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MEANINGS, CATEGORIES, FUNCTIONS AND STRUCTURE OF PRESUMPTIONS: A STRUCTURAL ANALYSIS OF PRESUMPTIONS IN QANOON E SHAHADAT ORDER

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ABSTRACT
The objective of the present research was to explore the meanings, kinds, functions and structure of presumptions in common law and then use it as a conceptual framework to analyze presumptions in Qanoon e Shahadat (hereinafter QSO). The present study, after doctrinal analysis, found that presumption in common law is viewed as a rule of law which allows courts to draw certain conclusions on the basis of certain proved facts. Additionally, researchers have identified numerous categories, functions and methods to study the structure of presumptions in the process of proof in common law. Similarly, the study found five categories of presumptions, four major functions of presumptions, and four varying ways to examine the structure of presumptions in QSO. It is hoped that the present study will be helpful in appropriate understanding and application of presumptions in the process of proof in Pakistan.
Keywords: presumptions, burden of proof, structure of presumptions, categories of presumptions, presumptions in common law.

INTRODUCTION
Determination of the controversies before the court is one of the major functions which courts are expected to discharge. The courts discharge this function by establishing the facts in the cases. These established facts enable the courts to draw inferences about the facts involved in the controversy. In addition, facts are usually proven by the use of evidence, and the study of the law of evidence examines how contested facts are proven in legal procedures. There are various means discussed in the law of evidence and presumption is one of such means. Presumption, in the context of law of evidence in common law countries, generally means a conclusion which may or must be drawn from a given set of facts until the contrary is proved. It is regarded as the second best method of establishing facts when there is little information about certain facts (Petroski, 2008, p.388) or when decisions are to be made under conditions of uncertainty (Hohmann, 1999, p.1). In addition, the term presumption is the creature of judges crystalized in rule of law and it covers those situations in which formal proof of certain facts is not required (McCormick, 1927, p. 309). In addition, some analysts believe that presumptions are the part of substantive law (Fanner, 1919, p. 388). Presumptions discharge three major functions in judicial trials; they reduce unnecessary proof process, secondly, these presumptions make it easy to prove such facts which are otherwise very difficult to prove in the process of proof and lastly, it exempt or reallocates the burden of proof. Despite these important functions which presumptions discharge in the process of proof, many researchers hold the view that the concept of presumption in common law is an ambiguous term since it has been employed by legal fraternity in various senses and for numerous purposes. Moreover, judges, lawyers, and legislators give it different title; sometimes it is viewed as the rule of substantive law, some accommodate it in procedural law, some think that it is the part of pleadings; some think that it is the component of reasoning and some believe that it is a statement of natural probability (Gama, 2016, p. 8). To Allen (2014), the controversy about the meaning of presumption is useless because it is the spin-off of theoretical muddle (p. 14). He added that

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presumption is a term which can be used for scattered evidentiary decisions and he urges the researcher to examine the problems created by the use of presumptions (Allen 1980, p.845, quoted in R. Gama 2016). It is important to point out that the topic of presumption relates to the factual questions and not to the questions of law.

The topic of presumption has been the point of discussion in bulk of literature due to its importance and ambiguity associated with it. This ambiguity relates to its meaning, kinds, functions and structure. Various analysts have discussed these dimensions of presumption; however, the researchers' difference of opinion can be noticed in the literature. There are many provisions in QSO which deal with presumptions. Article 2 sub articles 7, 8, and 9 discuss when courts shall or may draw presumptions. Similarly, from article 90 to article 101 enlist the type of documents and the nature of presumption which the courts may or shall draw. However, QSO is silent regarding the definition, structure, kinds and its functions in the process of proof. Moreover, there is scarcity of research on the definition, kinds, types and functions of presumption in QSO. While keeping in view all this, the present study intends to fill this gap. For that purpose, the current research has the following research questions; how is presumption defined in the literature? What are its different types? What are its various functions? What is the structure of presumptions in general and in QSO in particular? The authors of the present study adopted doctrinal approach to address the above mentioned research questions. The present research will clarify the meaning, kinds, functions and structure of presumptions as these are contained in QSO. This clarification will assist in using presumptions properly in the process of proof in Pakistan.

The present study has three major sections other than introductory section. The second section discusses the definition, kinds, functions, and structure of presumption in common law countries. The third section analyses how presumption can be explained in the context of QSO and how various presumptions may be categorized in term of their kinds, functions and structure in QSO. The last section describes the conclusions of the present study.

