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HEARSAY EVIDENCE: MEANING, KINDS, AND EXCEPTIONS IN COMMON LAW AND PAKISTANI LAW OF EVIDENCE

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ABSTRACT
Hearsay evidence is an out of court statement which is presented in court to prove that the assertions made in it are true. The hearsay rule means that hearsay evidence will not be used in judicial proceedings except in exceptional cases. The definition, kinds and exceptions to hearsay rule have been explicitly discussed in various statutes and judicial decisions of common law countries. On the other hand, the definition and exceptions to hearsay evidence have not been explicitly discussed in Qanoon e Shahdat, 1984 (Pakistani law of evidence hereinafter QSO) which causes great difficulty in understanding the nature and scope of this concept. The present study, by deploying doctrinal research methods, intends to address these issues by analyzing the hearsay evidence and its exception in QSO. It is hoped that the present study will clarify the meaning and exceptions to hearsay rule in QSO.
Keywords: Hearsay Evidence, Exceptions to Hearsay Evidence in Common Law, Direct Evidence, Kinds of Hearsay, Hearsay in Pakistan

INTRODUCTION
The hearsay rule is one of the most significant and frequently applied rules of evidence but it has been a difficult concept to understand for the academician and practitioners (Murphy, 2013, p. 228). The hearsay rule originated in common law countries in general and UK in particular and the rule has taken its modern shape between 1675 and 1696. The English judges developed the rule to prevent the use of such out of court testimonial and documentary evidence which was not subjected to cross examination or which was not perceived by the witnesses with their own senses (Koch, 2005, p. 252). The English judges developed this rule due to number of reasons which can be stated in the following four points. Firstly, the hearsay evidence is excluded since it is difficulty for fact finders to assess the evidentiary weight of hearsay evidence (Blastland 1986 AC 41, 54). Secondly, the hearsay evidence is excluded due to judicial approach that such evidence is not reliable (Koch, 2005, p. 253-254). Thirdly, hearsay evidence is excluded because the admission of such evidence will deprive fact-finders of observing the demeanor and checking the various weaknesses of testimonial evidence (Koch, 2005, p. 253-254). Fourthly, hearsay evidence is tendered without swearing oath and the maker is not subjected to cross examination (Signorelli, 2011, p. 370). On the other hand, the rule against hearsay is considered as related to relevancy of evidence and it is meant to increase the probability of evidence (Allen, 2015, p. 1398).

Siegel (1992) argued that the primary task of hearsay rule is to enable fact finders to accurately reconstruct the past events in courts and this primary task must be kept in mind while applying this rule or putting suggestions to improve it (Siegel, 1992, p. 898). Despite the importance of hearsay evidence in judicial decision making, its meanings, nature, scope, kinds and exception are not clear in common law countries in general and in Pakistan in particular. It is true to some extent that some common law countries have clear statutory structure related to hearsay evidence and its exceptions. However, the rule, its definition, nature and exceptions are not clear in QSO as there is no statutory provision in QSO which either defines or talks about the exceptions to hearsay rule. This ambiguity requires an investigation into how this principle has been incorporated in QSO. It is imperative to examine the

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nature and scope of this principle and related exceptions in common law to analyze Pakistani law on this point since the origin of Pakistani law of evidence is common law legal system. The present study is an attempt in this direction as it intends to analyze the whole QSO to understand the statutory structure related to hearsay evidence and its exceptions. The present study has following four research question; what is hearsay evidence in common law? What are various kinds of hearsay evidence in common law? What are its exceptions in common law? What is hearsay and what are the exceptions in QSO. The paper is organized as follows: the second section discusses the meaning and kinds of hearsay evidence in common law. The third section ponders over the exception to hearsay evidence in common law countries (UK and USA). The fourth section analyses the meaning and scope of hear evidence hearsay in QSO. The fifth section points out the exceptions to hearsay rule in QSO and the last section offers summarized conclusions of the present study.

