FEDERAL LAW NO.10, 1992 AD
ISSUING THE LAW OF PROOF IN CIVIL AND COMMERCIAL TRANSACTIONS

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We, Zayed bin Sultan Al Nahyan, President of the State of the United Arab Emirates,

- in cognizance of the Provisional Constitution
- and of the Federal Law No.1 of 1972 regarding the capacities of Ministries and the powers of Ministers, and the amendment laws thereof,
- and of the Federal Law No.10 of 1973 concerning the Federal Supreme Court and the amendment laws thereof,
- and of the Federal Law No.6 of 1978 concerning the establishment of Federal Courts and the transferal thereto of the jurisdiction of local legal judicial institutions of certain Emirates, and the amendment laws thereof,
- and of the Law of Civil Transactions issued in the Federal Law No.5 of 1985 and the amendment laws thereof,
- and on the basis of what is presented by the Minister of Justice, and with the agreement of the Council of Ministers, and ratification by the Federal Supreme Council,

Have issued the following law:

First Article: This Law shall be applicable in matters of proof in civil and commercial transactions and all other texts contradicting its rulings shall be abrogated.

Second Article: This Law is to be published in the Official Gazette, and shall come into effect three months after the date of publication.

Zayed bin Sultan Al Nahyan
President of the State of the United Arab Emirates

Issued by us from the Presidential Palace in Abu Dhabi
11 Rajab 1412 AR (15 January 1992)

Minister of State for Affairs
of the Council of Ministers
21 Rajab 1412 AH (25 January
1992).

Year 22
Number 233
21 Rajab 1412 AH
corresponding to 25 January 1992 AD

LAW OF PROOF IN CIVIL AND COMMERCIAL TRANSACTIONS

CHAPTER 1 - GENERAL RULINGS

Article 1

(1) It is the responsibility of the claimant to prove his claim and that of the respondent to refute it.

(2) The facts which are to be proved must relate to the claim and material to it and acceptance of them must be permissible.

(3) The judge is not permitted to make rulings on the basis of his personal knowledge.

Article 2

(1) Rulings issued for procedures of proof do not have to be accompanied by justifications, provided they do not comprise rulings for rebuttal or claim.

(2) In all cases reasons must be given for rulings issued in urgent cases for circumstances to be proved or witnesses heard.

Article 3

(1) If the Court rules for one of the procedures of proof to be pursued then it is required to specify in the ruling the date of the first session for pursuit of this procedure, and the Office of the Clerk to the Court shall notify any adversaries who are absent.

(2) The proceedings shall be attended by a clerk to take down the official record and sign it.

Article 4

Wherever the completion of the procedure requires more than one session, the record shall show the time and date to which it is adjourned. It is not warranted to inform those who are absent of this adjournment.

Article 5

(1) The Court may alter its decision or an order for a procedure of proof, confirming this in the record of the session, on condition that it shall indicate in the record the reasons for the alteration. There is no necessity to indicate the reasons, however, if it is the alteration of a procedure which it has taken up of its own accord rather than at the request of one of the adversaries.

(2) The Court is permitted not to accept the result of a procedure of proof on condition that it shall indicate the reason for this in its ruling.

Article 6

If the judge finds no provision in this law, then he shall rule according to the Islamic Sharia, choosing the most appropriate solution from the Schools of Imam Malik and Imam Ahmad ibn Hanbal, and failing this from the other schools, according to what the best interests require.

CHAPTER 2 - WRITTEN EVIDENCE

Part I - Official Documents

Article 7

(1) Official documents are those in which a public official or person employed in public service certifies what has taken place before him, or what he has been informed of by the parties concerned, in accordance with legal statutes and within the limit of his authority and jurisdiction.

(2) If documents do not attain official status then they have the value only of customary documents and that only if the parties concerned have endorsed them with their signature, seal or fingerprints.

Article 8

A legal document shall be evidence for all matters recorded in it, be they undertaken by the official within the limits of his capacity, or signed before him by the parties concerned, so long as it is not shown to be forged by any of the legally agreed means.

Article 9

(1) If the original of the official document is available then an official copy, whether hand-written or photographic shall be evidence to the extent that it conforms to the original.

(2) The copy shall be considered to conform to the original, and if any party disputes this then the copy must be compared with the original.

Article 10

If the original of the document is not available, then the copy shall be evidence within the following limits:

(a) The original official copy, whether or not it be executory, shall have the same value as evidence as the original, provided that it's outward appearance does not cause suspicion of its non-conformity to the original.

(b) An official copy taken from the original copy has the same evidential value. In this case, however, any of the parties concerned may request that it be compared to the original copies from which it was taken.

(c) Any copies taken from the official copies of the original copy shall not be counted as evidence but only taken into consideration

Part II Customary Documents

Article 11

(1) A customary document shall be considered to originate from the person signing it provided he does not explicitly deny any handwriting, signature, seal or fingerprint pertaining to him. An heir or successor shall not be required to make a denial; it shall suffice for him to state that he has no knowledge as to whether the handwriting, signature, seal or fingerprint are those of the person from whom he has assumed the right.