Meanings, Structure, Categories, and Functions of Presumptions

This section intends to address the first three research questions of the present study by developing a conceptual framework to analyze the functioning of presumptions in QSO, the Pakistani law of evidence. The primary objective which the present section intends to achieve is to have a deeper understanding of the meaning of presumptions, their nature, kinds and functioning in common law countries especially in United States of America and United Kingdom. This section has been split into four sub-sections. The first section discusses the definition of presumption, the second deals with the structure of presumption, the third section discusses the categories and the last section analyses the functions of presumptions in common law.

What is Presumption?

This section is devoted to discuss the meaning of presumption and for that purpose, the authoritative literature from law and artificial intelligence and law is consulted and analyze to define presumptions in law. To begin with, it must be admitted that a universally admitted definition is not found in the huge literature on presumptions in common law countries (He, 2018, p.170). It may be due to the reason that this term has been engulfed by confusions and controversies which made it as a slipperiest term of law of evidence (McCormick, 2013, p. 342). However, to develop the idea, a few definitions of presumptions are discussed in the following paragraph.

Presumption, according to Black's Law Dictionary, is "a legal inference or assumption regarding the existence of a fact on the basis of some other known or proven facts concerning the existence of some other fact or combination of facts." According to Stephen (1876), "presumption is a rule of law that require courts and judges to draw a particular conclusion from a specific fact or a particular piece of evidence, unless and until the truth of such inference is established" (p. 4). While commenting on Stephen's definition, Thayer (1898) advised to differentiate rules related to presumption and permitted inferences. He remarked that a rule of presumption does not only indicate that such and such is a legal and usable inference from other facts, but it goes on to say that this importance shall always, in the absence of additional facts, be ascribed to them," the speaker said (p.317). Similarly, to Wigmore (1940) presumption is a rule of law which is established by judges and it assigns a specific procedural effect to an evidentiary fact. He added that presumptions adjust the burden of proof on parties (Wigmore, 1940, p.2491). On the same line of reasoning, Kaiser (1955) defined presumptions as a rule of law which requires drawing specific conclusions when certain facts are proved and remain

uncontested (p. 261). Likewise, Waltz (1986) held the view that presumptions refer to such inferences about the existence or non-existence of any fact which are drawn when certain basic facts are proved. Similarly, to Phipson (1987) presumption means holding a conclusion until the time when contrary to such conclusion is established. He added that sometimes such conclusions may be drawn when certain preliminary facts are proved and sometimes such conclusions may be drawn without establishing preliminary facts (p. 223). Smith (1995) defines presumption in the same sense. To him, presumptions are the rules of law which allow judges to draw certain inferences when certain facts are proved. Presumption, according to Strong (1992), is a standardized procedure where certain facts are deemed to demand consistent treatment with regard to their influence as proof of other facts (Strong, 1992, p. 449). Similarly, Allen (2006) points out that presumptions refer to set of rules related to the inferential process of proof. These rules are set, definite and create legal relations between proved facts and some other facts which deemed to be proved. He added that presumptions exhibit an inferential relation between proved and presumed fact. Like legal scholars, various researchers from the artificial intelligence and law and from argumentation theory have also defined presumptions. Macagno & Walton (2012) believe that presumption is a device which changes the burden of proof backward and forward between parties (p. 272). Similarly, Prakken & Sartor (2006) think that presumptions are default rules in non-monotonic logic (p. 9). It is important to point out that the term "presumption" has not been defined in QSO however; article 2 sub-articles 7, 8 and 9 discuss presumptions. These articles just state the circumstances when courts may or when courts will and when courts must draw presumptions.

Thirteen definitions of presumption described in the above paragraph vary in scope and nature. However, the following common points in these definitions may be noticed. Firstly, presumptions are rules of law, secondly, these rules of law sometimes require or sometimes gives option to the courts to draw specific inferences in certain circumstances, thirdly, the inferences will be drawn when basic facts have been proved with evidence, fourthly, these inferences can be rebutted except in a very few cases, and lastly, presumptions is a technique to re-adjust burden of proof. For the sake of continuing the discussion, the presumption may be defined as; a rule of law which requires the courts to draw certain conclusions from certain proved facts which sometimes may be rebutted and sometimes will not be rebutted.

