

The Saudi New Law of Evidence: New Page in the Saudi Judiciary History

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Generally, disputes before the Saudi Judiciary are settled according to the Islamic jurisprudence books of the Hanbali School, making the discretionary powers of courts very wide. Accordingly, for any person dealing with justice, it is very difficult to know the expected judgements. Discretionary judgements vary from one judge to another and even the same judge may render different judgments on similar cases. This state of uncertainty is improper for dealing with the economic challenges chosen by the political leadership to achieve its ambitious objectives on the coming period.

Therefore, the Crown Prince, on the beginning of the last year, announced that the Kingdom in its endeavor to cope with the current developments in the Kingdom and worldwide is working now on new four legislations, which are the Law of Evidence, Personal Status Law, Civil Transactions Law and Penal Code for Discretionary Sentences. The first of these four laws, which is the Law of Evidence, has been promulgated by the Royal Decree No (M/43), dated 26/05/1443 H (31/12/2021). The promulgation of this law, no doubt, is considered a highly qualitative leap that will support the judicial system in the Kingdom. In this article, I will try to give general overview of the means of evidence stipulated in this Law, which are summarized as follows:

1. Writing Evidence

A Writing evidence, whether officially issued by public institutions or a customary instrument issued by an ordinary person or a company, is a known method of proof, used in Saudi courts. Nevertheless, writing evidence instruments had – under the previous law- no specific order of weighting among the other means of proof, in case of occurrence of contradiction with others.

The Law of Evidence introduced completely new provisions not included in the previous laws of evidence known in KSA regarding writing instruments as evidence of proof.

The Law stipulates that each disposition which value exceeds One Hundred Thousand Saudi Riyals, or equivalent in foreign currency, and each disposition which value is not specified, shall be stated in writing, unless the parties agreed in written otherwise or there is a legal provision permits stating not in written, as stipulated in Article 30 of the Saudi Capital Market Law, regarding permissibility of evidence in Securities cases in all forms including electronic or computer data, telephone recordings, facsimile messages and electronic mail.

The Law stipulates that it is not permissible to state anything contradicting or exceeding the written evidence even if the value of disposition is less than One Hundred Thousand Saudi Riyals, as the evidential power of writing is more than others before justice.

“Disposition which value exceeds One Hundred Thousand Saudi Riyals, or equivalent in foreign currency, and each disposition which value is not specified, shall be stated in writing”

2. Digital Evidence

Recognition of digital evidence as a proofing instrument before courts is one of the most important amendments in the Law of Evidence. This has been adopted, within other developments, in the judicial system even before the spread of Covid-19 when the validity of electronic serving of the lawsuits has been recognized. After the pandemic spread, the Saudi judiciary adopted those hearings to be held remotely between judges and litigants. Most judicial services have been provided electronically, including issuing the original enforceable judgment without the need to follow up with the court.

The new Law of Evidence defined the Digital Evidence as any evidence derived from any data to be generated, issued, received, saved, or notified by an electronic instrument, which may be retrieved or obtained in an understandable manner, including the digital record, digital written instrument, digital signature and digital messages.

The Law recognizes the digital evidence and gives it the same power of evidence as the traditional written instrument (official and customary), which is considered an important development in the history of the Saudi judiciary.

The Law stipulates also that the Minister of Justice, in coordination with the Saudi High Judicial Council, shall issue the necessary regulations of the digital evidence procedures, which is considered an important issue to strengthen the confidence of the public in the digital instrument.

“Recognition of digital evidence as a proofing instrument before courts”

3. Testimony

Testimony of witnesses is one of the means of evidence, which are known in the Saudi judiciary, and which is widely discussed in the Islamic Jurisprudence. The Law permits use of testimony in all cases, other than where the Law stipulates exclusively the use of writing. Pursuant to the Law, age of a witness shall not be less than fifteen years and shall be of sound mind. Nevertheless, the Law permits hearing the testimony of a person who has not reached fifteen years of age as a matter of guidance.

4. Acknowledgment

According to the Law, admission or acknowledgment is judicial if a party to litigation acknowledges before a court of a fact alleged against him and may be extrajudicial if it occurred outside the court.

The Law of Evidence accepts admission of facts stated during hearing of lawsuits other than the one in which such acknowledgment is intended to be used.

The judicial admission constitutes absolute proof against the admitter only. Acknowledgment does not obligate any person other than the admitter. Generally, acknowledgment may not be retracted and shall not be divided against the admitter, unless related to multiple facts that can be divided.