(2) Notwithstanding, a person who enters into discussion on the subject of a document may not then deny any handwriting, signature, seal or fingerprint pertaining to him or insist that he has no knowledge that anything therein originates from the person from whom he has assumed the right.

Article 12

(1) A customary document shall not be evidence for others in terms of date until it has a confirmed date. The date of the document shall be confirmed in the following cases:

(a) From the date when it is entered in the relevant register.

(b) From the date when it is endorsed by a duly qualified public servant.

(c) From the date of decease of one of those having a recognized mark on the document, whether handwriting, signature, seal or fingerprint, or from the date when it becomes impossible for one of them to write or put his fingerprint due to some bodily defect.

(d) From the date of any other event which establishes definitely that the document was signed prior to it.

(e) From the date when its contents are recorded in another document of confirmed date.

(2) Notwithstanding, a judge shall be permitted in accordance with the circumstances not to apply the rulings of this article in the case of receipts and commercial forms, or lean documents signed to the interest of a trader, with or without security and whatever the capacity of the borrower.

Article 13

Documents issued outside the State and verified by its representative and by the official bodies in the country of issue shall be acceptable as proof.

Article 14

(1) Signed letters shall have the value of customary documents as proof. Telegrams shall have the same value if the original lodged at the sending office is signed by the sender. A telegram shall be considered to correspond to the original provided there is no evidence to the contrary.

(2) If the original of the telegram is not available, then it shall not be deemed evidence but only taken into consideration.

Article 15

(1) Traders' ledgers shall not be evidence with regard to anyone else but them. Notwithstanding, the information confirmed therein with regard to that which the traders supply and which is essentially valid, permit the judge to direct the supplementary oath to either party in matters where proof by testimony of witnesses is permissible.

(2) Traders' obligatory records shall be evidence for the trader to whom they apply against a trader who is his adversary, if the dispute concerns a business matter and if the records are in order. This validity as evidence shall become void where them is evidence to the contrary, and such evidence may be taken from the records of an adversary which are in order.

(3) Traders' obligatory records, whether or not they are in order, shall be evidence against the trader to whom they apply in so far as his adversary, whether or not he is a trader himself, bases his case on them, provided that the entries which are to the benefit of the person whose records they are also considered evidence.

(4) It shall be permissible for one of the traders who are adversaries to be made to take an oath that his claim is valid if he bases his case on the records of his adversary and agrees in advance to be bound by what appears therein, and his adversary then refuses to produce the records without justification.

Article 16

(1) Domestic records and papers shall not be evidence against those from whom they originate except in the two following cases:

(a) If it is shown explicitly therein that he has received what he is owed in full.

(b) If it is shown explicitly therein that he intended in writing it that it should have the value of a document for a person whose interest it confirms.

(2) In both cases, if what is shown is not signed by the person from whom it originates he shall be permitted to prove the contrary by any of the means of proof.

Article 17

(1) A lender's mark on a loan document in his handwriting, albeit without his signature, indicating that the debtor has fulfilled his obligation shall be considered proof against him unless he can prove otherwise. The lender's mark likewise shall be proof against him, even if it is not in his handwriting or signed by him, provided that the document has not left his possession.

(2) The ruling shall be the same if the lender confirms in his handwriting but without a signature indicating that the debtor has fulfilled his obligations, in another original copy of the document or receipt and if the copy or the receipt is in the possession of the debtor.

Part III - Request that an Adversary Be Obliged to Present Documents and Papers in His Possession

Article 18

(1) An adversary may request that his adversary be required to present material documents or papers which are in his possession in the following circumstances:

(a) If the law allows that he be required to present or submit them.

(b) If it is a joint document between himself and his adversary. A document shall be considered joint specifically if it relates to the interest of both adversaries or if it establishes their reciprocal rights and obligations.

(c) If his adversary bases his case thereon at any stage of the case.

(2) This request shall indicate the description of the document, its significance, the facts for which it is to be used in evidence, the evidence and circumstances supporting that it is in the possession of the adversary and the reason for requiring him to present it.

Article 19

(1) If the person making the request establishes its validity, and if the adversary affirms that the document or paper is in his possession or says nothing, then the Court shall order the document or paper to be submitted immediately or at an early specified date.

(2) If he does not present to the Court sufficient proof of the validity of the claim and the adversary denies the existence of the document or paper then the latter shall swear an oath that the document or paper does not exist, and that he does not know of its existence or its location, and that he is neither hiding it, nor neglecting to search for it, in order to deprive his adversary of using it in evidence.

(3) If the adversary does not present the document or paper at the time specified by the Court, or refuses to swear the aforementioned oath, then a copy of the document or paper presented by the person making the request shall be considered valid and in conformity with the original. If he has not presented a copy, then it is permitted to accept his word regarding its form and content.

Article 20

(1) The Court shall be permitted during the course of the case, even if it is before the Court of Appeal, to introduce another person in order to oblige him to present a document in his possession. This shall be in circumstances and observing the rulings and conditions specified in the preceding Articles.