Structure Of Presumptions

After analyzing the various definitions of presumptions in common law countries, this section examines the literature on the structure of presumptions. As far as the structure of presumptions is concerned, various researchers and analyst have proposed number of methods to analyze it. These proposals can be collapsed in the following four categories.

First of all, the structure of presumption may be examined by looking into the probability between presumption raising facts (also called basic facts) and presumed facts. The basic facts denote to such facts which are conditions precedent to presume certain facts; on the other hand, presumed facts are those facts which are deemed to exist when primary facts are established (Hellman, 1944, p. 22). Hohmann, (1999, p. 3) claims that generally the structure of presumption resembles with argument from probability. To him, if there is high probability between presumption raising facts and presumed facts, the drawing of presumption will be justified. He added that generally presumptions have empirical backing however; legal presumptions may be empirical or non-empirical. This suggestion points out that one can be justified in presuming a fact in law on the basis of another fact if empirical or non-empirical probability justifies the presumption. Secondly, various researchers are of the view that the structure of presumption can be studied by using the standard of premise-conclusion and by looking into the defeasibility of the presumed fact. For instance, Walton (2014) believes that legal presumptions are defeasible in nature which means that conclusion drawn may be withdrawn when new evidence comes in suggesting that previous conclusion is not justified (p. 92). Thirdly, some researchers have proposed to examine the structure of presumption by treating it as an inference and by looking into its characteristics patterns. For instance, Ullman-Margalit (1983) believes that presumptions are inferences which have three components: presumption raising facts, presumption formula, and presumed facts (p. 147-149). To her, the presumption raising facts are those facts which give grounds to presume certain facts (these are basic facts in legal terminology), the conclusion is a claim that is believed to be true based on (1) and (2), and the presumption rule is a defeasible rule that permits the transit from the presumed fact to the conclusion (Ullman-Margalit, 1983, p. 147-149). Fourthly, many analysts have

analysed the structure of presumption by looking into the relationship between basic or primary facts and presumed facts. For instance, Podleśny (2019) maintained that building formula of presumptions consists of two elements: the antecedent, and the consequent. The antecedent sets out the conditions for drawing presumptions and the consequent is the statement of presumed facts which are drawn when the conditions specified in the antecedent occur. In addition, the situations mentioned in the antecedent must be established with evidence and according to the required legal standard of proof (p. 127).

Similarly, QSO offers some guidelines in article 2 sub-article 7, 8, and 9 to study the structure of presumptions. For instance, article 3 (7) states that when a court is allowed to presume a fact pursuant to this order, it may either consider the fact proven until it is refuted or may request proof of the fact. Additionally, sub-article 8 specifies that, unless and until it is refuted, the court shall accept a fact as proved whenever it is directed by this order that a fact be presumed. In a similar vein, article 9 states that when one fact is proclaimed by the order (QSO) to be conclusive proof of another, the court shall accept the other fact as proved upon proof of the first fact and shall not permit evidence to refute it.

Categories of Presumptions

This section describes various categories of presumptions which are found in the literature. It is important to point out that several researchers have used different terminology for classifying presumptions and on the basis of the underlying idea behind such classification, the following six classes have been identified.

The first in this catalogue is the conflicting presumptions. Conflicting presumptions are those presumptions which may operate in favor of both parties. In addition, the presumed facts in such presumptions are contradictory with each other. In such presumptions, the primary fact has no probability value (Geraldson, 1941, p. 130). The courts have number of options to treat such presumptions. The courts may choose one presumption by preferring it over another presumption or they may assume that conflicting presumptions have refuted each other. Some researchers have noticed that in such situations, courts picked the latter alternate (F. Roberts, 1959, p. 479-480). However, American Federal Rules of evidence provide that the courts will chose the stringer presumption in such situations (Gausewitz, 1955, p. 398). The second class of presumptions is conclusive presumptions which refer to such presumptions which require that the courts must draw certain conclusions which cannot be rebutted by the production of new evidence. A number of researchers hold the view that conclusive presumptions are in fact the statutory definitions of crimes (Plaxton, 2010, p. 145). It is important to point out that a few researchers do not treat such principles of law as presumptions (Edward C, 1965, p. 325).