Hearsay Evidence: Meaning and Kinds in English Law

This section addresses the first research question of the present study by analyzing several definitions of hearsay evidence in common law context to grasp the meaning and scope of it. For this purpose, various statutory, judicial and academic definitions of hearsay evidence are discussed and analyzed in this section.

As far as statutory definitions of hearsay are concerned, the English law provides two definitions of hearsay; one for civil cases and another for criminal cases. In civil cases, hearsay evidence refers to a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated and it includes hearsay of any degree (Civil Evidence Act, 1997). Similarly, in criminal proceedings sections 114 and 115 of Criminal Justice Act, 2003 jointly define hearsay evidence. It is important to point out that the Criminal Justice Act 2003 has reorganized the admissibility of hearsay evidence in criminal cases by abolishing the common law rules related to hearsay evidence and holding the exclusionary organization of hearsay rules in the act (Dennis, 2013, p. 706). Sections 114 (1) and 115 state that a statement which is not made in proceedings as oral evidence will be admissible in criminal proceedings only if it is not made to make another person believe the content of statement or to make another person act or a machine to operate on the basis of the matter narrated in statement (Criminal Justice Act, 2003). Similarly, federal rules of evidence in America define hearsay evidence as a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted (Rule 801 (c). Likewise, hearsay evidence in New Zealand means a statement by a person other than a person who is giving evidence of the statement at a proceeding and is offered in evidence to prove the truth of the statement. The meaning of "statement" refers to spoken or written assertion by a person of any matter; or non-verbal conduct of a person that is intended by that person as an assertion of any matter (NZLC Preliminary Paper No 15, Evidence Law: Hearsay, 1991, p. 32-33).

Likewise, various researchers have also offered numerous definitions of hearsay and six definitions given by Powell, Cross, Stephen, Wigmore, Taylor, Murphy and Keane and Mckeown are worth noticing. Powell (1904) defined hearsay evidence as oral or written statements of such witnesses who were not produced in courts or when witnesses narrated such matters in courts which they did not perceive themselves rather other person had told them (Powell, 1904, p.126). **Cross (2007)** believes that hearsay evidence refers to such assertions which are not made by a person while giving oral evidence in proceedings and such statements are inadmissible if these are tendered to prove any fact or opinion asserted in such statements (Cross, 2007, p. 509). Stephen (1872) pointed out that hearsay evidence has variety of meaning depending upon the context. He explained that sometimes it refers to a statement which a person has heard from another person, sometimes it stands for information which has been communicated by another person to witness and sometimes irrelevant evidence means hearsay evidence (Stephen, 1872, p. 4). Similarly, Taylor (1878) believed that hearsay evidence is evidence whose value is not determined by giving credit to person who made it in court rather by giving credit to credibility and reliability of another person (Taylor, 1878, p. 570). Keane and Mckeown (2012) define hearsay evidence in the common law context as any statement, other than one made by a witness in the course of giving his evidence in the proceedings in question, by any person, whether it was made on oath or unsworn and whether it was made orally, in writing, or by signs and gestures, which is offered as evidence of the truth of its contents. If the statement is tendered for any purpose other than that of proving the truth of its contents (Keane and Mckeown, 2012, p. 10).

