on conviction by *hadd* penalty shall only be admissible if –

(a) made before the Court;

(b) made orally;

(c) it is clear in stating the commission of the offence; and

(d) made on 4 separate occasions.

Withdrawal of *ikrar* in *zina* case and its effect.

25. (1) *Ikrar* in a case of *zina* may be withdrawn –

(a) before conviction;

(b) after conviction but before implementation of punishment; or

(c) during implementation of punishment.

(2) In a case of *zina* which may be punishable with *hadd* penalty, if the *ikrar* is withdrawn –

(a) at any stage as in subsection (1), the withdrawal of the *ikrar* shall be admitted;

(b) before the implementation of punishment on the person making the *ikrar*, he shall no longer be inflicted with the punishment;

(c) in the course of serving the punishment, the implementation of the punishment shall cease forthwith.

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

Cases in which statement of relevant fact by person who is dead or cannot be found etc. is *qarinah*.

26. (1) Statements, written or verbal, of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves *qarinah* in the following cases –

(a) when the statement is made by a person as to the cause of death, or as to any of the circumstances of the transaction which resulted in his death comes into question.

Such statements are relevant whether the person who made them was or was not at the time when they were made under expectation of death, and whatever may be the nature of the proceeding in which the cause of death comes into question;

(b) when the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce, written or signed

by him, or of the date of a letter or other document usually dated, written or signed by him;

(c) when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages;

(d) when the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which if it existed he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen;

(e) when the statement relates to the existence of any relationship by *nasab*, marriage or *sesusuan* between persons as to whose relationship by *nasab*, marriage or *sesusuan* the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised;

(f) when the statement relates to the existence of any relationship by *nasab*, marriage or *sesusuan* between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised;

(g) when the statement is contained in any deed or other document which relates to any such transaction as is mentioned in paragraph *(a)* of section 16;

(h) when the statement was made by a number of persons and expressed feelings or impressions on their part relevant to the matter in question.

Illustrations

(a) The question is whether *A* was murdered by *B*; or *A* dies of injuries received in a transaction in the course of which she was ravished.

The question is whether she was ravished by *B*; or

The question is whether *A* was killed by *B* under such circumstances that a suit would lie against *B* by *A's* widow.

Statements made by *A* as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are *qarinah*.

(b) The question is as to the date of *A's* birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that on a given day he attended *A's* mother and delivered her a son, is *qarinah*.

(c) The question is whether there was a marriage outside the country on a given day.

A letter written by a deceased person stating that he married another woman outside the country not in accordance with usual procedure is *qarinah*.

(d) The question is whether *A* and *B* were legally married.

The statement of a deceased *kadi* that he married them under such circumstances that the celebration would be invalid is *qarinah*.

(e) The question is, what was the date of birth of *A*?

A letter from *A's* deceased father to a friend, announcing the birth of *A* on a given day, is *qarinah*.

(f) The question is whether and when *A* and *B* were married.

An entry in a memorandum-book by *C*, the deceased father of *B*, of his daughter's marriage with *A* on a given date, is *qarinah*.

(g) The question is whether a piece of land was *wakaf* land.

An entry in a diary by a deceased Imam of a mosque in a certain *qariah* stating that a certain piece of land was *wakaf* land, is *qarinah*.

(h) The question is whether *A* and *B* had been living together and had several children in a certain village.

The assumption of the villagers when asked, was that they were husband and wife.

The statements of the villagers are *qarinah*.

(2) The evidence of such statement shall not be admissible to convict in cases of *hudud* and *qisas* in accordance with *Hukum Syara'*.

(3) The evidence relating to such statement shall not be admissible under the following cases –

(a) when the person who made the statement ceases to be competent to give evidence;

(b) when the person who made the statement refuses to give evidence on the ground that he has no evidence relevant to the dispute or that he did not make the statement or that he made a mistake in relation to the statement.

Relevancy of certain evidence for proving in subsequent proceeding the truth of facts therein stated.

27. Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case the Court considers unreasonable:

Provided that –

(a) the proceeding was between the same parties or their representatives in interest;

(b) the adverse party in the first proceeding has the right and opportunity to cross-examine;

(c) the questions in issue were substantially the same in the first as in the second proceeding.

Explanation - A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES

Entries in books of account when relevant.

28. Entries in books of accounts regularly kept in the course of business are *qarinah* whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Relevancy of entry in public record made in performance of duty.

29. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself *qarinah*.

Admissibility of statements produced by computers.

30. (1) In any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) are satisfied in relation to the statement and computer in question.

(2) The conditions are –

(a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any body, whether corporate or not, or by any individual;

(b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and

(d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph *(a)* of subsection (2) was regularly performed by computers, whether –

(a) by a combination of computers operating over that period;

(b) by different computers operating in succession over that period;

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this Order as constituting a single computer; and references in this Order to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things –

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate,

and purporting to be signed by a person holding a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) Notwithstanding subsection (4), in any such proceedings as are therein mentioned the Court may for special cause require oral evidence to be given of any matter of which evidence could ordinarily be given by means of a certificate under that subsection.

(6) If any person in a certificate tendered in evidence in any proceedings by virtue of subsection (4) intentionally makes a statement material in those proceedings which he knows

to be false or does not believe to be true, he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine or both.

(7) For the purposes of this Order –

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) where in the course of activities carried on by any individual or body, whether corporate or not, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

(8) Subject to subsection (3), in this Order "computer" means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

Provisions supplementary to section 30.

31. (1) Where in any proceedings a statement contained in a document is admissible in evidence by virtue of section 30, it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the Court may approve.

(2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 30, the Court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including, in the case of a statement contained in a document, the form and contents of that document.

(3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 30, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not any person concerned with the supply of information to that computer or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

Relevancy of statements in maps, charts and plans.

32. Statements of facts in issue or relevant facts made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of Government as to matters usually represented or stated in such maps, charts or plans, are themselves *qarinah*.

Relevancy of statements as to any fact contained in legislation and *Gazette*.

33. When the Court has to form an opinion as to the existence of any fact of a public nature any statement of it made and contained in any legislation enacted in Brunei Darussalam and notification in the *Gazette* is *qarinah*.

Relevancy of statements as to any law contained in law books.

34. When the Court has to form an opinion as to a law of any country or territory, any statement of such law contained in a book purporting to be printed or published under the authority of the Government of such country or territory, and to contain any such law, and any report of a ruling of the courts of such country or territory contained in a book purporting to be a report of such rulings, is *qarinah*.

HOW MUCH OF A STATEMENT IS TO BE PROVED

What evidence to be given when statement forms part of a conversation, document, book or series of letters or papers.

35. When any statement of which evidence is given forms part of a longer statement or of a conversation, or part of an isolated document or is contained in a document which forms part of a book or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement and of the circumstances under which it was made.

JUDGMENTS OF COURTS OF JUSTICE WHEN RELEVANT

Previous judgments, orders or decrees relevant to bar a second suit or trial.

36. The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit or to hold such trial.

Relevancy of certain judgments in probate etc. jurisdiction.