The third class of presumption is the presumption of fact which means drawing inference regarding the existence or non-existence of a fact on the basis of another proved fact without using any legal rule (Greenleaf, 1866, p. 48). Some researchers believe that such presumptions allow drawing conclusions by deploying ordinary reasoning skills and these presumptions are not the rules of law (Kaiser, 1955, p. 254; Thayer, 1898, p. 539-550). Presumptions of fact are tentative conclusions and involve the discretion of the court and it is up to court to draw such presumption or refuse it even though primary facts have been proved (Wodage, 2014, p. 263). It is important to highlight that this is a controversial category of presumption in the literature. Some analysts hold the view that presumption of fact is no presumption and the courts must abandon such presumptions. For instance, Wigmore (1940) pointed out that all presumptions are those of law, and that there is none of fact. Similarly, the fourth class of presumptions is the presumption of law or mandatory presumption. Such presumptions require the courts to draw a particular conclusion from a particular fact. These presumptions are the artificial creation of law which may be logical or under a particular legal rule (Kaiser, 1955, p. 253). Presumptions of law are usually formed in light of public policy or for convenience or to avoid a quandary or to compel a litigant having easy access to disclose more information (Morgan, 1933). The scholars typically distinguish presumptions of law from presumptions of fact while keeping in view the distinction between basic fact and presumed fact. For instance, Kaiser (1955) points out that the presumptions of law are fixed rules of law which requires drawing a particular inference from a specific fact. On the other hand, the presumptions of fact are the logical arguments derived from the circumstances of specific case and which depend upon their own natural force and not on any rule of law (p. 254). Similarly, some analysts believe that presumptions of law are based on policy of law or rule of law whereas the presumptions of fact are based on experience or probability of any kind. For instance, Greenleaf (1866) pointed out that both presumption of law and fact are grounded on same

probability but they differ on the ground that presumptions of law are based on rules or policy of law; conversely, presumption of facts are based on experience (p. 49). It is important to notice that that the justification of presumption of law depends upon a rational connection between primary facts and presumed facts (Morgan, 1943, 1324, see also, Comment, 1966, The Constitutionality of Statutory Criminal Presumptions).

Functions of Presumptions

This section deliberates on the various functions which presumptions discharge in the process of proof. Various researchers have pointed out numerous functions of presumptions which can be accommodated in four themes: functions related to evidence, burden of proof, connections between two facts and resolving a deadlock.

As far as the functions of presumptions regarding evidence is concerned, presumptions may discharge two functions. Firstly, presumptions come into play to tackle the issues of insufficient evidence. Macagno, & Walton (2012) argue that when there is evidence about a particular fact but this evidence is insufficient due to its failure to meet the required standard of proof, presumptions offer an additional premise which comes over the insufficiency (p. 277-278). Secondly, presumptions are used to handle situation when there is no evidence about a particular fact. It is important to highlight that presumption is considered as a device in logic, philosophy and argumentation theory to fill certain gaps in knowledge (Simons, Mandy, 2013). The same is the case in judicial trials where presumptions allow presuming the existence of particular fact about which there is no evidence (Podleśny, 2019, p. 127, see also, Monir, 2017, p. 13). Similarly, insofar as the presumptions in the context of burden of proof are concerned, it is believed that presumptions allocate and regulate the burden of persuasion and production of evidence. Laughlin (1953) maintains that drawing presumptions supportive of one party mean that the burden of persuasion is shifted on other party (p. 199). Likewise, presumptions regulate the shifting of the burden of persuasion. By pointing out that the presumption of legitimacy establishes that a child born during the validity of the marriage is the child of the husband, R. Gama (2016) demonstrated this argument. This presumption makes the father who contests the paternity of a child born or conceived during marriage responsible for persuading the court of his innocence (p. 10). On the same line of inquiry, presumptions also determine the burden of production of evidence in judicial trials. McCormick (2013) illustrated it with an example. He made note of the fact that a letter that has been properly addressed, stamped, and mailed is believed to have been duly delivered to the addressee unless the party against whom the presumptions operate introduces evidence showing the letter was not received (p. 343). This shows that how presumptions shift the burden of proof and this shifting hinge on the likelihood of the linking between basic facts and presumed facts (Best et al., 1875, p. 571).

Thirdly, presumptions are used to make clear the link between two facts; the primary facts and the presumed facts. When the basic facts are proved according to required standard of legal proof, the existence of presumed facts is deemed to be true by an ordinary process of reasoning and presumptions makes clear the relationship between them (Gama, 2016, p. 10). In addition, presumptions authorize courts to infer that presumed facts exist if existence of primary facts has been proved. The court will treat presumed facts as true until opponent party produces evidence to prove the non-existence of presumed facts (Morgan's analysis). Finally, presumptions are used to get rid of a deadlock. Allen (1980) pointed out that presumption in this sense is just a rule of decisions based on justice and policy. He illustrated this by citing an example of survivorship. He explained that when there is a question of survivorship of a person and there is no evidence about life of that person, presumption resolves this issue by allowing courts to assume life or death of that person in particular circumstances (p. 850).

