

# The Law of Evidence

Issued by Royal Decree No. (M/43) dated 26/05/1443 AH  
Published on 04/06/1443 AH  
Effective on (180) days after being published.

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Issued by Royal Decree No. (M/43) dated 1443/05/26 AH  
Published on 1443/06/04 AH  
Effective on (180) days after being published.

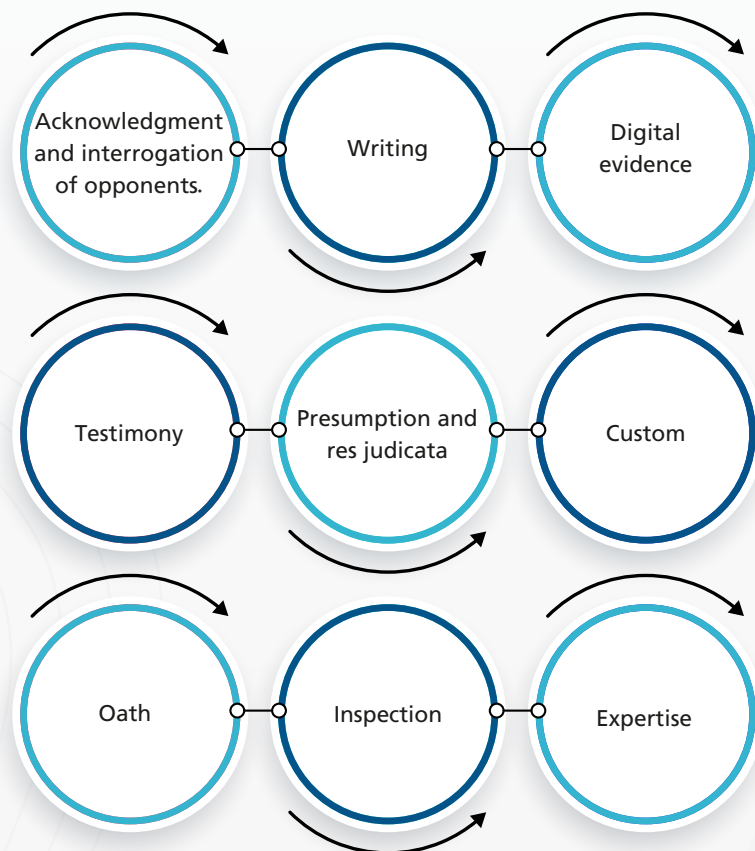


## Objectives of the Law

- Stability of judicial decisions.
- Expediting resolution of disputes.
- Achieving preventive justice.
- Considering social, economic, and technical developments.
- Increasing efficiency of contractual obligations.

**Scope of application of the law:** The provisions of this law apply to civil and commercial transactions.

## Means of Evidence



## General Provisions

- The plaintiff must prove his right, and the defendant has the right to deny it.
- The facts to be proven must be relevant to the case and productive, and acceptable.
- The judge may not rule with his own knowledge.
- Evidence is for the person who claims, to the case and productive, and acceptable.
- Evidence is to prove against the apparent, and oath is to keep the origin.
- Evidence is a transitive argument, and the acknowledgment is a limited argument.
- Proven by evidence is as proven by witness.

## Provisions of Proof

- No particular form is required to prove an obligation unless there is a special clause or agreement between the parties.
- If the parties agree on certain rules of evidence, the court shall consider their agreement, unless it violates the public laws.
- The agreement of parties on certain rules of evidence is not reliable unless it is written.

**Notwithstanding the international conventions to which the Kingdom is a party, the Court shall consider procedures of evidence that took place in a foreign state unless it violates the public laws.**

## Acknowledgment and Interrogation of Opponents



### Acknowledgment

- A judicial acknowledgment is when the opponent confesses before the court a fact that is brought against him by a plaintiff, during a court hearing related to that fact.
- An acknowledgment is non-judicial if it does not occur in court, or during a court hearing of a different case.
- An acknowledgment can be express, indicative, oral or written.
- An acknowledgment is unacceptable if it appears to be untrue.
- Judicial acknowledgment is a firm and limited argument to the person who performs it.
- A person who performs an acknowledgment is bound by it and cannot take it back.
- An acknowledgment shall not be dividable unless it is based on multiple facts, and the existence of one incident does not require the existence of the other.



