

## **FEDERAL LAW NO . 10**


Issued on 15/1 / 1992

Corresponding to 11 Rajab 1412 H .

### **ON EVIDENCE IN CIVIL AND COMMERCIAL TRANSACTIONS**

**Amended by**

**Federal Law no . 36/2006 dated 9/10/2006 .**

We , Zayed Bin Sultan Al Nahyan , the President of the United Arab Emirates State ,  
Pursuant to the perusal of the provisional Constitution  and

Federal law no . 1 of 1972 , concerning the jurisdictions of ministries , the powers of  
ministers , and its amending laws ,

Federal law no . 10 of 1973 , concerning the Supreme Federal Court , and its  
amending laws ,

Federal law no . 8 of 1974 , concerning organizing expertise before the courts ,

Federal law no . 6 of 1978 , concerning establishment of Federal courts , and  
transferring the jurisdictions of the local juridical authorities in some Emirates to them ,  
and its amending laws ,

The law on civil transactions , promulgated by law no . 5 of 1985 , and its amending  
laws ,

And upon what has been submitted by the Minister of Justice , the approval of the  
Cabinet , and the ratification of the Federal Supreme Council ,

Have promulgated the following Law :

#### **Article 1**

The accompanying Law on Evidence in civil and commercial transactions is to  
be put into effect and shall abrogate all other provisions contrary to its provisions  
.

#### **Article 2**

This law shall be published in the official Gazette and shall become effective  
three months subsequent to the date of its publication .

Presidential

Promulgated by Us at the

Palace in Abu Dhabi

On 11 Rajab , 1412 H .

Corresponding to 15 January 1992

**Zayed Bin Sultan Al Nahyan**

**President of the United Arab Emirates**

**State**

This Federal Law has been published in the Official Gazette , issue no . 233 , p . 55 .

# **THE LAW ON EVIDENCE IN CIVIL AND COMMERCIAL TRANSACTIONS**

## **TITLE ONE**

### **GENERAL PROVISIONS**

#### **Article 1**

- 1 - The plaintiff has to prove his right , and the defendant has to disprove it .
- 2 - The facts which have to be proved , must be related to the case , productive and acceptable .
- 3 - The judge may not rule according to his personal knowledge .

#### **Article 2**

- 1 - Judgments rendered in evidence procedures need not be justified , unless they include a final judgment in a plea or a claim .
- 2 - In any case , judgments rendered in summary cases of establishing the status quo or in hearing a witness must be reasoned .

#### **Article 3**

- 1 - If the Court decides to undertake one of the evidence procedures , it must determine in its judgment the date of the first session to commence the procedure . The court clerks' office shall notify the absent opponents in the litigation .
- 2 - A clerk must attend the evidence process to draft and sign the report .

#### **Article 4**

Whenever the completion of the procedure requires more than a session , it must be mentioned in the report the day and hour at which the postponement is made . Notification of the absentees of this postponement is not necessary .

#### **Article 5**

- 1 - The Court may , by virtue of a decision recorded in the minutes of the session , go back on what it has ordered to be taken as evidence procedures , provided it mentions in the minutes the reasons for changing its mind , unless

such change was decided by the court without a request from the parties to the litigation .

2 - The Court may disregard the result of the evidence procedure , provided it mentions at the condition to clarify the reasons of this in its judgment .

### **Article 6**

In the absence of any relevant text in this law , the judge shall adjudicate according to the Islamic Shari'a taking into consideration selecting the best solutions in the dogmas of El Imam Malek and El Imam Ahmed Ben Hanbal and , if none , from the other dogmas as interest may require .

## **TITLE TWO**

### **WRITTEN EVIDENCES**

#### **CHAPTER ONE**

### **OFFICIAL STATEMENTS**

#### **Article 7**

1 - The formal writing is a document in which a public officer or a person in charge of a public service records , in the manner prescribed by law and within the limits of his powers and competence , what has been performed in his presence or statements that have been made to him by the concerned parties .

2 - If this document does not fulfill the requirements of authenticity , it shall only have the value of an informal document provided that it bears the signatures , the seals or the finger prints of the concerned parties .

#### **Article 8**

A formal writing , unless it is legally established to be a forgery , has probative force erga omnes as regards matters therein recorded performed by its author within the limits of his duties or in respect of matters performed by the parties in his presence .

#### **Article 9**

1 - When the original of a formal document exists , official handwritten or photostat copy thereof has probative force as far as it is conform to the original .

2 - A copy is deemed to conform to the original unless its accuracy is contested by one of the concerned parties ; in such a case the copy will be checked against the original .