37. (1) A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or bankruptcy jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but

absolutely, is relevant when the existence of any such legal character or the title of any such person to any such thing is relevant.

(2) Such judgment, order or decree is conclusive proof –

(a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;

(b) that any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;

(c) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and

(d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

Relevancy and effect of judgments, orders or decrees other than those mentioned in section 37.

38. Judgments, orders or decrees other than those mentioned in section 37 are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A sues *B* for trespass on his land. *B* alleges the existence of a public right of way over the land which *A* denies.

The existence of a decree in favour of the defendant in a suit by *A* against *C* for a trespass on the same land in which *C* alleged the existence of the same right of way is relevant, but it is not conclusive proof that the right of way exists.

Judgments, orders or decrees other than those mentioned in sections 36 to 38 when relevant.

39. Judgments, orders or decrees other than those mentioned in sections 36 to 38 are irrelevant unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Order.

Illustrations

(a) *A* and *B* separately sue *C* for a libel which reflects upon each of them. *C* in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case or in neither.

A obtains a decree against *C* for damages on the ground that *C* failed to make out his justification. The fact is irrelevant as between *B* and *C*.

(b) *A* has obtained a decree for the possession of land against *B. C, B's* son murders *A* in consequence.

The existence of the judgment is relevant as showing motive for a crime.

(c) *A* is charged with theft and with having been previously convicted of theft.

The previous conviction is relevant as a fact in issue.

(d) *A* is tried for the murder of *B*. The fact that *B* prosecuted *A* for libel and that *A* was convicted and sentenced is relevant under section 11 as showing the motive for the fact in issue.

Fraud or collusion in obtaining judgment or incompetency of Court may be proved.

40. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under sections 36 to 38 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.

OPINIONS OF THIRD PERSONS WHEN RELEVANT

Opinions of experts.

41. (1) When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions or relating to determination of *nasab*, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions or relating to determination of *nasab*, are *qarinah*.

(2) Such persons are called experts.

Illustrations

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

The opinions of experts as to the symptoms produced by the poison by which *A* is supposed to have died are *qarinah*.

(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 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 *qarinah*.

(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 2 documents were written by the same person or by different persons are *qarinah*.

(3) 2 or more experts shall be called to give evidence where possible but if 2 experts are not available, the evidence of one expert is sufficient. If 2 experts give different opinions a 3rd expert shall be called to give evidence.

Facts bearing upon opinions of experts.

42. 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 *qarinah*.

(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 *qarinah*.

When opinion as to handwriting is *qarinah*.

43. 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 *qarinah*.

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 in answer to 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.

Illustration

The question is whether a given letter from *A* to his wife is written by *A*.

Evidence is given by *B*, *A's* secretary whose duty is to examine and file *A's* correspondence.

The opinion of *B* on the question whether the letter is in the handwriting of *A* is relevant, though *B* never saw *A* write the letter.

When opinion as to existence of right or custom is *qarinah*.

44. When the Court has to form an opinion as to the existence of any general custom or right, the opinions as to the existence of such custom or right of persons who would be likely to know of its existence, if it existed, are *qarinah*.

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

Illustration

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

When opinion as to usages, tenets etc. is *qarinah*.

45. When the Court has to form an opinion as to –

(a) the usages and tenets of any body of men or family;

(b) the constitution and government of any religious or charitable foundation; or

(c) 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 *qarinah*.

When opinion on relationship is *qarinah*.

46. 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 *qarinah*.

Illustrations

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

The fact that they were usually received and treated by friends as husband and wife is *qarinah*.

(b) The question is whether *A* was a legitimate son of *B*.

The fact that *A* was always treated as such by members of the family is *qarinah*.

When grounds of opinion are *qarinah*.

47. Whenever the opinion of any living person is relevant, the grounds on which such opinion is based are also *qarinah*.

Illustration

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

CHARACTER WHEN RELEVANT

In civil cases character to prove conduct imputed irrelevant.

48. 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 in so far as such character appears from facts otherwise relevant.

In criminal cases previous good character relevant.

49. In criminal proceedings the fact that the person accused is of good character is *qarinah*.

Previous bad character not relevant except in reply.

50. 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 *qarinah*.

Explanation 1 – This section 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.

PART II

ON PROOF

CHAPTER I

FACTS WHICH NEED NOT BE PROVED

Fact judicially noticeable need not be proved.

51. No fact of which the Court will take judicial notice need be proved.

Facts of which Court must take judicial notice.

52. (1) The Court shall take judicial notice of the following facts –

(a) all laws or regulations having the force of law now or heretofore in force or hereafter to be in force in any part of Brunei Darussalam;

(b) articles of war for the Royal Brunei Armed Forces or any visiting forces lawfully present in Brunei Darussalam;

(c) the course of proceeding of any Council;

(d) the accession of His Majesty the Sultan and Yang Di-Pertuan;

(e) all seals of Syariah Courts and Civil Courts of Brunei Darussalam, the seals of notaries public, and all seals which any person is authorised to use by any law in force for the time being in Brunei Darussalam;

(f) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of Brunei Darussalam, if the fact of their appointment to such office is notified in the *Gazette*;

(g) the existence, title and national flag of every State or Sovereign recognized by His Majesty the Sultan and Yang Di-Pertuan;

(h) the ordinary course of nature, natural and artificial divisions of time, the geographical divisions of the world, the meaning of Malay, English and Arabic words, and *Hari Raya*, Fasting Month and Public Holidays notified in the *Gazette*;

(i) the Commonwealth countries;

(j) the commencement, continuance and termination of hostilities between Brunei Darussalam or any part of the Commonwealth and any other State or body of persons;

(k) the names of the members and officers of Syariah Courts and Civil Courts and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates and solicitors and other persons authorised by law to appear or act before it;

(l) the rule of the road on the land, sea regulations and the rules of the air;

(m) all other matters which it is directed by any written law to notice.

(2) In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

(3) If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it considers necessary to enable it to do so.

Facts admitted need not be proved.

53. (1) Subject to subsection (2) of section 21, no fact need be proved in any proceeding which the parties thereto or their agents agree to make *ikrar* at the hearing or which before the hearing they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings.

(2) The Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

CHAPTER II
OF ORAL EVIDENCE

Proof of facts by oral evidence.

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

Oral evidence must be direct.

55. (1) Oral evidence must in all cases whatever be direct –

(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw that fact;

(b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact;

(c) if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived that fact by that sense or in that manner;

(d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

(2) The opinions of experts expressed in any treatise commonly offered for sale and the grounds on which such opinions are held may be proved by the production of such treatise if the author is dead or cannot be found or has become incapable of giving evidence or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

(3) If oral evidence refers to the existence or condition of any material thing other than a document, the Court may, if it thinks fit, require the production of such material thing for its inspection.

CHAPTER III

OF DOCUMENTARY EVIDENCE

Proof of contents of documents.

56. The contents of documents may be proved either by primary or by secondary evidence.

Primary evidence.

57. Primary evidence means the document itself is produced for the inspection of the Court.

Explanation 1 – Where a document is executed in several parts, each part is primary evidence of the document.

Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2 – Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original they are not primary evidence of the contents of the original.

Illustration

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence.

58. Secondary evidence includes –

(a) certified copies given under the provisions hereinafter contained;

(b) copies made from the original by mechanical processes, which in themselves ensure the accuracy of the copy, and copies compared with such copies;

(c) copies made from or compared with the original;

(d) counterparts of documents as against the parties who did not execute them;

(e) oral accounts of the contents of a document given by some person who has himself seen it.

Illustrations

(a) A photograph of an original is secondary evidence of its contents, though the 2 have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy but afterwards compared with the original is secondary evidence, but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original nor an oral account of a photograph or machine-copy of the original is secondary evidence of the original.

Proof of documents by primary evidence.

59. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Cases in which secondary evidence relating to documents may be given.

60. Secondary evidence may be given of the existence, condition or contents of a document admissible in evidence in the following cases –

(a) when the original is shown or appears to be in the possession or power –

(i) of the person against whom the document is sought to be proved;

or

(ii) of any person out of reach of or not subject to the process of the Court; or

(iii) of any person legally bound to produce it;

and when after the notice mentioned in section 61 such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative before a Syar'ie Judge or a Commissioner of Oaths who is a Muslim;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot for any other reason not arising from his own default or neglect produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 66;

(f) when the original is a document of which a certified copy is permitted by this Order or by any other law in force for the time being in Brunei Darussalam to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases *(a)*, *(c)* and *(d)* any secondary evidence of the contents of the document is admissible.

In case *(b)* the written admission is admissible before a Syar'ie Judge or a Commissioner of Oaths who is a Muslim.

In cases *(e)* or *(f)* a certified copy of the document but no other kind of secondary evidence is admissible.

In case *(g)* evidence may be given as to the general result of the documents by any person who has examined them and who is skilled in the examination of such documents.

Rules as to notice to produce.

61. Secondary evidence of the contents of the documents referred to in paragraph *(a)* of section 60 shall not be given unless the party proposing to give such secondary evidence has previously given the party in whose possession or power the document is, or to his Syar'ie Lawyer, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases or in any other case in which the Court thinks fit to dispense with it –

(a) when the document to be proved is itself a notice;

(b) when from the nature of the case the adverse party must know that he will be required to produce it;

(c) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;

(d) when the adverse party or his agent has the original in Court;

(e) when the adverse party or his agent has admitted the loss of the document; or

(f) when the person in possession of the document is out of reach of or not subject to the process of the Court.

Proof of signature and handwriting of person alleged to have signed or written document produced.

62. (1) If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

(2) This section shall not apply to any electronic record or electronic signature to which the Electronic Transactions Order, 2000 (S 93/2000) applies.

Admission of writing, signature or seal.

63. (1) Admission as to writing, signature or seal shall be admissible as an admission of the person who wrote or execute such document.

(2) An admission made in a document which is written by a person under his signature or seal and handed over to another person shall be admissible as an *ikrar*.

Proof of document.

64. (1) Where the executant of a document denies the writing or the liability created therein, the writing and the execution of such document shall be proved at least by 2 witnesses to the document.

(2) Where 2 witnesses cannot be found, the writing and the execution of the document shall be proved by 2 persons who can identify the writing and signature of the writer and executant of the document.

(3) Where witnesses to the document or the persons referred to in subsection (2) can identify the writing and signature, the executant of the document shall be bound by any liability created therein.

(4) Where the witnesses or the persons referred to in subsection·(2) do not completely identify the writing and signature of the document, the writing and signature of the document shall be authenticated by at least 2 experts.

(5) Where the experts identify the writing and signature of the document, the executant of the document shall be bound by the liability created therein.

(6) Where a document cannot be proved by any of the aforesaid manner, the person who denies the writing and execution of the document shall, on request by the plaintiff, take the *yamin*, and if he refuses the *yamin* the plaintiff may take the *yamin* and thereafter establish his claim.

Documentary evidence.

65. (1) Notwithstanding anything contained in this Order, in any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied –

(a) if the maker of the statement either –

(i) had personal knowledge of the matters dealt with by the statement; or

(ii) where the document in question is or forms part of a record purporting to be continuous record, made the statement (so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have had, personal knowledge of those matters; and

(b) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Brunei Darussalam and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the Court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence –

(a) notwithstanding that the maker of the statement is available but is not called as a witness; and

(b) notwithstanding that the original document is not produced, if, in lieu thereof, there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the Court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated, involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document, or the material part thereof, was written, made or produced by him with his own hand, or was signed or initialled by him, or otherwise recognized by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of subsections (1) to (4), the Court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and the Court may in its discretion reject the statement notwithstanding that the requirements of this section

are satisfied with respect thereto, if for any reason, it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

(6) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Order, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(7) For the purpose of any rule of law or practice requiring evidence to be corroborated, or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Order shall not be treated as corroboration of evidence given by the maker of the statement.

PUBLIC DOCUMENTS

Public documents.

66. The following documents are public documents –

(a) documents forming the acts or records of the acts –

(i) of the sovereign authority;

(ii) of official bodies and tribunals; and

(iii) of public officers, legislative, judicial and executive, whether of Brunei Darussalam or of a foreign country;

(b) public records kept in Brunei Darussalam of private documents.

Private documents.

67. All other documents are private.

Certified copies of public documents.

68. Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate, written at the foot of such copy, that it is a true copy of such document or part thereof, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.

Explanation – Any officer who by the ordinary course of official duty is authorized to deliver such copies shall be deemed to have the custody of such documents within the meaning of this section.

Proof of documents by production of certified copies.

69. Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of certain official documents.

70. The following public documents may be proved as follows –

(a) acts, orders or notifications of the Government of Brunei Darussalam in any of its departments –

(i) by the records of the departments certified by the heads of those departments respectively, or by the Minister having the responsibility for that department; or

(ii) by any document purporting to be printed by the authority of the Government;

(b) the proceedings of the Legislative Council, by the minutes of that body or by published Acts or Orders or abstracts or by copies purporting to be printed by the authority of the Government;

(c) the acts of the Executive or the proceedings of the legislature of a foreign country or territory, by journals published by their authority or commonly received in that country as such, or by a copy certified under the seal of the country or territory or sovereign, or by a recognition thereof in some public Act of Brunei Darussalam;

(d) the proceedings of a Municipal Board or local Council in Brunei Darussalam, by a copy of minutes of meetings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

(e) public documents of any other class in a foreign country or territory, by the original or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Brunei Darussalam Consul that the copy is duly certified by the officer having the custody of the original and upon proof of the character of the document according to the law of the foreign country or territory.

PRESUMPTIONS AS TO DOCUMENTS

Presumption as to genuineness of certified copies.

71. (1) The Court shall presume to be genuine every document purporting to be a certificate, certified copy or other document which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in or outside Brunei Darussalam who is duly authorised thereto:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The Court shall presume that any officer by whom any such document purports to be signed or certified held, when he signed it, the official character which he claims in such document.

Presumption as to documents produced as record of evidence.