### Interrogation of Opponents

- The court, on its own or at the request of an opponent, shall question whoever is present opponent and shall order the presence of the opponent to question him.
- Any of the opponents may directly question his opponent.
- An answer shall be provided at the same court hearing unless the court provides for another date.
- An opponent has the right to object to a question he has been asked, and he must indicate the reason of his objection.
- The court should prevent any question that is not related to the case, is not productive or acceptable.

## Writing



### Official Documents

- Official documents are in which a public employee or person in charge of public service proves what has been done on his hands or what he has received from the relevant persons, in accordance with the regular conditions, and within the limits of his authority and competence.
- Official documents are an argument against all, unless proven to be forged.
- If the original of the official document exists, its official copy is an argument to the extent that it corresponds to the original.
- If the original of the official document is not available, the official copy shall be as authentic, when its appearance does not allow for doubt.



### Regular Documents

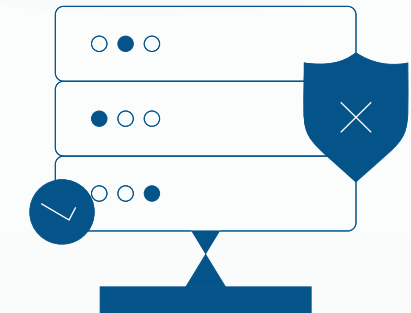
- A regular document is considered issued and accordingly argued against who signed it, unless he explicitly denies what is attributed to him.
- Whoever is argued against by a regular document and discusses its subject, then he cannot deny its validity or to claim him whether that he did not know that it was issued by those whom he has received the right from.
- Signed correspondence that it proven to be related to its sender has the argument of a regular document in evidence, unless the sender proves that it has not been sent and that no one has been assigned to send him.
- Merchant books are not an argument against non-traders, yet they serve as a basis for the court to request an integral oath from those whose side is stronger.
- The merchants' regular mandatory books are an argument for a merchant against its opponent merchant, and their argument shall be dismissed by proving the opposite of what was stated therein them by means of evidence.
- Mandatory -regular or irregular- merchant books are argument on its merchant against what its merchant or non-merchant opponent has relied upon.
- Private books and papers shall not be an argument against who has issued them unless:
  - If it expressly states that he has fulfilled his debt or if it expressly states that he intended by whatever is beneath to act as a bond to those who have truly proved his interest.
  - Reference by the creditor to the debt bond by its handwriting without signing it to be read as it releases the debtor is an argument on the creditor until proven otherwise.

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## Writing

### Requesting the opponent be obliged to submit the documents in his possession

- The opponent may ask the court to compel his opponent to submit any document in his possession that is productive in the case:
  - If the law authorizes its demand for submission,
  - If the document is shared with his opponent.
  - If his opponent is relying on it at any stage of the case.
- The request to oblige the opponent to submit documents is not accepted if it is not inclusive of the following elements:
  - Document descriptions.
  - Evidence that the document is in the possession of the opponent.
  - The fact on which the document is based, and the reason behind obliging the opponent to submit it.
- If the opponent acknowledges that the document is in his possession, or he was silent, or the requester proved validity of its request, the court shall order him to submit the document, if he refrains from submission the copy of the document shall be considered valid and in correspondence to its original, and if there was not a copy, the court shall consider the words of the requester.
- The opponent in commercial proceedings has the right to ask his opponent to submit or grant access to documents relevant to the case and the court shall order so in accordance with the following:
  - The documents must be specific by its nature or type and related to the business transaction that is subject of the case, provided that they are not confidential based on special text or an agreement between the opponents. If he refrains from providing what was ordered by the court, then the court shall consider that as a presumption.
- If the opponent denies the existence of the document and the requester does not provide the court with sufficient proof, he may ask the court to request the oath of the opponent in relation to the document, if he refuses to take the oath and does not return the request of oath to the requester of the document, or if he returns it and the requester takes the oath, then the copy of the document shall be considered valid and in correspondence to its original, and if there was not a copy, the court shall consider the words of the requester.
- The court may, on its own or at the request of an opponent, enter a third party to oblige it to submit a document in his possession, and to request a document or certified copies thereto, from government agencies.