It is necessary to seek explanation of few terms used in the above mentioned statutory and non-statutory definitions of hearsay evidence. These terms include, "statements", "out of court proceedings", and "to prove the matter asserted". As far as the term statement is concerned, it refers to descriptive assertions in the form of testimony (establishing facts through spoken words) which may be true or false (Raymond, 1999, p.127, see also Ratten v. R 1972 AC 378 PC at p. 387). In addition, the statements may be in the form of oral evidence, documentary evidence, or gestures (Raymond, 1999, p.128). Moreover, the statements refer to statements made by human being and it does not include the statements emanated from any machine without human command (Raymond, 1999, p.145). It is important to point out that assertion may be expressed or implied and this is a crucial question that whether the term "statement" in the definitions includes both or not. It has been clarified in the above lines that express assertions in any form will be termed as hearsay. On the other hand, implied assertions are in fact derived conclusions from a statement. For instance, if A says to B "pass the salt please" and it is inferred that A does not have the salt, it is implied assertion in the statement. Now the question is whether such inferences will be covered under hearsay evidence or not. The English judicial decisions have held the principle that such implied inferences will be hearsay evidence if these are intended to establish the truth i.e. B had the salt (Raymond, 1999, p.134, see also, R v. Sharp 1988 1 WLR 7 HL and Sukadave Singh versus R, 2006, 1 WLR 1564). In this respect, the court of appeal in England has held the principle that implied assertions are not inadmissible on the ground of hearsay evidence (Sukadave Singh versus R, 2006, 1 WLR 1564). In addition, Murphy (2013) believes that word "statement" also includes a previous consistent or inconsistent statement of witness who testifies in the court (Murphy, 2013, p. 251).

Similarly, the term "out of court proceedings" refers to a statement made by a witness without swearing oath and facing cross examination in the instant proceedings or which were made out of the court. In addition, the term also includes witness's statements given in judicial proceedings in another court where the witness sworn oath and faced cross examination proceedings (R v. Lockley and Corah 1995 2 Cr App R 554 CA). In addition, if oral evidence is tendered in one judicial proceedings and it is used in another connected proceedings, the evidence in second proceedings will be hearsay (Murphy, 2013, p. 251). Likewise, the term "to prove the matter asserted" means that statement was made to make other person believe that whatever has been narrated in the statement is true, however, if it is made for any other reason, it will not be hearsay evidence (Raymond, 1999, p.128). Murphy (2013) points out that statements made on other occasions to prove any other relevant fact like a statement was made by witness, or it was made on a specific time or in a specific manner will not be hearsay evidence (Murphy, 2013, p. 247). He advises to ask two questions to determine whether a statement is hearsay or not; was the statement made on prior occasion? for what purpose was the evidence tendered? He points out that if the statement was not made in the instant judicial proceedings and was tendered to establish the truth of the matter contained in it, it will be hearsay evidence (Murphy, 2013, p. 247).

It is also useful to discuss various kinds of hearsay evidence to understand its scope and nature. The literature on hearsay evidence shows that various analysts have identified six kinds of hearsay evidence. The first kind of hearsay is anonymous hearsay which refers to such hearsay evidence whose source is unknown (Dennis, p. 772). The admissibility of such hearsay evidence is controversial in United Kingdom even in such cases where exceptions to hearsay evidence allow using hearsay evidence. For instance, the English criminal court has held that anonymous hearsay is inadmissible (Mayers, 2008 EWCA Crim 2989; 2009 1 W.L.R. 1915 but Dennis (2013) argues that it should be admissible in limited cases (Dennis, 2013, p. 706). The second type of hearsay evidence is multiple hearsay or hearsay within hearsay. It refers to such hearsay evidence which includes another hearsay statement in it and it is generally found in documentary evidence. It is important to point out that such hearsay evidence will be admitted if both hearsay statements are covered by the exceptions to hearsay rule (Murphy, 2013, p. 249) and will be excluded if only statement is covered under exceptions and other statement is not (Brien, 2009, p. 542). The third type of hearsay evidence is documentary evidence which refers to such documents which are not original or when the authors of documents are not produced in court (Murphy, 2013, p. 311). However, documentary hearsay evidence is admissible in English law when the author is not found or cannot give evidence and the person producing the document has personal knowledge of its contents (Pattenden, 1987, p. 92-93). The fourth type of hearsay evidence is negative hearsay. This type of hearsay is analogous to implied assertions i.e. court or witnesses infer the non-existence of a fact from some narrated facts. It has been highlighted that in this