(2) It may also order, even of its own accord, the involvement of any administrative body to present any information or documents it has which are necessary for the conduct of the case.

Article 21

If one of the adversaries submits a document as evidence in his claim then he shall not be permitted to withdraw it without the consent of his adversary, except with the written permission of the President of the Circuit or the judge, according to the circumstances, after retaining a copy of it in the case file, and which must be endorsed by the Office of the clerk to the Court as corresponding to the original.

Part IV - Proof of the Validity of Papers

Section 1 - General Rulings

Article 22

(1) The Court shall assess how any scratching out, erasure or addition, or other material flaws in the document destroys or diminishes its value as evidence.

(2) If, in the view of the Court, the validity of the document is in doubt then it may of its own accord summon the official who issued it or the person who wrote it to give an explanation of the truth of the matter.

Article 23

(1) Accusations of forgery may be made with regard to official or customary documents. Handwriting, signature, seal or fingerprint may only be denied, however, in customary documents. The burden of proof in an accusation of forgery shall be on the accuser. Where a person denies that he originated a customary document or swears that he has no knowledge that it originated from the person from whom he assumed the right, then the burden shall fall on his adversary to prove that it originated from him or from his predecessor.

(2) If the adversary affirms the validity of the seal on a customary document but denies that he has put his fingerprint on it then he shall be required to follow the procedure for accusation of forgery.

Section 2 - Denial of Handwriting, Signature, Seal or Fingerprints and Identification of Handwriting

Article 24

(1) If the person to whom the document pertains denies his handwriting, signature, seal or fingerprint, or if an heir or successor denies knowledge that the document originates from the person from whom he assumed the right, and if his adversary adheres to this document, and if the document is material to the dispute and the facts and documents of the case are not sufficient to convince the court of the validity of the handwriting, signature, seal or fingerprint, then the court shall order an investigation by comparison or by the hearing of witnesses or both.

(2) The comparison shall take place according to the established principles of practice of experts. Witnesses shall be heard in accordance with the established principles regarding the testimony of witnesses. Their testimony shall be heard only in so far as it relates to confirmation that the handwriting, signature, seal or

fingerprint on the document which is to be verified is that of the person to whom it is ascribed.

Article 25

(1) The Court shall arrange a session to be attended by the adversaries in order to present any documents which they have for comparison, to agree upon which of them are valid for this purpose, and to make the person who disputes the validity of the document demonstrate his handwriting. If, without an acceptable justification, the adversary who disputes the validity of the document refuses to attend in person to demonstrate his handwriting, ruling may be made regarding its validity. If, without an acceptable justification, the adversary who is to prove its validity fails to attend, ruling may be made for him to forfeit his right to prove it. If, however his adversary fails to appear then ruling may be made for the document presented for comparison to be considered valid.

(2) The Chairman of the Session shall order that the document to be verified, the papers for comparison and the handwriting samples be lodged with the Office of the Clerk to the Court after both he and the Clerk to the Session have signed them. Moreover, he shall make an official record showing the condition and giving a description of the document to be verified, which must also be signed by himself and the Clerk to the Session.

Article 26

(1) The comparison of the handwriting, signature, seal or fingerprint which is contested shall be with the confirmed handwriting, signature, seal or fingerprint of the person to whom the document relates.

(2) In the case where the adversaries are not in agreement only the following shall be acceptable for comparison:

(a) Handwriting, a signature, seal or fingerprint on an official document.

(b) A part of the document to be verified, the validity of which the adversary admits.

(c) A person's handwriting, signature, seal or fingerprint which he makes before the court.

Article 27

If the whole of the document is ruled to be valid then the person who denied it shall be subject to a fine of not less than five hundred (500) dirharns, and not exceeding two thousand (2000) dirhams.

Section 3 - Accusation of Forgery

Article 28

(1) An accusation of forgery may be presented at any stage of the case. The person making the accusation shall define the locations of the alleged forgery, the evidence, and the procedures of investigation which he requests to prove this. This shall be notified in a memorandum to the Court, or set down in the record of the session, if the accusation is material to the dispute and the facts and documents of the case are not sufficient to convince the Court of the validity or the forgery of the document, and if the Court views the procedure of investigation requested by the accuser as useful and permissible, then it shall order an

investigation by comparison, or by testimony of witnesses or both, in the manner indicated in the preceding Articles.

(2) The person accused of forgery may halt the process of investigation at any stage by withdrawing his adherence to the document alleged to be forged. In this case the Court may make an order for the document to be confiscated or retained, if the person making the accusation of forgery requests this for some lawful interest.

Article 29

(1) The person making the accusation of forgery shall, if it is in his possession, submit the document alleged to be forged or a copy which shows it, to the Office of the Clerk to the Court. If the document is in the possession of the Court or the clerk, then it shall be lodged with the Office of the Clerk to the Court. If it is in the possession of the adversary, the Chairman of the Session shall require him, merely on the basis of the accusation of forgery, to submit it immediately to the Office of the Clerk to the Court. If the adversary refuses to submit it and its confiscation is not feasible, then it is considered non-existent. This does not prevent its being confiscated later.