Extrajudicial acknowledgment may be proved by all means of evidence if the amount is One Hundred Riyals or less, but if the amount exceeds that, shall not be proved by any means other than by the rules of writing evidence, stipulated in the Law

5. Interrogation of Opponents

According to Section 9 of the Law of Civil Procedures, which is repealed by this Law, the right of interrogation of opponents has been stated only for the court, while the Implementation Regulations of the Law of Procedures granted the opponent in commercial lawsuits the right to interrogate the opponent

directly.

In the new Law of Evidence, the court by itself or upon a request of one of the opponents, may interrogate the opponents. The Law also gives the right to any of the parties to interrogate his opponent directly in all types of lawsuits, whether commercial or other, and reserving the right to the interrogated opponent to object any question directed to him. The new Law gives the court the right to prevent any question not related to the case or non-productive or generally not accepted according to the court discretion.

6. The Presumption

The presumption is known in the Islamic jurisprudence as one of the means of evidence. The Law of Evidence, as the previous evidence laws, stipulates use of presumptions. Presumption is an established practice used by Saudi judiciary. Presumption can be generally defined as the use of known matter to judge on an unknown matter. The common example of presumption is that possession of movable property is evidence of ownership of the possessor of that movable asset, but the opponent has the right to challenge that presumption by all means of proofs according to law.

7. Custom

Custom is a widely recognized source in the Islamic jurisprudence and the Saudi judiciary relies on use of custom in many cases. The general principle in the use of custom is that a matter known in custom has the same power as the conditioned matter. What is customarily known by people in their legal dispositions is considered in the same position as the condition in the obligations and rights even if not explicitly stated in a written contract between the parties. The Commercial Courts Law stipulates in article 57 that it is permissible to adopt the commercial custom, or the custom known by parties. The new Law of Evidence repealed this provision of the Commercial Courts Law and states the same provision in an amended manner permitting relying on custom in all commercial and non-commercial transactions.

8. Oath

Oath is an established method of evidence in the Islamic jurisprudence and used in the Saudi judiciary for settlement of cases. The new Law of Evidence stipulates the use of oath. There are two types of oath, the first of which is the **Decisive Oath**: The Decisive Oath is the oath taken by a defendant to refute the claim of a plaintiff. The defendant instead of taking oath may request that the plaintiff to take the oath for asserting the truth of his claim according to the provisions of the Law of Evidence. The adopted rule in this type of oath is that however requested to take oath the judgment should be for his favor if he takes the oath. In the event such person rejected to take oath and not requested the other party to take oath, he will be adjudicated after being warned. The same shall be in the case he requests that the plaintiff to take oath and the later refuses to take oath.

Other type of oath is the **Supplementary Oath**: Supplementary oath is the oath to be taken by the plaintiff to complete his claim and the plaintiff has no right to request the defendant to take oath.

9. Inspection

The court has the right, by itself or upon a request of one of the opponents, to inspect the matter or the place, subject of dispute. The court may delegate an expert to carry out the inspection.

10. Expertise

Seeking the assistance of an expert specialized in the subject matter of the dispute to state his opinion on the technical issues of the dispute is widely used in the Saudi judiciary. The court may decide, by itself or upon a request of one of the litigants, to use an expert. The parties to the litigation may agree to appoint a certain expert, and the court in such case shall consent to this agreement.

11. The Res Judicata

Res Judicata means that judgments are absolute proof as to the matters finally decided by courts or in arbitration. No proof of any kind refuting the judgment is admitted, provided that the dispute is between the parties themselves acting in the same capacities and having the same object and the same cause.

The court, by its own initiative, without request from the litigants, may decide the incontestable character of this proof.

Means of Evidence issued outside the Kingdom of Saudi Arabia

The Law gives the court the right to accept evidence procedures taken outside Saudi Arabia, including paper and digital instruments attested by the concerned authorities in the state in which the same instrument is issued and to be certified by the concerned Saudi authorities; without prejudice to the obligations of Saudi Arabia stipulated in the international agreements to which Saudi Arabia is a party, provided that such means do not contradict the public order. The courts in Saudi Arabia require that all foreign documents shall be certified by the Saudi Ministry of Foreign Affairs and the Ministry of Justice and shall be translated into the Arabic language.

Briefly, these are the main elements of the Law, which is anticipated to take effect in July 2022. The other three laws announced by the Crown Prince, hoped to be issued, in particular the Law of Civil Transactions, which in our opinion, has the same importance as this Law because it introduces completely new provisions marking a new phase in the history of the Saudi judiciary.

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