### General Provisions

- The court may assess the material flaws in the document to drop or decrease its argument for evidence.
- In cases where proof of writing is required, it can be replaced by judicial acknowledgment, decisive oath or the principle of proof of writing that is reinforced by another proof.
- The principle of proof of writing; each writing is issued by the opponent and would make the existence of the alleged conduct potential.

### 1-Denial of handwriting, signature, sealing or fingerprint and validating handwritings

- It can only be on regular documents.
- Who denies the issuance of the regular document from him or denies knowing about it, the burden of proving its issuance is on his opponent.
- If the document is judged to be correct, the person who denied it will be sentenced to a fine of not more than 10,000 Saudi riyals.

### Proof of authenticity of documents



### 2- Claiming Forgery

- It can be on regular and official documents.
- The burden of proof is on the opponent who claims forgery.
- If the claim of forgery is judged to be denied, the person who claimed the forgery of the document will be sentenced to a fine of not more than 10,000 Saudi riyals.

### 3- Original Forgery Claim

- Anyone who fears being protested against by a forged document may file a case against those who possess the document and those who benefit from it to hear the ruling concerning its forgery in accordance with the usual procedures for filing a case.

## Digital Evidence

- Digital evidence is each evidence derived from any data that is created, issued, received, preserved, or communicated in a digital way, and is understandably recoverable or obtainable.
- Rules of written evidence apply on proof by digital evidence.
- The official digital evidence shall have the argument of the official document in accordance with its conditions.
- The regular digital evidence is an argument on its relevant parties in the following cases:
  - If issued in accordance with the Electronic Transactions or E-commerce laws.
  - If it is used by digital means stipulated in the contract that is the subject of the dispute.
  - If it is used by a documented or publicly offered digital medium.
- An opponent who claims the digital evidence is incorrect has the burden of proving his claim.
- The digital evidence has the argument of the regular document, excluding the cases based on which it has the argument of an official document.
- The digital guide is provided in its original form, or by any other digital means, and the court may request its content in writing when its nature allows it.
- Extracts from the digital evidence have the same argument, to the extent that the extracts are identical to their digital record.

The digital evidence can be:

Digital Record	1	Digital document	2	Digital signature	3
Digital correspondence including digital mail	4	Means of communication	5	Digital media	6
		Any other digital evidence.	7		

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## Testimony



- ☒ Evidence by testimony is permissible, unless there is a text that provides for the opposite.
- ☒ Any transaction that is worth more than SAR 100,000, or is of an unspecified value, has to be proven in writing.
- ☒ If the conduct is worth more than SAR 100,000 or unspecified value, the court may not accept witness testimony in establishing its existence or expiry.
- ☒ Witness testimony may not be substantiated even if the value of the transaction does not exceed SAR 100,000 in the following cases:
  - ☒ whatever is required by law to be written for its validity and for the purpose of proving it.
  - ☒ If what is required is the rest or part of a right that can only be proven by writing.
  - ☒ Whatever contradicts with or exceeds what is proven in a written evidence.
- ☒ Evidence by witness moral is permissible in the situations where proof by written evidence is required, as the following cases:
  - ☒ If there is a principle of proof in writing.
  - ☒ If there is a physical or moral barrier that prevents obtaining written evidence, physical such as the absence of anyone who can write and moral such as the marital bond.
  - ☒ If it is proven that the plaintiff has lost his written evidence based on a reason that is out-of-will.
- ☒ Those who fear that they could miss to cite a witness on a subject that has not yet been brought before the court and are likely to be brought before the court, may request that the witness be heard before the relevant authorities.
- ☒ It is not permissible to harm the witness and court must prevent any attempt to intimidate or influence him when testifying.