(2) In all cases the Chairman of the Session and the Clerk shall sign the document before it is lodged with the Office of the Clerk to the Court.

Article 30

A ruling for investigation of an accusation of forgery shall suspend the executory validity of the allegedly forged document without prejudice to any precautionary procedure.

Article 31

It shall be permissible for the Court to reject or declare void any document, even if it has not been alleged to be forged, if it appears clearly from its condition or from the circumstances of the case that it is forged. In this case it shall indicate in its ruling the circumstances and indications which point to this.

Article 32

If a ruling is made to reject the accusation of forgery or for the accuser to forfeit his right of proof, then he shall be subject to a fine of not less than five hundred (500) dirhams and not more than three thousand (3000) dirhams. There shall be no ruling against him if part of what he claims is proved. If a document is proved to be forged, the court shall send it, with copies of the official record relating to it to the Prosecutor General for criminal proceedings to be taken with regard to it.

Section 4 - Claim of Validity of Signature and Primary Claim of Forgery

Article 33

A person in possession of a customary document shall be permitted to challenge the person to whom it pertains to confirm that it is in his handwriting or bears his signature, seal or fingerprint, even if the obligation which it shows is not due. This shall be in the form of a primary claim by the usual procedures. If the respondent attends and affirms this, the court shall record his affirmation and the claimant shall bear all costs. The document shall be considered recognized if the respondent says nothing or does not deny it, or if

he does not ascribe it to another. If the respondent denies the handwriting, signature, seal or fingerprint then investigation shall take place in accordance with the aforesaid principles, lithe respondent fails to attend without acceptable justification then the Court shall rule in his absence that the handwriting, signature, seal or fingerprint are valid.

Article 34

A person who fears that a forged document may be put forward as evidence against him may challenge the person in whose possession the document is or any person who may assist in obtaining a verdict of forgery. This claim shall be by a primary claim raised in the normal manner. In investigating the claim, the court shall observe the principles and procedures stipulated in the preceding Articles.

CHAPTER 3- TESTIMONY OF WITNESSES

Article 35

(1) In non-commercial matters, if the value of the transaction is greater than five thousand dirhams or if the value is unspecified, testimony of witnesses shall not be permitted in establishing its existence or its termination, so long as there is no agreement or any written indication to the contrary.

(2) The obligation to take the value into consideration shall be determined at the time of issuing of the transaction, excluding any additions to the principal sum.

(3) If the case comprises multiple requests, originating from multiple sources, the proof by testimony of witnesses shall be permissible with regard to any request not exceeding five thousand (5000) dirhams, even if the combined sum is greater than this value, or if the basis of this is relations between the parties themselves, or request of a single nature.

(4) Where partial fulfillment is to be proved, the determining factor shall be the value of the original obligation.

Article 36

Proof by the testimony of witnesses shall not be permissible, even where the amount does not exceed five thousand (5000) dirhams, in the following cases:

(a) In anything which contradicts or goes beyond what is contained in the written evidence.

(b) If what is demanded is a remainder or part of a claim which can only be proved by written evidence.

(c) If one of the adversaries claims more than five thousand (5000) dirhams, and later amends his claim to an amount not exceeding this.

Article 37

Where proof should normally be written, proof by the testimony of witnesses shall be permissible in the following:

(a) If there is a firm written basis. A firm written basis shall be determined as anything in writing, originating from the adversary, which makes the existence of the alleged transaction probable.

(b) If there is a material or moral reason preventing written evidence being obtained.

(c) If the lender loses his written document through some unrelated factor, through no fault of his own.

(d) If in the opinion of the Court it is for exceptional reasons, proof by testimony should be allowed.

(e) If the written evidence is alleged to comprise something prohibited by law or contrary to public order or common morality.

Article 38

Testimony shall be with regard to things seen or witnessed; notwithstanding, it may be accepted with regard to hearsay in the following cases:

(a) Death.

(b) Paternity

(c) The origin of a valid *Waqf* (charitable endowment) and its conditions.

Article 39

(1) An adversary who requests proof by testimony of witnesses shall indicate either in writing or verbally, the facts which he wishes to prove before the session.

(2) The dispositive portion of the judgment ruling for proof by testimony of witnesses shall indicate each of the facts ordered to be established and the date of commencement of the investigation.

(3) If the Court permits an adversary to establish a fact by the testimony of witnesses, then the other shall have the right to refute it in the same manner.

(4) The Court may of its own accord rule for proof by testimony of witnesses in cases where the law permits proof in this form, so long as it sees in this something of benefit to the truth. It may in any case, whenever ruling for proof by testimony of witnesses, call to testify anyone whom it deems should be heard in order to ascertain the truth.

Article 40

The testimony of officials and public servants, even after they have left the position, shall not be accepted with regard to information they have obtained whilst doing it, where the competent authority does not allow such information to be revealed. Notwithstanding, the competent authority may permit them to testify, up

the request of the Court or one of the adversaries.