72. Whenever any document is produced before any Court purporting to be a record or memorandum of the evidence or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorised by law to take such evidence, or to be an *ikrar* by any prisoner or accused person, taken in accordance with law and purporting to be signed by any Syar'ie Judge, Supreme Court Judge, Magistrate or by any such officer as aforesaid, the Court shall presume –

(a) that the document is genuine;

(b) that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true; and

(c) that such evidence, statement or *ikrar* was duly taken.

Prints from films in the possession of the Government or public body.

73. (1) A print, whether enlarged or not, purporting to be made from a film of any document in the possession of the Government or any public body may be produced in proof of the contents of the document or such part of the document to which the print purports to be a copy upon proof that –

(a) while the document was in the custody or control of the Government or public body the film was taken in order to keep a permanent record thereof; and

(b) the document photographed –

(i) was subsequently destroyed, whether deliberately or otherwise;

(ii) was so damaged as to be wholly or partly indecipherable;

(iii) was lost; or

(iv) had passed out of the custody or control of the Government or public body.

(2) Proof –

(a) that a print is made from a film of a document in the possession of the Government or public body; and

(b) of compliance with the conditions in subsection (1),

may be given in respect of any document or groups of documents by a public officer or by an employee of the public body having custody or control of the film, orally or by a certificate purporting to be signed by such public officer or employee.

(3) A certificate under subsection (2) shall be admissible in evidence in any proceedings before any Court on its production without further proof.

(4) On the production of a certificate under subsection (3), the Court before which it is produced shall, until the contrary is proved, presume –

(a) that the facts stated in the certificate relating to the print and the compliance with the conditions in subsection (1) are true; and

(b) that the certificate purporting to be signed by a public officer or an employee of a specified statutory body has been signed by him.

(5) In this section, "film" includes a photographic plate, microfilm and photostatic negative.

Presumption as to *Gazette*, newspaper and other documents.

74. The Court shall presume the genuineness of every document purporting to be the *Gazette*, or to be a newspaper, journal or magazine and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to maps or plans made by authority of Government.

75. (1) The Court shall presume that maps or plans purporting to be made by the authority of Government were so made and are accurate.

(2) Maps or plans made for the purposes of any cause or other proceeding, civil or criminal, must be proved to be accurate.

Presumption as to collections of laws and reports of decisions.

76. The Court shall presume the genuineness of every book purporting –

(a) to be printed or published under the authority of the Government of any country or territory and to contain any of the laws of that country or territory; or

(b) to contain reports of decisions of the courts of such country or territory.

Presumption as to powers of attorney.

77. The Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a Syar'ie Judge, Supreme Court Judge, Magistrate or Brunei Darussalam Consul, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records.

78. The Court may presume that any document purporting to be a certified copy of any judicial record of any foreign country or territory is genuine and accurate if the document

purports to be certified in any manner which is certified by any representative of the Government in or for such country or territory to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to books, maps and charts.

79. The Court may presume that any book to which it may refer for information on *Hukum Syara'*, matters of public or general interest, and that any published map or chart the statements of which are relevant facts and which is produced for its inspection, was written and published by the person and at the time and place by whom or at which it purports to have been written or published.

Presumption as to telegraphic messages.

80. The Court may presume that a message forwarded from a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the Court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to due execution etc. of documents not produced.

81. The Court shall presume that every document called for and not produced, after notice to produce given under section 61, was attested, stamped and executed in the manner required by law.

CHAPTER IV

HEARSAY EVIDENCE

Application of Chapter IV.

82. The provisions of this Chapter shall apply to all civil proceedings, notwithstanding any provision of this Order or any other written law to the contrary effect.

Admissibility of hearsay evidence.

83. (1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay.

(2) In this Chapter –

(a) "hearsay" means a statement made otherwise than by a person while giving oral evidence in the proceedings, which is tendered as evidence of the matters stated; and

(b) references to hearsay include hearsay of whatever degree.

(3) Nothing in this Chapter shall affect the admissibility of evidence admissible apart from this section.

(4) The provision of sections 84 to 88 do not apply to hearsay evidence admissible apart from this section, notwithstanding that it may also be admissible by virtue of this section.

Notice of proposal to adduce hearsay evidence.

84. (1) A party proposing to adduce hearsay evidence in civil proceedings shall, subject to the following provisions of this section, give to the other party or parties to the proceedings –

(a) such notice (if any) of that fact; and

(b) on request, such particulars of or relating to the evidence,

as is reasonable and practicable in the circumstances for the purpose of enabling him or them to deal with any matters arising from its being hearsay.

(2) Subsection (1) may be excluded by agreement of the parties; and compliance with the duty to give notice may in any case be waived by the person to whom notice is required to be given.

(3) A failure to comply with subsection (1) does not affect the admissibility of the evidence but may be taken into account by the Court –

(a) in considering the exercise of its powers with respect to the course of proceedings and costs; and

(b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 86.

Power to call witness.

85. Where a party to civil proceedings adduces hearsay evidence of a statement made by a person and does not call that person as a witness, any other party to the proceedings may, with the leave of the Court, call that person as a witness and cross-examine him on the statement as if he had been called by the first-mentioned party and as if the hearsay statement were his evidence in chief.

Consideration relevant.

86. (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings that Court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following –

(a) whether it would have been reasonable and practicable for the party to whom the evidence was adduced to have produced the maker of the original statement as a witness;

(b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;

(c) whether the evidence involves multiple hearsay;

(d) whether any person involved had any motive to conceal or misrepresent matters;

(e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;

(f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

Credibility.

87. Where in civil proceedings hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness –

(a) evidence which if he had been so called would be admissible for the purpose of attacking or supporting his credibility as a witness is admissible for that purpose in the proceedings; and

(b) evidence tending to prove that, whether before or after he made the statement, he made any other statement inconsistent with it is admissible for the purposes of showing that he had contradicted himself:

Provided that evidence may not be given of any matter of which, if he had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

Previous statements of witnesses.

88. (1) The provisions of this Chapter as to hearsay evidence in civil proceedings apply equally (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings.

(2) A party who has called or intends to call a person as a witness in civil proceedings may not in those proceedings adduce evidence of a previous statement made by that person, except –

(a) with the leave of the Court; and

(b) for the purpose of rebutting a suggestion that his evidence had been fabricated.

This shall not be construed as preventing a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead from being adopted by a witness in giving evidence or treated as his evidence.

(3) Nothing in this Chapter affects any of the rules of law as to the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in the proceedings.

(4) Nothing in this section shall be construed as preventing a statement of any description referred to above from being admissible by virtue of section 83 as evidence of the matters stated.

Evidence formerly admissible.

89. (1) Any rule of law whereby in civil proceedings –

(a) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them;

(b) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them; or

(c) records (for example, the records of certain courts, treaties, State grants, pardons and commissions) are admissible as evidence of facts stated in them,

shall continue to have effect.

