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ANSWERSHEET

A(a) DECISION OF CASE ON THE BASIS OF OATH :

163. Acceptance or denial of claim on oath. --- (1) When the plaintiff takes oath in support of his claim, the court shall, on the application of the plaintiff, call upon the defendant to deny the claim on oath..

(2) The Court may pass such orders as to costs and other matters as it may deem fit.

(3) Nothing in this Article applies to laws relating to the enforcement of Hudood or other criminal cases.

Only_plaintiff may apply for oath. Only in civil cases oath will be taken especially in money cases. Plaintiff may apply for oath when he considers that he has ---no_evidence to prove the case.

When plaintiff applies to court for oath then court will summon the defendant that he wants to give oath or not and court consider that he is ready and there no threat on defendant than court will give the order of oath.

It is the duty of court that when plaintiff applies for oath and court consider that he has no sufficient evidence to prove the case than court must summon the accused for oath.

Art. 163---Oath taken by plaintiff during arguments in support of his claim without an offer to defendant to deny same---Effect---Provision of Art.163 would not apply, if both parties had led evidence---Such unilateral oath could not be termed as an oath under Art.163 of Qanun-e-Shahadat, 1984---Principles. Denial of claim by defendant on Oath. Effect. Parties to suit taking Oath, one affirming the claim and the other denying the same. Trial Court dismissed suit, also the Appellate Court, High Court in revision, remanding case to Trial Court for decision on basis of evidence which stood already recorded. Validity. Provision of Art. 163, Qanun-e-Shahadat, 1984 does not lay down what would be the consequences if defendant does or does not deny plaintiff's claim on Oath. Order of remand passed by High Court, thus, seemed to be proper, warranting no interference. Leave to appeal was refused in circumstances.

Applicability of Art. 163, Qanun-e-Shahadat, 1984 to criminal cases. Procedure of swearing on the Holy Qur'an (oath proceedings) is not applicable in criminal cases.

Qanun-e-Shahadat order, 1984 (10 of 1984)-- ----art. 163--oath on Holy Quran--suit for specific performance of contract--appellant made offer that if respondent makes oath on holy quran that he never entered into agreement to sell, nor received any consideration amount then his appeal be dismissed as withdrawn offer was accepted and appeal was dismissed--challenge to--validity--when any person makes an offer to other party to make statement on oath then the offer was not under art. 163 of Qanun-e-Shahadat order but under oath act, if such offer was accepted then person making the offer cannot resile from it--offer was duly accepted and respondent made statement on holy quran to same effect--appeal was dismissed by first appellate court--no illegality was found in the judgment--revision was dismissed in limine.

B. 162. No new trial for improper admission or rejection of evidence.- The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independent of the evidence objected to and admitted, there was sufficient evidence to

justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for improper admission or rejection of evidence Article 162: Where Court commits any mistake in trial or litigation on record, it cannot be made ground for new trial provided it does not affect the decision of Court. Where mistake is removed without effecting the Court decision or its non-removal does not affect the decision, it shall not be made ground for new trial.

Judgment based on improper evidence (which does not fulfill the requirement of court) cannot be retried for new judgment if it cannot be changed. But if judgment can be changed then case can be retried.

1. Base of decision:

a) Evidence:

b) Proper evidence:

c) Proper trial:

d) Examination:

e) Jurisdiction:

2. Where no proper evidence is admitted or rejected: Following the law for the retrial of denial of new trial:

a) No base of retrial:

b) Where is new trial:

i) If it effects decision:

ii) Where mistake is substantive:

iii) Where removal of mistake effects charges:

C. Indecent and scandalous question Article 146: Court monitors the proceedings. Indecent and scandalous question are not allowed. Where they are put, court can forbid putting them.

146. Indecent and scandalous question: The Court may forbid any question 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.

B.

Article. 164. Production of evidence that has become available because of modern devices, etc.: In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.

Before the enactment of Qanun-e-Shahadat, 1984, the prevailing law on evidence in our law Courts was with reference to Evidence Act. The process of oral and documentary evidence was applicable on civil and criminal trials with a contemplation that the civil suit is to be proved either in the wake of recorded admissions of the parties or the documentary evidence produced thereunder. Again on that document, series of the provisions from the Evidence Act were invoked to prove the legality and authenticity of the document. More so, a credibility of the witness was also held to be the essential element being a pre-requisite to prove the document in affirmation from its authenticity. As against that the process of evidence in a criminal case was distinguishable being without reference of any document. In criminal cases a previous conduct was found relevant both for the witness as well as accused; whereas, in civil suits character to prove conduct imputed was held irrelevant. Number of the citations and authorities of the superior Courts are holding the field inter alia believing the credibility of witness in a criminal case and documentary reference in a civil suit.

A judicial system relying upon oral and documentary evidence works in old dimension; whereby a proof lacks and does not focus on the target. Once again we divert on a document which is found insufficient being barred by legal implications. Patently, meritorious cases resulted in futility for want of proof. In fact there are point blank evidence presentation techniques that are being used in our judicial system to establish the case on merits.

The instances are:

"Getting documents or photographs presented and exhibited; reference of original testimony right from the transcript and also referring or presenting important documents and images for

ready reference; and such practice is prevalent from the years together where stereo evidence(s) delivered either in affirmative or negative."

(2) Modern evidence under Qanun-e-Shahadat, 1984

An evidence collected through modern mechanism, no doubt, a globally recognized system has now become in the Western Countries as "increasingly antiquated" as with induction of modern technology; a new generation of legal fraternity follow the latest and greatest technology, which the modern world has introduced with a brilliant follow up. Majority is of the opinion that the presentation of evidence is more useful when modern technique is used therein.

Before enactment of Qanun-e-Shahadat, 1984, there was no reference of modern and scientific technology/evidence to explore the truth reaching to an appropriate conclusion of the trial. As an advanced strategy to work in a proper dimension in order to discover the true scenario, and also meeting with the global challenges under foreign litigation, some new Articles were added in the Qanun-e-Shahadat, 1984 and also under the Code of Civil Procedure to get the prompt results; not only in the recourse of Court trials but also under the inquiry and investigational steps conducted by the Law Enforcing Elements. Consequently, Article 164 was inserted in the Qanun-e-Shahadat, 1984 with a following mention;

"Production of evidence that has become available because of modern devices etc: in such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques".

An emphasis of this enacted provision mainly hinges around the terminology of "modern devices or techniques".

"Any electronic device of communication which may include telegram, phonogram, telex, fax, radio and television; or

Under Article 164 of Qanun-e-Shahadat, 1984 Court might allow to be produced any evidence available because of modern devices or techniques. Holy Quran and Sunnah did not forbid employing scientific or analytical methods in discovering the truth. On the contrary the discovery and investigation had been strongly recommended by the Holy Quran and Sunnah. Courts in matters relating to Offence of Zina (Enforcement of Hudood) Ordinance, 1979 had all the powers to permit receptions of evidence including the resort of DNA test, if demanded by occasion".