Article 41

(1) Each witness shall give his testimony alone, without the presence of other witnesses who have not yet been heard. Witnesses for disproof shall be heard at the same session as the witnesses for proof, unless circumstances prevent this. If the investigation is adjourned to another session, then the order for adjournment shall be equivalent to an instruction to the witnesses present to attend that session, unless the Court explicitly excuses them from attending.

(2) The witness shall swear an oath, saying 'I swear by Almighty God that I shall tell the whole truth and nothing but the truth'. The oath shall be according to the particular custom of his own religion if he so requests.

Article 42

(1) If an adversary does not bring his witness or charge him to attend the specific session, the court shall stipulate his duty to bring him or to charge him to attend another session. If he fails to do so then the right to use his testimony shall be forfeited. This shall not prejudice any punishment specified by law for this delay.

(2) If the witness refuses to attend in response to the request of the adversary or of the Court, then the adversary or the Office of the Clerk to the Court, depending on the circumstances, shall instruct him to attend to testify at least twenty-four (24) hours, (excluding travel time), before the time fixed for hearing him. In cases of urgency this time may be reduced at the request of the Court, and by telegram from the Office of the Clerk to the Court, the witness may be called to attend.

(3) If a witness if validly charged to attend and fails to do so, a fine not exceeding five hundred (500) dirhams shall be imposed upon him. This ruling shall be entered in the record of the session and may not be appealed against. In cases of extreme urgency, the Court may rule for the witness to be brought before it. In cases not of great urgency then there shall be an order for the witness to be charged again to attend if there is a need for this, and he shall be liable for the costs involved therein. If he fails to appear he shall be subject to a fine of not less than two hundred (200) dirhams and not more than one thousand (1000) dirhams. This ruling may not be applied against, and the court may issue an order for him to be brought before it

(4) In all cases the Court is permitted to quash the fine if the witness attends and presents an acceptable justification.

Article 43

(1) If the witness attends but refuses to take the oath or refuses to answer, then he shall be sentenced0 to the penalty established in the law of punishments.

(2) If there is some justification which prevents the witness from attending, then the judge appointed to hear him is permitted to go to him. If the investigation is before the Court, then it is permitted to appoint one of its judges to do this. The Court or the appointed judge shall specify the date and place of hearing his testimony and the Office of the clerk to the Court shall inform the absent adversaries and make a record of it to be signed by the appointed judge and by the clerk.

Article 44

(1) Questions shall be directed to the witness by the Court. The witness shall reply first to the questions of the adversary who called for him to testify, and then to those of the other. It shall be permitted for the person who called him to testify to repeat his questions. If the adversary completes his questioning of the witness, then he may not begin his questions again except with the permission of the Court.

(2) The Chairman or any member of the Session, or the appointed judge, according to the circumstances, may put directly to the witness any questions which it deems will assist in determining the truth. The testimony shall be given verbally, and no reference to written notes shall be allowed except with the permission of the Court or the appointed judge and where the nature of the case allows this. If the witness omits something which should be mentioned, the Court of the appointed judge shall question him about this.

Article 45

The replies of the witness shall be taken down in the record and read back to him, and he shall sign it after making any corrections which he sees necessary. If he refuses to sign, this fact and the reasons for it shall be mentioned in the record.

Article 46

If whilst hearing the case or when ruling on the subject of the case, it becomes clear to the Court that the witness has given false testimony, it shall make a report to the Public Prosecutor for the necessary criminal proceedings to be taken.

Article 47

(1) It shall be permissible for a person who fears that an opportunity to hear the testimony of a witness may be lost with regard to some subject which has not yet been brought before the law but which may possibly be so brought, to request in the presence of those concerned that the witness be heard. He shall submit this request by the normal means to the Summary judge. The person making the request shall be responsible for the costs involved therein. Where it is shown to be necessary, the judge shall rule for the witness to be heard provided the fact is such which it is permissible to prove by testimony of witnesses.

(2) It shall be permissible for the judge to hear witnesses for rebuttal on the basis of a request by the other adversary, in so far as this is required by the conditions of urgency in the case.

(3) In matters beyond this, the principles and procedures given in the preceding Articles shall be applied with regard to testimony of witnesses. It shall not be permissible in this case for a copy of the report of the investigation to be submitted or presented to the judicial authorities unless the subject Court sees it is permissible to establish the fact by testimony of witnesses. The adversary shall be entitled to object before it to the acceptance of this evidence, just as he may request for opposing witnesses to be heard in his interest.

CHAPTER 4- PRESUMPTIONS AND THE EVIDENCE OF ACCOMPLISHED FACTS

Article 48

(1) Presumptions specified by the law relieve the person whose interest they affirm of any other method of proof. Notwithstanding, these presumptions may be refuted by evidence to the contrary, provided there is nothing to decree otherwise.

(2) The judge may derive other presumptions as proof in circumstances in which proof by testimony of witnesses is permissible.