### **Article 10**

When the original of a formal document does not exist , the copy has probative force within the following limits :

a - The authentic copy , whether bearing the executory formula or not , has the same probate force as the original when its outward appearance does not give rise to any doubt that it does not conform to the original .

b - The same probative force is accorded to the formal copy of the first authentic copy , but each of the parties may demand that such copies be checked against the original authentic copy from which they were taken .

c - Official copies of copies taken from the first authentic copy may only be regarded as merely informative .

## **CHAPTER TWO**

### **CUSTOMARY STATEMENTS**

#### **Article 11**

1 - An informal document is deemed to emanate from the person who signed it , unless he formally contests the writing , the signature , the seal or the finger print alleged to be his . His heirs or successors in title are not bound to contest , but may only declare on oath that they do not know that the writing , the signature , the seal or the finger print are those of their author .

2 - However , the one who discussed the subject - matter of the document may neither contest the writing , signature , seal or finger print attributed to him nor allege his ignorance that such a thing has been issued from the person from whom he received this right .

#### **Article 12**

1 - An informal document has no probative force as to its date as regards third parties , until it has acquired an established date . A document acquires an established date in one of the following instances :

a - from the day it is recorded in the register maintained for the purpose .

b - from the day that a visa is affixed to the document by a public official .

c - from the day of the death of one of those whose admitted handwriting , signature , seal or finger print it bears , or from the day on which it has become

impossible for any of them , as a result of incapacity , to write or to affix his finger print .

d - from the day on which any other event occurred establishing for certain the prior existence of the document .

e - from the day that its contents are mentioned in another document whose date is established .

2 - The judge may , however , upon taking into account the circumstances , refuse to apply the provisions of this article on discharges , commercial papers , loan instruments signed in favor of a merchant , with or without mortgage regardless of the borrower's capacity .

### **Article 13**


Documents issued outside the State authenticated by its representative and by official authorities in the country of issue , are admitted as evidence

### **Article 14**

1 - Signed correspondence has the same probative force as informal document . The same probative force will apply to telegrams if the original , left at the office of dispatch , is signed by the sender ; a telegram is presumed to be a true copy of the original until the contrary is proved .

2 - If the original of the telegram does not exist , the telegram will be regarded as merely informative .

### **Article 15**

1 - The traders' books shall not be taken as proof against persons who are not merchants . When , however , these books contain particulars , as to supplies made by traders , the judge may , on basis of these particulars and within the limits of matters that could be established by testimony of witnesses  call upon any of the parties to take the supplementary oath .

2 - The merchants' books that must compulsorily be kept by them have probative force against fellow merchants , if the dispute concerns a commercial act and the books are regularly kept . This probative force is forfeited by contra evidence which could be taken from the regular books of the opponent .

3 - The compulsory merchants' books , whether regularly kept or not , shall have probative force against their owner , as concerns the facts on which his opponent , merchant or otherwise , based himself . Entries in these books that are in favor of their owner shall , however , have probative force in his favor as well .

4 - Either one of the two merchant parties to the litigation may be called to take an oath in support of the veracity of his claim , if he based his claim on the


books of his opponent and accepted off - hand not to contest the contents thereof .

### **Article 16**

1 - Registers and private papers have no probative force against the person from whom they emanate , except in the two following cases :

a - when such a person states therein expressly that he has been repaid a debt .

b - When such a person states expressly his intention that the contents of these papers shall take the place of a title in favor of a person for whom the entries establish a right .

2  In both cases , if what is mentioned therein does not bear the signature of the person from whom they emanate , he may prove the contrary by all means of evidence .

### **Article 17**

1 - An endorsement of discharge by the creditor , entered on the title - deed of a debt , in his own handwriting but unsigned by him , constitutes a proof against him until proof to the contrary . Such endorsement shall also constitute a proof against him , even though it is not in his handwriting and is not signed by him , as long as the title - deed of the debt has never been out of his possession .

2 - The same shall apply if the creditor enters an endorsement of discharge in favor of his debtor , in his own handwriting but without signature , on a second original of the title - deed or on a receipt in discharge as long as this second original or the receipt is in the hands of the debtor .

3 -

**Added by Federal Law no . 36 dated 9/10/2006 :**

As determined by the Minister of Justice in coordination with the concerned bodies , payment by electronic means shall discharge the debtor .

## **CHAPTER TWO ( bis )**

### **Article 17 ( bis )**

**Added by Federal Law no . 36 dated 9/10/2006 :**

1 - Are considered electronic signatures , all letters , figures , symbols , signs , pictures or sounds , that have their distinct character allowing the identification of author of this signature and distinguish him from others as specified in the law on electronic transactions and commerce .