## Presumptions and res judicata



### Presumptions

- ☒ The presumptions provided by law and Shariah enrich those who have decided to their advantage through other means of proof whose indication may be reversed in any other way of proof.
- ☒ The court shall draw up other presumptions for proof, in cases where proof may be established by testimony; and it must justify.
- ☒ The Court has the right to use scientific means to develop presumption.



### Res judicata

- ☒ The final judgments are an argument for the rights that are resolved, and any evidence that contradicts this argument may not be accepted, and those judgments have this argument only in a dispute between the opponents themselves, and relate to the right itself.

## Custom

- ☒ It is permissible to prove by custom between opponents, where there is no special clause or agreement between the parties or the public laws are not violated.
- ☒ Those who adhere to custom among opponents must prove its existence at the time of the incident.
- ☒ In the event of conflict between public and private custom, the private shall prevail.
- ☒ Any of the opponents may to the custom between them, and they can object it by whatever is stronger.

## Inspection

- ☒ The court, on its own or at the request of an opponent, decides to examine the subject of the dispute.
- ☒ The court can assign an expert for the examinations.
- ☒ Those who fear the loss of disputed features that is potential to be brought before the court may request examination and proof of their status.

## Expertise

- ☒ The court, on its own or at the request of one of the opponents, can decide to assign one or more experts to express their opinion on the technical matters of the case.
- ☒ The selection of the expert shall be based in proportion to his technical knowledge and experience with the subject of the dispute.
- ☒ If the opponents agree to choose one or more experts, the court shall approve their agreement.
- ☒ The opponent who lost the claim that is subject to examination will bear its costs unless the loss is proportionate and each of the opponents bears as much as it has lost.
- ☒ The Court should appoint an expert to give its opinion orally on a simple technical matter that does not require lengthy or complex work, and the court may decide to submit the it in writing.
- ☒ The court may rely on an expert report filed in another case rather than using an expert in the case, without prejudice to the right of the parties to discuss what is mentioned in that report.

## Oath



### Decisive oath

- ☒ It is performed by the defendant to dismiss the case and may be returned to the plaintiff.
- ☒ The oath can be taken in financial rights, and in any situation the case may be brought It is not permissible to take an oath in in an incident contrary to the public laws.
- ☒ The court shall prohibit requesting an oath if it was not relevant to the case, or it is unproductive or unacceptable.
- ☒ If the plaintiff fails to give evidence and asks for the oath of his opponent, if he refuse it shall return to the plaintiff upon the request of the defendant, if the plaintiff refuses to take the oath, then the case will be dismissed.
- ☒ The oath cannot be returned if the evidence in the defendant possession, and if he refuses, he shall be deemed to have declined.
- ☒ The plaintiff may request the oath of his opponent, as long as the case is not decided by a final ruling.
- ☒ The plaintiff has the right to drop his evidence and request the defendant's oath.



### Integral oath

- ☒ It is performed by the plaintiff to complete the evidence, and may not be returned to the defendant.
- ☒ The court direct the integral oath to whom provided incomplete evidence, if he took the oath the court will rule in his favor, if he refuse the court will dismiss the evidence.
- ☒ The integral oath can only be confirmative.
- ☒ The integral oath cannot be returned to the other opponent.



### Final provisions

- ☒ The provisions of Shariah that are most relevant to this law on matters of evidence that this law is silent on, shall apply.
- ☒ The provisions of Law of Procedures before Shariah Courts and the Commercial Courts Law shall apply on the procedures of evidence, unless where is regulated otherwise.
- ☒ The private sector may be used in evidentiary procedures.
- ☒ This law shall supersede the chapter 9 from the Law of Procedures before Shariah Courts and the chapter 7 from the Commercial Courts Law.

### general provisions

The oath must be on the side of the strongest opponents