Article 49

(1) Rulings which attain the value in evidence of an accomplished fact shall be evidence in so far as they are decisive in the dispute. It is not permissible for evidence contradicting this presumption to be accepted. These rulings shall not have this value as proof, however, except in a dispute arising between the adversaries themselves, without alteration of their designations, and which is related to the same interest both in subject and cause.

(2) The Court shall, of its own accord, determine this value as evidence.

Article 50

A civil judge shall not be bound by a criminal judgment except with regard to the facts on which the judgment rules and where it's ruling on them is essential. Moreover, he is not bound by a judgment of innocence, unless this is based on the disproval of any connection between the occurrence and the accused.

CHAPTER 5- ADMISSION AND EXAMINATION OF THE ADVERSARIES

Part I - Admission

Article 51

(1) Admission is information by a person of a right which another person has over him.

(2) The admission shall be legal if the adversary admits before the judiciary a legal fact which is claimed against him, during the course of a case connected with this fact.

(3) The admission shall not be legal if it occurs outside the judicial session, or with regard to a dispute which is part of a different case.

Article 52

For a legal admission to be valid, it is required that the person making it be of sound mind and age, acting of his own free will and legally competent with regard to what he is admitting.

Article 53

A legal admission shall be evidence against the one making it and his retraction of it shall not be accepted.

Part II - Examination of the Adversaries

Article 54

It shall not be permissible for the adversaries to be heard as witnesses in the case, except that the Court may examine any of the adversaries present, and that any of these may request the examination of his adversary if he is present. Moreover, the Court may order the attendance of an adversary for examination, either of its own accord or at the request of the other adversary. The person whom it is decided should be examined shall be required to attend the session specified.

Article 55

If an adversary has no legal capacity or only diminished legal capacity, then it is permissible for a person representing him to be examined. The Court may enter into discussion with the person himself, if he is rational, in permitted matters. Judicial person may be questioned by means of their legal representatives. In all cases it is stipulated that the person to be examined shall be qualified to act with regard to the interest which is disputed.

Article 56

(1) The Court shall direct, if it sees fit, questions to the adversary, along with those which the other adversary requests. The reply shall be at the same session, unless the Court sees fit to fix a time for the reply.

(2) The reply shall be in the presence of the person who requested the examination. The examination shall not, however, be conditional upon his presence.

(3) The questions and replies shall be written down in the record of the session and Chairman of the Session, the clerk and the person examined shall sign it. If the person examined refuses to answer or to sign, his refusal and his reason for this shall be noted in the record.

(4) If an adversary fails to appear for examination without an acceptable justification or refuses to answer without a legal excuse, then the Court shall deduce what it sees fit from this. It shall be permitted to accept proof in the form of testimony of witnesses or presumptions in cases where this would not have been possible otherwise.

(5) If the adversary does have an acceptable excuse preventing him from attending for examination, then the Court may appoint one of its judges for the examination.

CHAPTER 6- OATHS

Article 57

(1) It shall be permitted for any adversary, at any stage of the case, to call the other to take a conclusive oath, on condition that the fact at which the oath is directed is related to the individual called to take it, and if it is not related to him personally it may be related to a fact of which he has knowledge. The judge may in any case prevent the call for the oath if the adversary is arbitrary in his request.

(2) The person called to take an oath may turn it back on his adversary, except that this shall not be permitted with regard to facts not connected to the two adversaries jointly but which are connected only to the person called to take the oath.

(3) It shall not be permissible for a person who calls for an oath to be taken, or who turns one back on another, to withdraw this call later, provided his adversary agrees to take the oath.

Article 58

The executor, guardian or agent of an absent person shall not be permitted to call for a conclusive oath, or to turn one back except if it is within his authority according to the law.

Article 59

A call for a conclusive oath shall not be permitted with regard to a fact which is contrary to public order or morality.

Article 60

Any person called to take an oath and who declines to do so without turning it back on his adversary, and any person upon whom the call to take an oath is turned back and who declines, shall lose his case.

Article 61

It shall not be permitted for an adversary to establish the falseness of an oath after it has been taken by the one who was called to take it or the one to whom it was turned back, except that if the falsehood is established in a criminal ruling. The adversary who has suffered harm from this shall have the right to claim compensation, without prejudice to any right he may have to appeal against a ruling made against him.

Article 62

(1) The judge may at any stage of the case and or its own accord call any of the adversaries to take a conclusive oath, in order that he may base thereon his ruling on the subject of the case or on the value of the judgment. It is a condition in requiring such an oath that the evidence in the case should not be complete, nor should the case be devoid of any evidence.

(2) The person called to take this oath shall not be permitted to turn back on the other adversary.

Article 63

The judge shall not be permitted to call upon the claimant to take a conclusive oath to determine the value of what he claims, unless it is impossible to define this by any other means. In this case the judge shall specify an upper limit to the value to which the claimant swears.

Article 64

(1) A person who calls his adversary to take an oath shall be obliged to indicate precisely the facts upon which he wishes him to swear, and to specify in a clear expression the form of words of the oath. The Court may amend the form proposed by the adversary so that it is aimed clearly and precisely at the facts with regard to which the oath is requested.