form of hearsay, non-happening of a fact is inferred from oral or documentary evidence (Britain Law Commission, 1997, p. 19-20). For instance, if a written record does not contain an entry of performance of any act and the same record is produced to show that the act was not performed because its performance was not recorded in the record. The custodian or writer of the record has not mentioned in the rerecord that the event did not occur. The inference that the act was not performed will be negative hearsay. The fifth type of hearsay is first-hand hearsay and it means using a statement enclosed in a document without calling the person who made such statement in the document (Britain Law Commission, 1997, p. 43). The sixth type of hearsay is oral hearsay which refers to verbal statement of witness in court when they have not perceived a fact.

The above discussion leads to the following five conclusions regarding the meaning of hearsay in common law. Firstly, if a witness does not testify in the court and his out of court or previous statement is used in judicial proceedings, it will be hearsay evidence. Secondly, if a witness testifies in the court about facts which others have reported to him and he has not himself perceived such facts, his evidence will be hearsay evidence. Thirdly, if written record is produced without calling a person who prepared it, it will be hearsay evidence. Fourthly, the witnesses' statements in other judicial proceedings will be hearsay evidence. Fifthly, if original documents are not produced in the court, it will be hearsay evidence.

Exceptions to Hearsay Rule in Common Law Countries

The third research question of the present study was related to the exceptions to hearsay rule in common law. The present section addresses this question by examining the statutory or non-statutory exceptions to hearsay rule in selected common law countries.

The analysis of various books, articles and judicial decisions has revealed that exceptions to hearsay rule may be adjusted in two major categories: common law exceptions and statutory exceptions. It is important to highlight that all the exceptions to hearsay rule was originated in common law legal system; however, common law exceptions in the present study refers to such exceptions which have not been incorporated in statutes. On the other hand, statutory exceptions are those exceptions which have been incorporated in statutes. The both categories of exceptions are discussed in the following lines. It is worth mentioning that hearsay statements will be used to prove the matter asserted in such statements if these statements are covered by these exceptions (Myers v. DPP 1965 AC 1001 HL).

As far as, the common law exceptions to hearsay rule are concerned, Raymond (1999) has discussed various exceptions in detail. The first common law exception he discussed is res gestae which include hearsay statements related to excited utterances, and statements about maker's state of mind, physical condition, and performance of relevant act (Raymond, 1999, p.154-162). He added that dying declaration, declarations against maker's financial or proprietary interests, statements made during the performance of legal duty, statements of witnesses who died before the retrial of accused, and statements related to general rights or pedigree are exceptions to hearsay rule (Raymond, 1999, p. 164-168). Similarly, statements of business partners, statements in public documents, authoritative reference books and statements about reputation of a person are also common law exceptions to hearsay rule (Raymond, 1999, p. 168-169). Similarly, there are certain exceptions to hearsay rule incorporated in statutes in common law and statutory exceptions in UK and USA are described in the following paragraphs.

The statutory exceptions to hearsay rule in America may be classified into two categories on the basis of the availability of maker. The first category relates to exceptions when maker is available but even then his statements are used in courts. Rule 803 of Federal Rules of Evidence deals with the exceptions when maker is available but not called and basic objective behind the rule is to save the time and resources. The said rule contains twenty three heads under which various hearsay statements have been held admissible. These statements include statements describing or explaining an event or condition, excited utterances, statements related to mental, emotional or physical conditions or related to medical history, symptoms, treatment and diagnosis and documents used by witnesses to refresh memory. The said provision also include record of acts regularly conducted, public record related to official acts, judgments of courts, birth, marriage, public record related to religious organizations, or ceremonies and statements related to family affairs contained in written document. Similarly, documents affecting proprietary interests, statements in ancient documents, statements in authoritative academic writing, and statements about reputation, history and judgments about previous conviction are admissible. On the other hand, rule 804 deals with the exceptions when maker of statement is not