(2) Any rule of law whereby in civil proceedings –

(a) evidence of a person's reputation is admissible for the purpose of proving his good or bad character; or

(b) evidence or reputation or family tradition is admissible –

(i) for the purpose of proving or disproving pedigree or the existence of a marriage; or

(ii) for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing,

shall continue to have effect in so far as they authorise the Court to treat such evidence as proving or disproving that matter. Where any such rule applies, reputation or family tradition shall be treated for the purposes of this Chapter as a fact and not as a statement or multiplicity of statements about the matter in question.

(3) The words in which a rule of law mentioned in this section is described are intended only to identify the rule and shall not be construed as altering it in any way.

PART III

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER I

BURDEN OF PROOF

Burden of proof.

90. (1) Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Illustrations

(a) *A* desires the Court to give judgment that *B* shall be punished for a crime which *A* says *B* has committed.

A must prove that *B* has committed the crime.

(b) *A* desires the Court to give judgment that he is entitled to certain land in the possession of *B* by reason of facts which he asserts and which *B* denies to be true.

A must prove the existence of those facts.

On whom the burden of proof lies.

91. The burden of proof in any suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations

(a) *A* sues *B* for land of which *B* is in possession, and which, as *A* asserts, was left to *A* by the will of *C*, *B*'s father.

If no evidence were given on either side, *B* would be entitled to his possession.

Therefore the burden of proof is on *A*.

(b) *A* sues *B* for money due on a bond.

The execution of the bond is admitted, but *B* says that it was obtained by fraud, which *A* denies.

If no evidence were given on either side, *A* would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on *B*.

Burden of proof as to particular fact.

92. The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustrations

(a) *A* prosecutes *B* for theft and wishes the Court to believe that *B* admitted the theft to *C*.

A must prove the admission.

(b) *B* wishes the Court to believe that at the time in question he was elsewhere.

He must prove it.

Burden of proving fact to be proved to make evidence admissible.

93. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact, is on the person who wishes to give such evidence.

Illustrations

(a) *A* wishes to prove a declaration by *B* during *B's marad al maut*.

A must prove *marad al maut* and *B*'s death.

(b) *A* wishes to prove by secondary evidence the contents of a lost document.

A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions.

94. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in any law, or within any special exception or proviso contained in any law, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations

(a) *A* is accused of unlawful cohabitation with *B*. The prosecution produces evidence to show that *A* had divorced his wife *B*.

A claims that he was forced to divorce his wife.

The burden of proving that he was forced lies on *A*.

(b) *C* is accused of committing unlawful sexual intercourse with *D*.

C claims that he had already been married to *D* in a foreign country.

The burden of proving that such marriage took place lies on *C*.

(c) *A* accused of murder alleges that by reason of unsoundness of mind he did not know the nature of the act.

The burden of proof is on *A*.

(d) *A* accused of murder alleges that by grave and sudden provocation he was deprived of the power of self-control.

The burden of proof is on *A*.

Burden of proving fact especially within knowledge.

95. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustration

When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

Burden of proving death of person known to have been alive within 30 years.

96. Subject to the provisions of any other written law, when the question is whether a man is alive or dead, and it is shown that he was alive within 30 years, the burden of proving that he is dead is on the person who affirms it.

Burden of proving that person is alive who has not been heard of for 4 years.

97. Subject to *Hukum Syara'* and any other written law, when the question is whether a man is alive or dead, and it is proved that he has not been heard of for 4 years from the time he was missing by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Burden of proof as to ownership.

98. When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Court may presume existence of certain fact.

99. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume –

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that any accomplice is unworthy of credit unless he is corroborated in material particulars;

(c) that a bill of exchange accepted or endorsed was accepted or endorsed for good consideration;

(d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things usually cease to exist is still in existence;

(e) that judicial and official acts have been regularly performed;

(f) that the ordinary course of business has been followed in particular cases;

(g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;

(h) that if a man refuses to answer a question which he is not compelled to answer by law, the answer if given would be unfavourable to him;

(i) that when a document creating an obligation is in the hands of the obligor the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it –

as to illustration *(a)* – a shopkeeper has in his till a marked dollar, soon after it was stolen and cannot account for its possession specifically but is continually receiving dollars in the course of his business;

as to illustration *(b)* – *A*, a person of the highest character is tried for causing a man's death by an act of negligence in arranging certain machinery. *B*, a person of equally good character, who also took part in the arrangement, describes precisely what was done and admits and explains the common carelessness of *A* and himself;

as to illustration *(b)* – a crime is committed by several persons. *A*, *B* and *C*, 3 of the criminals, are captured on the spot and kept from each other. Each gives an account of the crime implicating *D*, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

as to illustration *(c)* – *A*, the drawer of a bill of exchange, was a man of business. *B*, the acceptor, was a young and ignorant person completely under *A's* influence;

as to illustration *(d)* – it is proved that a river ran in a certain course 5 years ago, but it is known that there have been floods since that time which might change its course;

as to illustration *(e)* – a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

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 feeling 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 II

YAMIN

Burden to produce evidence.

100. In a civil case the burden to produce evidence or to assert a fact lies on the party who alleges (*mudda'ii*) and *yamin* on those who deny or dispute a fact *(mudda'a 'alaih).*

Manner of giving evidence.

101. (1) In a civil case, evidence shall be given by *mudda'ii* in support of his claim and *mudda'a 'alaih* shall give evidence denying or disputing the claim made by *mudda'ii*.

(2) Where *mudda'ii* fails to give evidence or to assert a fact in respect of his claim whereas *mudda'a 'alaih* has evidence to the satisfaction of a Judge *mudda'a 'alaih* is not required to be asked to take *yamin* and the claim made by *mudda'ii* against him shall be dismissed.

(3) Where *mudda'ii* fails to give evidence or to assert a fact in respect of his claim and *mudda'a 'alaih* also has no evidence to the satisfaction of a Judge, the Judge shall on the request by *mudda'ii* ask *mudda'a 'alaih* to take *yamin*, if he does so he has no liability and the claim made by *mudda'ii* against him shall be dismissed.

(4) Where *mudda'a 'alaih* refuses to take *yamin*, the Judge may on the request of *mudda'a 'alaih* ask *mudda'ii* to take *yamin* upon which his claim shall be admitted.

(5) In a criminal case, evidence shall be given by *mudda'ii* and *mudda'a 'alaih*, unless *mudda'a 'alaih* pleads guilty.

Court to order taking of *yamin*.

102. The Court may, if it thinks necessary, order any party or both parties or any witness, interpreter, translator or assessor to take *yamin*.

Explanation 1 – A non-Muslim may take an oath in accordance with his religion.

Explanation 2 – A representative or substitute for a person in any proceedings shall not take *yamin* on behalf of the person he represents or substitutes for.

SYAHADAH

Who can give *bayyinah* or *syahadah*.

103. (1) Subject to *Hukum Syara'* and the provision of this section, all Muslims shall be competent to give –

(a) *bayyinah*; or

(b) *syahadah* provided that they shall be of sound mind, *baligh*, *'adil*, have a good memory and are not imputed. In *hudud* or *qisas* cases they shall also be able to speak, see and hear.