Structural Analysis of Presumptions in Qanoon e Shahadat

After developing a conceptual framework in second section, this section intends to analyze the presumptions in QSO. It is important to highlight that this section intends to address the fourth research question of the present research. This section has seven sub-sections which discuss various aspects of presumption in QSO.

Types of Structure of Presumptions

From structural point of view, there are four types of presumptions in Qanoon e Shahdat namely presumptions having basic fact-presumed fact structure, presumptions having operative part-basic fact-presumed fact structure, presumptions having basic fact-presumed fact-restrictions structure and presumptions having no basic fact-no presumed fact-just guide lines structure. These four types of structure of presumptions are discussed in the following lines.

The common structure of presumptions found in QSO is "basic fact-presumed fact" structure. This structure makes it necessary that the basic facts must be proved in courts before requiring them to assume the existence of presumed fact. The working mechanism of such presumptions is very simple; the basic facts have to be established first and then the courts will draw specific inferences provided in the same article. For instance, article 92 provides that every document purporting to be a document directed by law to be kept by any person and to be kept in a particular form and if it is shown that it has been kept in the same manners, the court will presume that the document is genuine. In this article, primary facts include, document, legal requirement to keep it in a specific form, and its keeping in the given form are the primary facts. Similarly, the conclusion that it is genuine is a presumed fact. The second type of structure of presumptions in QSO is "operative part-basic fact-presumed fact" structure. This type of structure is found in the presumptions under the burden of proof. Such presumptions have three step working mechanism; the first part provides the situation when such presumptions can or may be drawn, the second part provides basic facts and the third part provides the specific inferences which can or may be drawn. For instance, Article 126 of the QSO states that the burden of demonstrating that a person is not the owner of something of which he is proved to be in possession falls on the person who makes the affirmation that he is not the owner. In this article, "when the question is whether a person is owner of anything" is operative part which provides that under what circumstances the presumption will be drawn. Similarly, the words "of which he is shown to be in possession" is the part which provides the basic fact and the words "the burden of proving that he is not the owner on that person who affirms that he is not the owner" is the presumed fact.

Likewise, the third type of structure of presumption is "basic fact-presumed fact-restricted inferences" structure. The working mechanism of such presumption is also based on three steps; first the basic facts have to be shown, secondly, certain inferences are to be drawn and thirdly certain inferences are forbidden to be drawn from the basic facts. For example, according to article 98 of QSO, the court may assume that a message sent from a telegraph office to the person to whom it is intended equates with a message delivered for transmission at the office from which it was sent. However, the court shall not presume anything regarding the identity of the person who delivered the message for transmission. In this article, messages sent from a telegraphic office to a specific person are the primary facts. Similarly, the conclusion that message delivered from telegraphic office corresponds with the messages received is the presumed fact and the words "but the court shall not make any presumption as to the person by whom such message was delivered" is the prohibition on court not to draw this inference. The fourth type of structure of presumptions in QSO is "no basic fact-no presumed fact-just guidelines" structure. The working mechanism of this type of presumption is very simple; such presumption does not provide any basic fact, presumed fact or restricted inferences rather it just offer guidelines to draw inferences from various facts. Article 129 of the QSO, for instance, states that the court may presume the existence of any fact that it believes is likely to have occurred, taking into account the usual sequence of natural events, human behavior, and public and private business, in relation to the facts of the specific case. This article only provides recommendations to make inferences rather than providing any basic facts or presumed fact.

Categories of Presumptions

The present study identifies five different categories of presumptions in QSO which include presumption of fact, presumption of law, mixed presumption, rebuttable presumption, ir-rebuttable presumptions and conclusive presumptions. It is pertinent to highlight that the various studied cited in second section uses different criterion to differentiate presumption of law from presumption of fact. According to these studies, the criterion to differentiate presumption of law and fact involves the application of logical or legal rules. However, the criterion of presumption of law and fact is different and quite easy in QSO.