available and hence his statements are used in evidence. The said rule contains five classes of hearsay; the first class includes former statement of witness given in the same or different judicial proceedings provided it was subjected to examination in chief and cross examination. The second class includes dying declaration, and the third includes statements against proprietary and pecuniary interest. The fourth class of exceptions includes statements related to family or personal history i.e. birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, and similar facts of personal or family history. The fifth class includes statements which are against a party who has wrongfully caused unavailability of maker of statement. Similarly, rule 807 of the Federal Rules of Evidence also deals with residuary exceptions to hearsay evidence. According to rule 807, a hearsay statement is admissible if it has more probative evidence than any other evidence on the same point or it is supported by a guarantee of trustworthiness.

Similarly, in England, there are many statutory exceptions to hearsay rule in civil and criminal cases. In criminal cases, section 114 (1) of the Criminal Evidence Act, 2003 sets out the exceptions in three sub-clauses. It is important to point out that this section gives discretion to judges to exclude or admit hearsay evidence in criminal cases. The first sub-clause (a) states that hearsay evidence will be admitted if its admission is allowed under any provision of this chapter or any law for the time being enforced. The exceptions contained in Criminal Evidence Act, 2003 are statements made by persons who cannot be produced as witnesses, statements in business and other documents, specific inconsistent and previous statements of witnesses, expert-opinion, and accomplice's confession. The second part is related to allowing hearsay evidence about the provisions of any other statue which allows using hearsay evidence. Similarly, the clause (b) of section 114 (1) states that any rule of law related to hearsay evidence may be allowed if section 118 preserves that rule of law allowing hearsay evidence. This section has abolished the old common law exceptions to hearsay evidence except in a few criminal proceedings. The preserved exceptions include statements forming part of res gestae or contained in public documents, works of reference, and evidence related to age and reputation. Likewise, the sub-clause (c) allows using hearsay evidence in criminal proceedings if prosecution, accused, and co-accused agree to use it as evidence. Finally, sub-clause (d) states that it will be discretion of the court to allow admissibility of any hearsay evidence if it is in the interest of justice. However, section 114 (3) states that all the above mentioned pieces of hearsay evidence will not admitted if they are excluded on ground of public policy or under any other exclusionary rule, privilege or are irrelevant or inadmissible.

Likewise, Civil Evidence Act 1995 deals with hearsay evidence in civil cases. It is important to mention that section 1 of the said act explicitly abolished the application of hearsay rule in civil cases. According to sub-sections 1 and 2, hearsay evidence of any degree shall not be excluded in civil cases. Similarly, section 13 gives more precision to the definition of hearsay by explaining the meaning of "statement" and "oral evidence". According to section 13, statement refers to any representation of fact or opinion, and 'oral evidence' includes evidence given in writing or by sign when a witness cannot speak. In addition, section 2 provides certain safeguards regarding using hearsay evidence in civil cases. It states that a party must give notice to other party regarding the fact, for which hearsay evidence is intended to be used, or when the party is required by opponent party to enable him to deal with any matter arisen due to hearsay evidence. One can notice that hearsay evidence and its exceptions in common law is a complicated web of exceptions to exceptions, qualifications and doctrines (Park, Miene, & Borgida, 1992, p. 684).

Hearsay Rule in QSO

The fourth research question of the present study was related to the scope, application and exceptions to hearsay rule in QSO. The present section addresses the first half of this research question by discussing the definition and scope of hearsay evidence in QSO. It is important to point out that the discussion offered in the second and third section of the current study is used as a criterion to identify the definition, and kinds of hearsay evidence in QSO.