(2) If the person called to take an oath does not dispute either its permissibility or its relevance to the case, he shall be obliged to take it immediately if he is present in person, or to turn it back on his adversary, otherwise he shall be considered to have refused. The Court shall be permitted to give him a deadline for taking the oath if it sees a reason for this. If he is not present then he shall be informed of the form of the oath agreed by the Court, in order for him to attend the session specified to take the oath. If he attends but refrains without contesting it, or fails to attend without an excuse, he shall likewise to be considered to have refused.

Article 65

If the person called to take the oath has a justifiable reason preventing him from attending, the Court may move to where he is or appoint one of its judges to hear his oath.

Article 66

(1) The rendering of the oath shall be by the swearer saying 'I swear by Almighty God', followed by the form of words agreed by the Court. A person called to swear an oath may render this according to the established custom of his own religion if he so requests.

(2) The accustomed signs of a mute person shall be recognized in his taking of the oath, his refusal to do so, or in turning it back, if he is unable to write. If lie is able, then his oath, refusal of it or turning it back shall be in writing.

(3) A record of the oath shall be written and signed by the swearer, the Chairman of the Session and the clerk.

CHAPTER 7- OBSERVATION AND PROOF OF CIRCUMSTANCES

Article 67

(1) At the request of one of the adversaries or of its own accord the Court may decide to move in order to observe the matter which is contested, or may appoint one of its judges to do so. The date and place of the observation shall be defined in this decision. The Court or the judge shall write a record specifying therein all actions connected with the observation.

(2) The Court or its appointed judge may appoint an expert to assist in the observation and may hear the

testimony of witnesses as it sees fit. The call to these to attend shall be by request of the Office of the Clerk to the Court, even if this is verbal.

Article 68

(1) It shall be permissible for a person who fears the loss of factual signs which may become the subject of a dispute before the law, in the presence of the parties concerned and in the normal way, to request the Summary Judge to move in order to observe them. In this case the preceding rulings shall be abided by.

(2) The Summary Judge shall be permitted in the aforementioned situation to appoint an expert to move in order to observe and to hear witnesses not under oath. The judge shall then specify a session for hearing the remarks of the adversaries on the report of the expert and his actions. The principles stipulated in the Chapter on Expertise shall be applied.

CHAPTER 8 - EXPERTISE

Article 69

The Court may, when necessary, rule to appoint one or more experts from amongst the employees of the State or those listed in the register of experts, in order to seek their opinion to give insight on the issues on which judgment is to be made in the case. The Court shall determine the deposit which must be lodged with the Treasury Department of the Court on account of the expenses of the expert and his fees, the party who shall be required to lodge this deposit, and the time by which it must be lodged; also the amount which may be drawn by the expert towards his expenses.

Article 70

If the adversaries agree on the choice of one or more experts the Court shall confirm their agreement. In any other situation the Court shall select an expert from those admitted before it so long as specific circumstances do not dictate otherwise, and in such cases the Court shall indicate the circumstances.

Article 71

If the court rules for the appointment of one or more experts, the dispositive portion of the judgment shall comprise the following:

(a) A precise statement of the task of the expert and the summary measures which it is permitted for him to take.

(b) The deadline fixed for the lodging of the report of the expert.

(c) The date of the session to which the case is adjourned for proceedings in the case where the deposit has been lodged, and another, earlier session to look into the case where the deposit has not been lodged.

Article 72

If the deposit is not lodged by the adversary charged with doing so nor by any of the other adversaries, the expert shall not be obliged to fulfill the task assigned to him, and the Court shall decide that the adversary who failed to pay the deposit in accordance with the ruling issued for the appointment of the expert shall forfeit his right, if it finds the reasons which he puts forward for this unacceptable.

Article 73

The Office of the Clerk to the Court shall within two days of the lodging of the deposit call the expert to study the papers in the case file, but without taking possession of them, so long as the adversaries have not given permission for this. He shall be given a copy of the ruling.

Article 74

If the expert is not listed in the register, he shall be obliged to take an oath before the Court which appointed him that he will fulfill his task truthfully and in good faith otherwise the work shall be invalid. It is not required that the adversaries be present for the oath of the expert, but the oath shall be recorded in a document.

Article 75

(1) The expert shall have five days, from receipt of the copy of the judgment from the Office of the Clerk to the Court, to request to be excused from performing the task he is charged with. In urgent cases the Court shall be permitted to stipulate in its ruling that this period be shortened.

(2) The Court which appointed him may excuse him from this if the reasons he puts forward are acceptable.

Article 76

If the expert does not fulfill his task and has not been excused from it, the Court which appointed him may order him to pay the costs incurred in its disbursements, without interest but with compensation where appropriate. This shall not prejudice any disciplinary measures.

Article 77

The adversaries shall be permitted to reject the expert if some reason pertaining to him makes it probable that he will be unable to perform his function without prejudice. In particular, the expert may be rejected if he is a relative or in-law of one of the adversaries up to the fourth degree, the agent of one of them in his private business, his executor or guardian, if he works for one of the adversaries, or if he or his spouse has some current dispute with one of the adversaries in the case or with his spouse, provided this dispute has not arisen after the appointment of the expert with the aim of rejecting him.