[S 16/2014]

(2) Subject to *Hukum Syara'* and the provision of this section, a non-Muslim shall be competent to give –

(a) *bayyinah* upon a Muslim and non-Muslim;

(b) *syahadah* of a non-Muslim upon or for a non-Muslim is admissible if he is credible according to his religion.

(3) The persons who are competent to give *bayyinah* but not competent to give *syahadah* are –

(a) a person who is not considered to be *'adil* whereby his badness overrides his goodness or always talks lies or of bad character;

(b) a child who is not *baligh* or a person who is *baligh* but of unsound mind;

(c) a person who is known to have a weak memory or is forgetful or suffers from lapses of memory;

(d) a person who is suspected because of his good relationship with or who has an interest in the relevant party;

(e) a person who is suspected because of his bad relationship with the relevant party; and

(f) an accomplice against his accomplice.

(4) A person convicted of *qazaf* who is liable to *hadd*, his *bayyinah* is admissible. If he shows repentance, his *bayyinah* or *syahadah* is admissible according to *Hukum Syara'*.

Dumb, deaf or blind witnesses.

104. (1) A dumb, deaf or blind witness may give his *bayyinah* in any intelligible manner by writing or by signs.

(2) Such writing must be written and the signs must be made in the Court.

***Bayyinah* or *syahadah* of husband, wife, parent and child.**

105. (1) Evidence of a husband against his wife is admissible as *syahadah* or *bayyinah*.

(2) Evidence of a child against his parent and ascendants or that of a parent against his child and descendants is admissible as *syahadah* or *bayyinah*.

(3) Evidence of a husband for his wife and that of a wife for her husband is admissible as *bayyinah*.

(4) Evidence of a parent for his child and descendants and that of a child for his parent and ascendants is admissible as *bayyinah*.

Number of *syahid*.

106. (1) *Syahadah* in the case of *zina* in order to convict an offence of *hadd* is inadmissible unless it is given by at least 4 male *syahid* who have seen it.

(2) A claim by a person who is known to be rich that he has become a pauper is inadmissible unless it is corroborated by *syahadah* of at least 3 male *syahid*.

Explanation – Admission of a person that he has become a pauper in the determination of *zakat* or for the purpose of abandoning the burden to pay debts or maintenance of the family and wife on himself is inadmissible unless it is corroborated by *syahadah* of at least 3 male *syahid*.

(3) *Syahadah* in the cases of *sariqah*, *hirabah*, *qazaf*, drinking intoxicating drinks, *irtidad* and *qisas* in order to convict an offence of *hudud* or *qisas* is inadmissible unless it is given by at least 2 male *syahid* who have seen it.

[S 16/2014]

(4) *Syahadah* of a male person in the following circumstances –

(a) a teacher in a case of school-children;

(b) an expert in the valuation of damaged goods;

(c) evidence as to the acceptance and rejection of *syahid*;

(d) notification of dismissal of a representative;

(e) notification of defects in the goods for sale,

is admissible.

(5) *Syahadah* of a female person is admissible in any matter which is usually seen by a female person.

Illustration

Syahadah of a female person who breast-fed a child or that of a midwife in matters relating to menstruation, birth, breastfeeding and of embarrassment to a female is admissible.

(6) In matters other than as referred to in the preceding subsections, *syahadah* shall be given by –

(a) 2 male *syahid;*

(b) one male and 2 female *syahid;* or

(c) one male *syahid* and oath of the complainant.

[S 16/2014]

Syahadah of a *syahid* with *yamin*.

107. *Syahadah* of only one male for *mudda'ii* is admissible in a civil case provided that it is given together with *yamin* taken by *mudda'ii*.

Illustration

A *mudda'ii* claiming a debt against other person and having only one *syahid,* his claim is admissible provided that the *syahid* gives *syahadah* with *mudda'ii* taking *yamin*.

PRIVILEGED COMMUNICATIONS

Communications during marriage.

108. 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 persons or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State.

109. No one shall be permitted to produce any unpublished official records relating to affairs of State, or to give any evidence derived therefrom, 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, subject, however, to the control of the Minister having the responsibility for that department.

Official communications.

110. 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.

Information as to commission of offences.

111. No Judge, religious enforcement officer or police officer shall be compelled to say whence he got 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 or the excise laws.

Explanation – "Revenue officer" in this section means any officer employed in or about the business of any branch of the public revenue or in or about the business of any Government farm.

Professional communications.

112. (1) No Syar'ie lawyer, advocate or solicitor 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 Syar'ie lawyer, advocate or solicitor by or on behalf of his client, or to state the contents or condition 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 section shall protect from disclosure –

(a) any such communication made in furtherance of any illegal purpose;

(b) any fact observed by any Syar'ie lawyer, advocate or solicitor in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.

(2) It is immaterial whether the attention of such Syar'ie lawyer, advocate or solicitor was or was not directed to such fact by or on behalf of his client.

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

Illustrations

(a) *A*, a client, says to *B*, a solicitor: "I have committed forgery and I wish you to defend me."

As the defence of a man known to be guilty is not a criminal purpose this communication is protected from disclosure.

(b) *A*, a client, says to *B*, a solicitor: "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication being made in furtherance of a criminal purpose is not protected from disclosure.

(c) *A*, being charged with embezzlement, retains *B*, a solicitor, 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.

Section 112 to apply to interpreters etc.

113. Section 112 shall apply to interpreters and the clerks or employees of Syar'ie lawyers, advocates and solicitors.

SYAHADAH ALA AL SYAHADAH

Syahid asal unable to appear in Court.

114. Where a *syahid asal* is unable to appear in Court for any reason which in the opinion of the Court is reasonable, his *syahadah* may be served by other *syahid* based on *syahadah ala al syahadah*.

Explanation – Where a *syahid asal* cannot give his *syahadah* in Court, he may ask *syahid furu'* to serve his *syahadah* on *syahadah* given by him.

Manner of serving *syahadah syahid*.

115. A *syahid asal*, shall state to *syahid furu*' that he has become *syahid* to the fact in issue and give an authority to *syahid furu*' to serve *syahadah* on his behalf.

Explanation – Manner of giving *syahadah*, is with a *syahid asal* saying to *syahid furu'*, "You are to affirm on my *syahadah*, that I do hereby affirm that.....". Thereafter *syahid furu'* would say in Court, "I (name) do hereby affirm that (name) has solemnly asked me to affirm on his *syahadah* ..... (in respect of the fact) ..... and he has said that you are to affirm on my *syahadah* that.....".

When *syahadah ala al syahadah* is admissible.

116. *Syahadah ala al syahadah* is only admissible in a civil case.

Conditions of *syahadah ala al syahadah*.

117. *Syahadah ala al syahadah* is admissible on the following conditions –

(a) *syahid furu'* on giving his *syahadah* shall state the name and identity of the *syahid asal*;

(b) the *syahid asal* and *syahid furu'* shall meet the conditions to become *syahid*;

(c) *syahadah* of the *syahid asal* shall be admitted by *syahid furu'* comprising of at least 2 male persons or a male person and 2 female persons;

(d) the *syahid asal* does not deny that he has asked *syahid furu'* to serve *syahadah* on his behalf.