To begin with, the term hearsay evidence has not been defined in QSO. However, there are various articles in QSO namely article 71, 75, 133 and 139 which exclude hearsay evidence. For instance, article 71 excludes oral and opinion hearsay and it states that oral evidence must be direct i.e. it must come from the mouth of a person who has perceived the facts with his own senses and the court will accept the opinion evidence from such person who holds that opinion. In addition, the wording of article 133 indicates that witnesses will come in court and get recorded their testimony or opinion. Similarly, article 75 excludes documentary hearsay and it requires that the contents of a document must

be proved by primary evidence. The term primary evidence has been defined in article 73 which states that primary evidence means original document. Likewise, article 139 forbids oral testimony when the same matter has been reduced to writing. The article states that when a witness makes an oral assertion regarding any contract, grant or other disposition of property which have been reduced into writing, the opponent party may ask the court not to allow the witness to narrate the contents of documents until such document is produced in court. Moreover, it has been pointed out in the third section of the present study that hearsay evidence is excluded because the courts cannot observe the demeanor of witnesses or such evidence is without oath. There are various judicial decisions in which the courts have required these formalities to be fulfilled when a witness get recorded his testimony through video link. For instance, in Muhammad Israr versus State (2021 PLD 105 Peshawar), the court observed that witnesses' testimony may be recorded through video link however; the recording must be under the supervision of any judicial or executive officer so that witnesses' demeanor may be observed. The court also held that a witnesses must get recorded their testimonies in open court after administering oath to them when they testify through video link.

On the other hand, various judicial decisions give the hint about the definition, and kinds of hearsay evidence. For instance, in Muhammad Husain versus Province of Punjab, the court held that when witnesses testify in the court that they had no personal knowledge about the fact they are stating rather it has been communicated to them by another person, their evidence is hearsay (2021 YLR 2310 Lahore). The same principle has been followed in criminal cases as well. For instance, in Muhammad Ghayas versus State, the court did not admit the testimony of a witness who stated that he did not see the occurrence rather the injured witness told him the whole story about the incident (2020 MLD 1996 Karachi). Similarly, the judicial decisions also reflect that Pakistani courts do not allow using documentary hearsay evidence. For instance, in State Life Insurance Corporation versus Mst. Safia Akhtar, the employees of the company themselves filled the inquiry reports by gathering information from third person. The company tendered these enquiry reports in the court without calling those people from whom their employees gathered information. The court held that such document is hearsay and cannot be used in evidence (2019 CLD 310 Lahore). Similarly, the courts in Pakistan have time and again established the principle that hearsay evidence is the weakest type of evidence and it cannot be the basis for convicting an accused (Sajjan Solangi versus State, 2019 SCMR 872).

Exceptions to Hearsay Rule in QSO

This section addresses the second half of the fourth research question which was related to the exceptions to hearsay rule in QSO. It is necessary to mention that the researchers of the present study have used the discussion in second and third sections of the present study as a yard stick to identify the exceptions to hearsay rule in QSO. These exceptions are discussed in the following paragraphs.

The first exception to hearsay rule in QSO is admissions. The admission may be judicial and extra-judicial. The judicial admissions are made during judicial proceedings whereas extra-judicial admissions are made out of court. It has been mentioned in the above sections that out of court statements of witnesses will not be used to establish the truth of such statements. However, there are various provisions in QSO which allows using the out of court admissions. For instance, article 31 allows the courts to use out of court admissions made by parties who are suing or being sued in representative character, persons having pecuniary or proprietary interest in subject matter of proceedings, or admissions by person from whom parties have derived their interest. In addition, article 32 allows the courts to use admissions made by such person whose position is to be proved in proceedings. Similarly, article 33 states that the statements of person who have been referred to by the parties to proceedings can be used to establish the truth of such statement though such person have not been called as witness in court.

Similarly, the second exception to hearsay rule is confessions. Like admission, confession can also be judicial and extra-judicial. It has been discussed in the above sections that a witness will not be allowed to testify about such facts which he has not perceived or which have been reported to him by another person to establish the truth of the matter narrated in it. However, article 39 and 43 are the exceptions to this principle where the testimony of magistrate and any other person can be used against accused. Article 39 states that confession made by an accused before a magistrate will be admissible and may be proved against the maker. Similarly, article 43 states that confession made by accused can be used as circumstantial evidence against co-accused who was being tried jointly with the accused who

confessed. In both article, the testimony of magistrate is held admissible though he has not perceived the facts himself.