Article 78

The application to reject the appointment of an expert shall take place before the Court within one week of the date of the ruling appointing him if the ruling has been issued in the presence of the adversary who requests the rejection. If, however, it has been issued in his absence, the application must be submitted within one week of his being informed of the dispositive part of the ruling being made known to him. The right to

request rejection shall not be forfeited if the reasons for it appear after this deadline or if the adversary presents evidence that he had no knowledge of it until after its expiry.

Article 79

If the expert is appointed with the agreement of the adversaries, then an application for his rejection from one of them shall not be accepted so long as the reason for rejection did not occur after his appointment or it is established that he did not know of the reason at the time of his appointment.

Article 80

The Court shall decide quickly on the application for rejection and the ruling issued on the request shall not be subject to appeal. If it refuses the request for rejection, the person making the request shall be subject to a fine of not less than two hundred (200) dirhams and not more than five hundred (500) dirhams.

Article 81

(1) The expert shall set a date to begin his work and shall call the adversaries to attend at least seven days before this date, indicating the place of the first meeting and the date and time.

(2) In urgent cases he may call them to attend immediately by telegram.

(3) If he fails to summon the adversaries, his work shall be void.

Article 82

(1) The adversaries shall attend before the expert in person or by their agent

(2) The expert may proceed in his work even in the absence of the adversaries whom he has called to attend in the proper manner.

(3) In application of the ruling appointing the expert, no governmental or non-governmental body shall be permitted to prevent the expert from examining any records, registers, documents or papers which he requires to see and which it holds.

Article 83

The expert shall keep a record of his work, and this record shall comprise the following:

(a) Indication of the attendance of the adversaries and their statements and remarks, signed by them, provided there is nothing to prevent them from signing, in which case the reason for this shall be given in the record.

(b) Indication of the actions taken by the expert, in detail, and the statements of the people whom he has heard either of his own accord or at the request of one of the adversaries.

Article 84

The expert shall be required to submit a signed report with the results of his actions, his opinions and the points of view on which he has relied. If there is more than one expert, it shall be permissible for each to submit an independent report with his own opinion if they cannot agree to submit a single report.

Article 85

(1) The expert shall lodge his report, the records of his actions and all the papers which have been submitted to him with the Office of the Clerk to the Court which appointed him.

(2) The Office of the Clerk to the Court shall inform the adversaries of this lodgment within twenty-four (24) hours of receiving it.

(3) The expert shall send a copy of the report to each of the adversaries in the case within three days of lodging it.

Article 86

(1) If the expert does not submit his report within the time limit set by the ruling appointing him, then he shall be obliged before the expiry of this time to lodge with the Office of the Clerk to the Court which appointed him a memorandum indicating what actions be has taken and the reasons which prevented him from completing his assignment.

(2) If the Court finds in the expert's memorandum justification for his delay, it shall permit him an extension in order to complete his task and lodge his report. If he does not it shall impose on him a fine of not more than five hundred (500) dirhams, and in this case the Court may rule to allow him an extension to complete his task and lodge his report, or to replace him with another, requiring him to return to the Office of the Clerk to the Court any of the deposit which he has drawn. This shall not prejudice any disciplinary measures or compensation if such are appropriate.

(3) No appeal shall be accepted against a ruling to replace an expert and to require him to repay what he has drawn from the deposit.

Article 87

If it appears to the Court after examining the memorandum submitted by the expert in accordance with the preceding Article that the delay is due to some fault of an adversary, it shall impose on him a fine not exceeding one thousand (1000) dirhams, and in addition it may rule for this adversary to forfeit his right that the ruling for the appointment of the expert be adhered to.

Article 88

(1) The Court may of its own accord, or at the request of the adversaries, order that the expert be called to a specified session to discuss the report and it may address to him any questions which it sees beneficial to the case.

(2) It may order him to complete any deficient aspects in his work, or to amend any aspects which appear

to be incorrect. It may delegate one or more other experts to do this.

Article 89

The Court may appoint an expert to express his opinion verbally in the session without making a report, and his opinion shall be set down in the record,

Article 90

(1) The opinion of the expert shall not bind the Court.

(2) If the Court rules in contradiction to the opinion of the expert, it shall show in its ruling the reasons which led it not to accept this opinion in full or in part.

Article 91

(1) The expert's expenses and fees shall be determined by an order on an application issued without any proceedings by the Court which appointed him. Any of the adversaries or the expert himself may protest against the estimate within eight days of it being announced.

(2) The protest shall be lodged with the Office of the Clerk to the Court and as a result the implementation of the estimate shall be suspended. A different judge or a different Circuit of the Court shall rule on this protest after hearing the statement of the protester and its ruling shall be final and not subject to appeal in any way.

Article 92

The expert shall receive what is assessed for him from the Treasurer's Department. The party who was ruled to be responsible for the costs shall be obliged to meet the estimate where it exceeds the deposit.