CHAPTER IX

EXAMINATION OF WITNESSES

Order of production and examination of witnesses.

118. 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.

Court to decide as to admissibility of evidence.

119. (1) When either party proposes to give evidence of any fact, the Court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Court shall admit the evidence if it 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 another alleged fact being first proved, the Court may, in its 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 section 26.

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 the 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*.

Examination-in-chief; cross-examination and re-examination.

120. (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) Where a witness has been cross-examined and is then examined by the party who called him, such examination shall be called his re-examination.

Order of examinations. Direction of re-examination.

121. (1) Witnesses shall be first examined-in-chief, then, if the adverse party so desires, cross-examined, then, if the party calling them 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 upon that matter.

(4) The Court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination respectively.

Cross-examination of person called to produce a document.

122. 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.

Witnesses to character.

123. Witnesses to character may be cross-examined and re-examined.

Leading questions.

124. Any question suggesting the answer which the person putting it wishes or expects to receive or suggesting disputed facts as to which the witness is to testify, is called a leading question.

When leading questions must not be asked.

125. (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.

When leading questions may be asked.

126. (1) Leading questions may be asked in cross-examination, subject to the following qualifications –

(a) the question must not put into the mouth of the witness the very words which he is to echo back again; and

(b) the question must not assume that facts that have not been proved have been proved, or that particular answers have been given contrary to the fact.

(2) The Court, in its discretion, may prohibit leading questions from being put to a witness who shows a strong interest or bias in favour of the cross-examining party.

Evidence as to matters in writing.

127. 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 take revenge on him".

The 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.

Cross-examination as to previous statements in writing.

128. (1) A witness may be cross-examined as to previous statements made by him in writing or reduced in writing, and relevant to matters in question in the suit or proceeding in which he is cross-examined, 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.

(2) If a witness, upon cross-examination as to a previous oral statement made by him relevant to matters in question in the suit or proceeding in which he is cross-examined and inconsistent with his present testimony, does not distinctly admit that he made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such statement.

Questions lawful in cross-examination.

129. When a witness may be cross-examined he may, in addition to the questions hereinbefore referred to, be asked any questions which tend –

(a) to test his accuracy, veracity or credibility;

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

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

Court to decide when question shall be asked and when witness compelled to answer.

130. (1) If any 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 does not think fit to compel him to answer the question, warn the witness that he is not obliged to answer it.

(2) In exercising its discretion, the Court shall have regard to the following considerations –

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

(b) 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 a slight degree the opinion of the Court as to the credibility of the witness on the matter to which he testifies;

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

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

Question not to be asked without reasonable grounds.

131. No such questions as is referred to in section 130 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) A Syar'ie lawyer is instructed by another Syar'ie lawyer that an important witness is a professional gambler. This is reasonable ground for asking the witness whether he is a professional gambler.

(b) A Syar'ie lawyer is informed by a person in Court that an important witness is a professional gambler. The informant, on being questioned by the Syar'ie lawyer, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a professional gambler.

(c) A witness of whom nothing whatever is known is asked at random whether he is a professional gambler. There are 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 professional gambler.

Procedure of Court in case of question being asked without reasonable grounds.

132. If the Court is of opinion that any such question as is referred to in section 130 was asked without reasonable grounds, it may, if it was asked by an advocate, report the circumstances of the case to the Chief Syar'ie Judge or other authority to which the advocate is subject in the exercise of his profession.

Indecent and scandalous questions.

133. The Court may forbid any questions 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.

Questions intended to insult or annoy.

134. 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.

Exclusion of evidence to contradict answers to questions testing veracity.

135. 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 and 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 facts suggested, he may be contradicted.

Illustrations

(a) *A* witness is asked whether he was dismissed from a situation for dishonesty. He denies it.

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

The evidence is inadmissible.

(b) *A* affirms that on a certain day he saw *B* at Tutong.

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

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

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 Tutong.

(c) *A* is asked whether he has not said that he would be revenged on *B*, against whom he gives evidence. He denies it.

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

Question by party to his own witness.

136. 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.

Impeaching credit of witness.

137. 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 –

(a) by the evidence of persons who testify that they from their knowledge of the witness believe him to be unworthy of credit;

(b) by the 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;

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

Explanation – A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons 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 he 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* is indicted for the murder of *B*.

C says that *B*, when in *marad al maut* declared that *A* had caused the wound of which *B* died.

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

The evidence is admissible.

Questions tending to corroborate evidence or relevant fact admissible.

138. (1) 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 the opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact to which he testifies.

(2) Any rule of law or practice whereby in criminal proceedings the evidence of one witness is incapable of corroborating the evidence of another witness is hereby abrogated.

Illustration

A, an accomplice gives an account of an offence in which he took part. He describes various incidents, unconnected with the offence, 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 offence itself.

Former statements of witness may be proved to corroborate later testimony as to the same fact.

139. In order to corroborate the testimony of a witness, any former statement made by such witness, whether written or verbal, or in ordinary conversation, relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters proved in connection with proved statement relevant under section 26 or 27.

140. Whenever any statement relevant under section 26 or 27 is proved, all matters may be proved either in order to contradict or to 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.

Refreshing memory.

141. (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 and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct.

(3) Whenever the 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 is 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.

Testimony to facts stated in document mentioned in section 141.

142. A witness may also testify to facts mentioned in any such document as is mentioned in section 141 although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

Illustration

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.

Right of adverse party as to writing used to refresh memory.

143. Any writing referred to under section 141 or 142 must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Production of documents and translation of documents.

144. (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 such objection shall be decided on by the Court.

(2) The Court may, if it sees fit, may inspect the document unless it refers to affairs 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.

Giving as evidence of document called for and produced on notice.

145. 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 and if it is relevant.

Using as evidence of document production of which was refused on notice.

146. 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.

Illustration

A sues *B* 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.

Judge's power to put questions or order production.

147. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, 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.

CHAPTER IV

ENSURING THE TRUTH OF *SYAHADAH SYAHID*

Ensuring the truth of *syahadah syahid*.

148. (1) A *syahid* or any party who intends to summon a *syahid* intending to give *syahadah* shall give a prior notice to the Court for that purpose.

(2) The provisions of Chapter III shall apply to *syahid* who gives *bayyinah* or *syahadah* in order to ensure the accuracy of his evidence.

(3) The provisions of this Chapter shall apply to a *syahid* who gives *syahadah* in order to ensure that he is '*adil*.

Explanation – If a Judge says to any *syahid* to speak the truth or any such *syahid* is *'adil* but the *syahid* has done mistakes in his evidence or the *syahid* has forgotten the fact, or he says the *syahid* is '*adil* but he denies such claim, the Judge shall not make a decision, unless he ensures at first that the *syahid* is *'adil* or otherwise with *tazkiyah al syuhud* in the Court or in secret.

Nature of *tazkiyah al syuhud*.

149. *Syahid* shall be charged with *tazkiyah al syuhud* in open Court or in secret through *muzakki*.

Illustrations

(a) If *syahid* is a student, he shall be examined through a school teacher where he studies and through a trustworthy party of the school.