The third exception to hearsay rule is the statements of person who cannot be called as witness in court. It has been discussed in the above sections that if a witness does not come in court and his statement is used in judicial proceedings, it will be hearsay evidence. However, article 46 of QSO contains eight situations when witnesses are not called in courts but their statements, oral or documentary, are used. The situations in which statements can be made and then be used include; dying declaration, statements made during course of business and official duty, statements are against the interests of maker, statements relate to opinion about public right, custom or matters of general interests, statements relate to existence of any relationship by blood, marriage or adoption, statements in wills related to family affairs and when statements are the express feelings of many person about matter under inquiry. It is to be kept in mind that the statements will be used when certain conditions are fulfilled. These conditions include when the maker of such statements is dead, or cannot, be found, or, have become incapable of giving evidence, or his attendance cannot be procured without an amount of delay or expense.

The fourth exception to hearsay rule in QSO is the statement made under special circumstances. It has been pointed out in the second and third sections that it is necessary to call the maker of a document when the document is to be used in courts. However, there are certain exceptions to this principle which are contained in articles 48 to 52. These articles discuss certain special circumstances in which a statement was made and may be used in evidence in court without calling its maker or which is hearsay. For instance article 48 states that entries in such books of account are admissible which are regularly kept in the course of business. Similarly, article 49 states that entries made by public servant during official duty in books (public or official), register or record will be admissible. Likewise, the matters mentioned in maps, charts and plans prepared on the direction of government are admissible under article 50 and statements regarding a fact of public nature, contained in acts or notifications by competent legislative body and published in official gazette will be admissible. Similarly, article 52 states that description of foreign law or judicial ruling contained in a book which is published under the authority of that foreign country will be admissible evidence.

The fifth exception to hearsay rule in QSO is the admission of previous judgments of courts. It has been learnt in the second and third sections of the present study that when witnesses' statements given in one judicial proceeding are used as evidence at later stage or in subsequent proceedings, it will be hearsay evidence. However, article 47 creates an exception to this principle and it states that evidence given by a witness in a judicial proceeding is admissible in later stage of the same proceedings or in another subsequent proceeding for the purpose of proving the truth of the facts which it states. However, the admissibility of such evidence is subject to five conditions namely when witness is dead or cannot be found or is incapable of giving evidence or is kept out of the way by the adverse party, or if his attendance cannot be obtained without an amount of delay or expense. In addition, the article also requires that the proceedings in which the witness gave evidence was between the same parties, the adverse party in the first proceeding had the right and opportunity to cross-examine and the questions in the first and subsequent proceedings were the same.

The sixth exception to hearsay rule in QSO is the admission of opinion evidence in specific matter and circumstances. It has been discussed in the fourth section that article 71 requires that opinion evidence will be admitted if it is given by a person who holds such opinion and is called in court as witness or the author of a document will be called in court to prove the content of a document. However, there are various provisions in QSO under which opinion of a person who is not called as witness or opinion expressed in books has been held admissible. For instance, proviso to article 71 states that opinions of experts expressed in treaties commonly offered for sale and the grounds on which such opinions are held, maybe proved by the production of such treaties. However, the article also provides some qualifications before using such opinion in evidence and these include; if the author is dead, or cannot be found, or have become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense. Similarly, articles 61 states that when the court has to form an opinion whether a particular document was written or signed by a person, opinion of a person who is acquainted with handwriting of a person will be admissible. Likewise, article 62 declares that opinion of person who assumed to know the existence of any general custom or right will be admissible. On the same line of reasoning, article 63 states that opinion of person having special means of knowledge regarding

usages and tenets of any body of men or family, the constitution and government of any religious or charitable foundation, or the meaning of words or terms used in particular districts or by particular classes of people will be admissible. In addition, article 64 states that opinion expressed through conduct by family member or any other person having special means of knowledge regarding existence of relationship will be admissible. Similarly, another exception to hearsay rule is found in article 69 which states that the opinion of general public is admissible to establish the character of parties to judicial proceedings.