In QSO, presumptions of facts are denominated by the words "may presume" (article 2 (7). There are six articles in QSO which bestow discretion upon judges to draw or not to draw specific inferences from proved primary facts. For instance, Article 97 states that the Court may assume that any book it consults for information on topics of public or general interest and any published map or chart, the statements of which are relevant facts and which are produced for its inspection, were created and published by the person, and at the time and location, by whom or at which it purports to have been created or published. On the same line of inquiry, presumption of law, in QSO, are those presumptions which QSO requires the judges to draw (article 2 (8)). The legal provisions containing presumptions of

law use the word "court shall presume". There are seven presumptions in QSO which require the judges to draw specific conclusion when primary facts are established. For instance, Article 92 specifies that if a document is kept essentially in legal form and is produced from proper custody, the Court will conclude that it is a genuine document. The third category of presumptions in QSO is rebuttable and ir-rebutable presumptions. It is important to point out that both types are treated as presumption of law under QSO. However, there is fundamental difference between these presumptions. In case of rebuttable presumption, the opponent party can adduce the evidence but in case of ir-rebutable presumption the right to adduce evidence to dispel the conclusion is not allowed. In these articles, the words conclusive proof has been used. According to Article 128 for instance, a child born during the continuation of a legitimate marriage shall constitute conclusive evidence of legitimacy. This article does not allow adducing evidence to deny this fact. On the other hand, rest of the legal presumption is rebuttable (article 2(8). Similarly, the fourth category of presumptions in QSO is conclusive proof. There are two conclusive presumptions contained in article 55 and 128 of QSO. Conclusive presumptions have a special effect that these presumptions do not allow to rebut the inference as discussed in the above paragraph. Likewise, the fifth category of presumptions in QSO is mixed presumptions. Mixed presumptions are those presumptions which are both presumption of law and fact. There is only one instance of mixed presumption and that is found in article 98. In this article states that the initial presumption is presumption of fact since the words "courts may presume" have been used; whereas the restriction to draw specified inference is presumption of law because the words "courts shall not presume" were used.

Subject Matter of Presumptions

After thorough examination of all the provisions of QSO, the present study has identified fifteen subject matters about which courts may or shall draw presumptions. These subject matters include national or foreign laws, national or foreign judicial decisions, judicial record, certified copies, reference books, telegraphic messages, documents, power of attorney, certificates, expectancy of a man's life, relationship between specific people, ownership of property, good faith in transactions between specific people, legitimacy of child, and natural course of business of everything. The first theme or subject matter of presumption is the laws of Pakistan and foreign country. For instance, Article 94 states that the court shall infer the authenticity of any document containing laws of Pakistan or any other foreign country that is published with the consent of that country. Similarly, the second subject matter of presumption is the judicial decisions of Pakistani and foreign courts. For instance, under article 55, the courts have to draw a presumption regarding the specific juridical decisions of specific Pakistani courts. Similarly, article 94 deals with the presumptions about foreign courts. Likewise, the third subject matter of presumptions is certified copies. There are various articles in QSO which either authorizes or required courts to draw presumptions regarding certified copies and these certified copies relate to old documents (article 101), about any Pakistani document (article 90), judicial record of foreign courts (article 96), reference book for Pakistani courts (97), telegraphic messages (98), documents which are not produced (99), thirty years old documents (100), power of attorneys (95) and certificates (90). Similarly, the courts are bound to draw presumptions about a man's life (123,124), relationship between specific people (125), ownership of property in a man's possession (126), good faith in transaction between specific people (127), legitimacy of a child (128), and about any two facts which are connected with each other on natural probability (129).

Nature of Presumed Facts

Similarly, a closer examination of various provisions of QSO dealing with presumptions reveals that there are twenty different subject matters of the presumed facts. The analysis shows that the themes of the presumed facts are genuineness of documents or certified copies (91, 92, 94, 96), due execution of documents (95, 99), due authentication of documents (95), authenticity of documents (96), authorship of books, date, time and place of publication (97), transmission of telegraphic message (98), due attestation, signature and stamping (99), official character of attesting officer (90), and truth of circumstances in which a particular document was prepared (91). In addition, the examination shows that the subject matter of presumed facts includes compliance with the given legal procedure (91), and accuracy of certain documents (93). Similarly, the courts may or can presume the continuity of man's life (123), his death (124), continuation of relationship between specific persons (125), ownership of property (126), absence of good faith in transactions between specific person (127), legitimacy of a child (129) and conferring or taking away legal character under specific jurisdiction (55).