(b) If *syahid* is a member of the armed forces, the examination shall be carried out through his commanding officer.

(c) If *syahid* is a civilian, he shall be examined through a trustworthy resident of the place where he resides.

Muzakki.

150. A *muzakki* shall be a Muslim, *'adil*, of sound mind, *baligh*, has a good memory and is not imputed, has the knowledge on the background of *syahid*, has been asked by a Judge to give information whether such *syahid* is *'adil* or not.

Explanation – If the *syahid* is a non-Muslim, *muzakki* may comprise of persons who are non-Muslims.

Open *tazkiyah*

151. An open *tazkiyah* shall be conducted in the following manner –

(a) 2 *muzakki* and each *syahid* shall be brought before the Court in the presence of the parties to the proceedings; and

(b) the Judge shall ask each *muzzaki* with a question of "is this *syahid adil* or otherwise" and the *muzakki* shall explicitly answer with an answer of "this *syahid* is *adil*" or "this *syahid* is not *'adil.*"

[S 16/2014]

Open *tazkiyah* forms part of *syahadah*.

152. An open *tazkiyah* forms part of *syahadah* having regard to the conditions and number of *syahid*.

Secret *tazkiyah*.

153. (1) A secret *tazkiyah* shall be conducted by means of a 'Secret Letter' in which a Judge will write the name of the defendant or the accused and the subject-matter of the claim or the charge, also the name of the *syahid*, his identification, occupation, place of residence to introduce clearly such *syahid*.

(2) The information will be endorsed in a sealed envelope, the envelope shall subsequently be given to a person selected to become *muzakki*. Once the envelope has been received and read by *muzakki*, he shall write below the name of *syahid* the word *" 'adil"* if it is found that the witness is *'adil* and "not *'adil"* if it is found that the witness is not *'adil* and shall sign and return it to the Judge.

(3) When the 'Secret Letter' is returned to the Judge and there is no word " *'adil"* from *muzakki* in respect of such *syahid,* but there is a word which means that the witness is "not *'adil*" express or implied, the Judge may request the plaintiff or the prosecution to produce another *syahid*.

Explanation – If *muzakki* writes that *syahid* is "not *'adil"*, or he does not know the status of the *syahid* or writes "*Wallahu 'a'alam"* or he does not write any word, the Judge shall not admit the evidence of such *syahid*.

Number of secret *tazkiyah muzakki*.

154. One *muzakki* in secret *tazkiyah* is sufficient, but the Judge may request more than one if it thinks necessary as a precautionary measure.

When *syahid* need not be examined.

155. A Judge is no longer required to carry out *tazkiyah* upon *syahid* who has been found to be '*adil* in another proceeding before the Judge if the interval between the 2 proceedings does not exceed 6 months, unless the Judge has reasonable grounds to conduct *tazkiyah* again. If the interval between the 2 proceedings exceeds 6 months, the Judge shall carry out a re-examination.

Accusing syahid not '*adil*.

156. When a party to any proceeding accuses *syahid* for the adverse party as being not '*adil* either before or after *tazkiyah* before the Judge gives his judgment by producing any fact which can prevent the admissibility of evidence, the Judge shall ask him to prove the fact.

Explanation – Whenever a party to any proceeding proves that *syahid* is not *'adil*, the Judge shall reject the evidence of that *syahid*. If that party fails to prove it, the Judge shall proceed with the *tazkiyah* on the *syahid* if he has not done so and give his decision based on the evidence if he has conducted the *tazkiyah al syuhud*.

When findings of *muzakki* differ.

157. When one of the *muzakki* finds that *syahid* is *'adil* whereas other *muzakki* find him not *'adil*, the Judge cannot give decision based on the evidence of that *syahid*.

Continuation of *tazkiyah*.

158. The Judge may, if it considers necessary in certain cases, conduct *tazkiyah* for a second time.

***Syahid* dies, disappears or whereabouts not known.**

159. When a *syahid* dies, disappears or his whereabouts is not known after giving evidence in civil matters, the Judge has the jurisdiction to conduct examination on his evidence and may give decision based on such evidence.

When *syahid* is required to take *yamin*.

160. For civil cases, if the situation demands or the process of *tazkiyah al syuhud* cannot be carried out or *mudda'a 'alaih* makes an application to the Judge requesting the Judge to order *syahid* to take the *yamin* as *syahid* of speaking the truth because of the need to strengthen his *syahadah*, the Judge shall order that *syahid* to take the *yamin* and the Judge shall remind him that if he does not take the *yamin* his *syahadah* is inadmissible.

CHAPTER V

GENERAL

Manner of conviction.

161. (1) Any *hudud* or *qisas* offence can only be convicted through *ikrar* or *syahadah* in accordance with *Hukum Syara'*.

[S 16/2014]

(2) Any offence punishable with *ta'zir* penalty may be convicted with any evidence in accordance with *Hukum Syara'*.

Withdrawal of *syahadah*.

162. Subject to *Hukum Syara'*, any *syahadah* admitted by the Court cannot be withdrawn unless the withdrawal is done in Court.

***Hukum Syara'* shall apply where there is no provision.**

163. (1) Any provision or interpretation of any provision in this Order that is inconsistent with *Hukum Syara'* shall be invalid to the extent of its inconsistency.

(2) In relation to any matter which is not expressly provided for in this Order or in any rules made under this Order, the Court shall apply *Hukum Syara'*.

Power to make rules.

164. The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules for the purpose of this Order.

Amendment of Chapter 77.

165. Section 57 of the Religious Council and Kadis Court Act (Chapter 77) is hereby repealed.

SCHEDULE

'Adil	عادل
'Aib	عيب
Mudda'a 'alaih	مدعى عليه
Mudda'ii	مدعى
'Ariyah	عارية
Asyhadu	اشهد
Bayyinah	بينة
Baligh/Akil Baligh	بالغ/عاقل بالغ
Furu'	فروع
Ghaib	غيب
Haidh	حيض
Hadd	حد
Hudud	حدود
Hukum Syara'	حكم شرع
Ikrar	اقرار
Jinayat	خناية
Jurh	جرح
Kafalah	كفالة

Mahjur ‘alaih	محجور عليه
Mahr	مهر
Marad al maut	مرض الموت
Mazhab	مذهب
Ma’tuh	معتوه
Mua’amalat	معاملات
Mudharabah	مضاربه
Mumaiyiz	مميز
Muzakki	مزكى
Nisab	نصاب
Qarinah	قرينة
Qisas	قصاص
Syahadah	شهادة
Syahid	شاهد
Syahid Asal	شاهد اصل
Syahid Furu’	شهد فروع
Syahadah ala al syahadah	شهادة عالى الشهادة
Ta’zir	تعزير
Ta’n	طعن
Tazkiyah al syuhud	تزكية الشهود
Wali	ولى
Wasi	وصى
Wallahu ‘a‘alam	والله اعلم
Yamin	يمين
Zakat	زكاة
Zina	زنا

Made this 5th. day of Zulhijah, 1421 Hijriah corresponding to the 1st. day of March, 2001 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN,
BRUNEI DARUSSALAM.