The seventh exception to hearsay rule is shahada al shada. It has been discussed in the third section that if a witness does not come in court and his statement is used as evidence, it will be hearsay evidence. However, proviso to article 71 states that two witnesses can testify on behalf of another witness who is dead, or cannot be found or has become incapable of giving evidence or his attendance cannot be procured without an amount of delay or expense. However, this exception is not applicable in hudood cases.

Similarly, the eighth exception to hearsay rule in QSO is the admission of secondary evidence. It has been pointed out in the second and third section that if derivative evidence of a document is tendered as evidence instead of producing original document, it will be hearsay evidence. However, there are certain exceptions in QSO to the rule that original document must be produced to prove the content of a document. For instance, article 76 describes the various situations when secondary evidence i.e. the derivative evidence from original document may be given to prove its contents. The article states that secondary evidence may be produced to prove the contents when original document is lost, destroyed, in possession of party who is not inclined to produce it, admitted in writing, bulky, not easily movable, a public document, or cannot be examined in court conveniently. Similarly, article 96 states that when certified copies of foreign judicial record are produced in Pakistani courts, it will be presumed that the record is genuine. Likewise, the discussion in second and third section indicates that the hearsay rule requires that contents of documents will be proved by calling the author of document. However, there are two exceptions to this principle in article 100 and 101. According to these articles, the court may conclude that the contents, signature and other formalities of thirty years old document or their copies which are produced from proper custody are correct and genuine.

Likewise, the ninth exception to hearsay rule is the use of previous statements of witnesses. It has been pointed out in the second and third section that out of court statements and without swearing oath will be hearsay evidence. However, articles 140, 151 and 153 create exceptions to this rule. These articles allow using previous consistent or inconsistent statements of witnesses during his examination in chief, cross examination or re-examination. Article 140 allows using such statements to contradict witness, article 151 allows using such statements to impeach the credit of witness and article 153 allows using previous statements to corroborate witnesses' testimony given in the court.

The tenth exception to hearsay evidence in QSO is the statements forming part of same transaction. It has been discussed in the second, third and fourth sections of the present study that when a witness testifies about facts which he has not perceived himself rather some other person reported it to him, his evidence would be hearsay. However, various articles related to res gestae are the exceptions to it. For instance, illustration (j) to article 21 admits an exception to hearsay rule where a witness is allowed to testify what victim of rape complained of. The illustration demonstrates that when A was raped and shortly after the rape, she made a complaint related to it to B, the statement of B in court will be admissible though B has not seen the rape.

CONCLUSIONS

The discussion in the present study shows that the term hearsay evidence in common law is used in five different senses. Firstly, if a witness's previous written or oral statement is used in evidence without calling him in the court, it will be hearsay evidence. Secondly, if a witness testifies in the court about facts which others have reported to him and he has not himself perceived such facts, his evidence will be hearsay evidence. Thirdly, if written record is produced without calling a person who prepared it, it will be hearsay evidence. Fourthly, the witnesses' statements in other judicial proceedings will be hearsay evidence. Fifthly, if original documents are not produced in the court, it will be hearsay evidence. Sixthly, if maker of documentary evidence is not produced in courts and the document is used as evidence, it will be hearsay evidence. The present study also concludes that various statutory exceptions to hearsay rule can be identified in QSO by using seven-point criteria which include;

witnesses' statement without calling them in court, witnesses' assertions of facts which other have reported to them, documentary evidence without calling the author, witnesses' statements which they tendered in other judicial proceedings, witnesses' previous statements, statements forming part of the same transaction, opinion evidence and proving contents of documents other than original document.

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