Explicitly and Implicitly Presumed Fact

The structural examination of all the provisions dealing with presumptions in QSO also indicates that some provisions expressly provides the presumed fact and some provisions do not provide the facts which the courts may or must presumed. In case of later provisions, one has to identify the presumed fact hidden inside the provisions. For instance, article 90 specifies that the court shall assume the authenticity of those documents which are mentioned in the same article. In this article, the nature of presumed fact is expressly provided in the article. However, according to Article 126, the person who asserts that a person is not the owner of something over which they are demonstrated to be in possession is required to give evidence to support their claim. The presumption that the court will make is not stated in this article; rather, it is implied that the court will assume that the individual is the property's owner.

Logic-Legal Rule behind Presumptions

Similarly, the structural analysis of the presumptions in QSO shows that all the presumptions, except one, involve the application of a particular legal rule to draw presumptions. The only exception to this principle is article 129 which requires the judges to apply their own experience and probability to draw presumption and this liberty is not given in other provisions of QSO dealing with presumptions.

Functions of Presumptions

The analysis of various articles of QSO shows that presumptions discharge four functions in the process of proof and these are discussed in the lines below.

Firstly, presumptions are helpful in establishing matters which are almost impossible to prove in courts due to elapse of considerable time or any other reason acceding to the required standard. When considerable time has been elapsed and it is necessary to establish certain facts occurred during that time, the courts are in a difficult position as their normal proof is difficult to acquire. The presumptions come into action in such situations and bring the courts out of this odd situation. An illustration of this function is article 100. The article states that the court may presume attestation, executions, signature and handwriting in such documents as genuine, authentic and duly execution. Monir points out that it is difficult and sometimes impossible to prove the handwriting, execution, attestation or signature in old documents after the elapse of many years and this article brings the courts out of this situation (p. 335). Similarly, sometimes some facts like mental state of mind are difficult to prove and presumptions help the courts in such situations. For instance, Article 122 specifies that the onus of proof is with the party who has special knowledge of the fact being in dispute. Secondly, presumptions discharge the function of keeping intact the status quo. For instance, article 126 states that when the court has to resolve the question that whether any person is the owner of a particular property or not, the court will assume that a person is the owner in whose possession the property was at the time when the matter was brought before the court. Thirdly, the analysis of QSO shows that the presumptions are used in QSO to shift the burden of proof in the process of proof. For instance, Article 127 stipulates that when a party to a transaction questions the other's good faith when one of was in a position of active confidence toward other. The party who is in an active position of confidence has the duty of demonstrating the good faith of the transaction. The presumption in this article shifts the burden of proof on the party who was in a position of active confidence. Lastly, some presumptions in QSO work to give finality to certain matters and these presumptions in QSO are called conclusive proof. For instance, when the courts draw the presumption of legitimacy under article 128, the opponent party will not allowed adducing any evidence to rebut this presumption. So, this presumption gives finality to the legitimacy of child.

CONCLUSIONS

The above discussion leads to the following six conclusions regarding presumptions in common law countries. Firstly, presumption in common law countries is a rule of law which authorizes courts to draw certain inference when some specific facts have been established. Secondly, sometimes courts are required and sometimes courts have the discretion to draw or not to draw such inferences. Thirdly, the party against whom presumptions have been drawn generally has the right to adduce evidence to rebut the effect of presumptions. Fourthly, the presumptions in common law countries are categorized into presumption of law and fact, rebuttable and irrebutable presumptions, conclusive and conflicting presumptions. Fifthly, presumptions shift and allocate burden of production of evidence, and burden of persuasion. Similarly, presumption brings out the court out of difficult situation like when there is no

or insufficient evidence or when certain facts are difficult to prove. Sixthly, there are four methods to study the structure of presumptions in statutes. On the same line of inquiry, the following major conclusions can be drawn regarding presumptions in QSO. Firstly, QSO recognizes five categories of presumption namely presumption of fact, presumption of law, conclusive presumptions, rebuttable and irrebutable presumptions. Secondly, presumptions in QSO discharge four functions namely, allocation of burden of proof and persuasion, resolution of deadlock and proof of such facts which are impossible to establish. Thirdly, the structure of presumptions in QSO can be analyzed by four methods namely by looking into basic fact-presumed fact, operative part-basic fact-presumed fact, basic fact-presumed fact-restrictions clause and no basic fact-no presumed fact-just guidelines.

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