2 - Shall be considered an electronic correspondance , each transmission or emission or reception or storage of symbols , signs , writings , pictures , sounds

or data , of whatever nature performed through a means of information technology .

3 - The electronic signature has the same probative force given to the signatures referred to in the present law ; in case the provisions of the law on electronic transactions and commerce are observed .

4 - Electronic writings , correspondence , registers and documents having the same probative force given by this Law to formal and informal writings and correspondence , whenever it satisfies the conditions and provisions set forth in the law on electronic transactions and commerce .

## **CHAPTER THREE**

### **A REQUEST OF OBLIGATING THE OPPONENT TO SUBMIT THE AVAILABLE STATEMENTS AND DOCUMENTS IN HIS HAND**

#### **Article 18**

1 - A party to the litigation may request the court to compel his opponent to submit any useful written document or paper detained by him , in the following instances :

a - if the law allows him to ask for their submission or delivery .

b - if the document is joint between him and his opponent . A document is particularly considered joint when it is for the benefit of both parties to the litigation or evidencing their mutual obligations and rights .

c - if the opponent based his claim on it in any stage of the lawsuit .

2 - The request must state the description of the written document , its contents , the fact that helps in identifying the document , the evidence and circumstances corroborating its existence in the hands of the opponent and the reason for compelling him to produce it .

#### **Article 19**

1 - In case the requestor establishes the veracity of his request or if the opponent admits that the document or paper is in his possession or keeps silent , the court shall order the submission of the document or paper at once or within the shortest delay fixed by it .

2 - Should he fail to submit satisfactory evidence proving the veracity of his request and the opponent denies the existence of such document or paper , the latter must take oath that the document or paper does not exist , that he has no knowledge of its existence or its place and that he did not conceal it or neglect searching for it in order to deprive the requester from using it as evidence .

3 - If the opponent fails to produce the document or paper on the date fixed by the court , or refuses to take the abovementioned oath , the copy of the document or paper submitted by the requester shall be considered true and conform to the original . In case he did not submit copy of the document , the court may accept his oral statement as to the form and substance of such document .

### **Article 20**

The Court may , during the examination of the case , even before the court of appeal , give permission to force the intervention of a third party compelling him to submit a document in his possession , in the instances and without prejudice to the provisions and the circumstances provided for in the preceding articles .

It may also order - even if by itself - to involve any administrative party to give all information and documents necessary for the flow of the case .

### **Article 21**

If the opponent submits a document as evidence in the case , he may not withdraw it without the consent of the other party in the litigation except with a written authorization of the circuit president or the judge , as the case may be , and after keeping a copy in the file of the case , duly endorsed by the clerks' office that it is conform to the original .

## **CHAPTER FOUR**

### **VERIFICATION OF DOCUMENTS**

#### **SECTION ONE**

#### **GENERAL PROVISIONS**

### **Article 22**

1 - The Court shall appraise the consequences of scratching off , erasure , insertion and other material defects in the document which forfeit or depreciate its value as evidence .

2 - In case the veracity of the document is doubtful to the court , it may *jure call* upon the official who issued it or the person who wrote it to clarify the truth of the matter .

### **Article 23**

1 - The official and informal documents may both be challenged for forgery , while contesting the writing , seal , signature or fingerprint applies only to



informal documents . The challenger in forgery has to prove the subject matter of his challenge ; while who denies that the informal document was issued by him or takes an oath that he has no knowledge that it was issued by the person from whom he received the right , the onus of proof lies on his opponent to prove that the challenger or his predecessor - in - title issued it .

2 - If the opponent admits the veracity of the signature and seal apposed on the informal document but denies his finger print on the same document , he has to challenge it for forgery .

## **SECTION TWO**

### **THE DENIAL OF HANDWRITING , SIGNATURE , SEAL , OR FINGERPRINT FOR HANDWRITING VERIFICATION**

#### **Article 24**

1 - The court shall order investigation by way of comparison and / or hearing the witnesses in case the person designated by the document denies his handwriting , seal or fingerprint , or if the heir or successor - in - title denies knowing that the document was issued by whom he received the title , and the other party to the litigation persist on sticking to the document , and where the document is of significant value in the litigation and the facts and documents of the case were not sufficient to convince the court of the veracity of the handwriting , signature , seal or fingerprint .

2 - The verification by comparison will be carried out in accordance with the rules prescribed for expertise and the hearing of witnesses according to the rules prescribed for testimony of witnesses . The testimony of witnesses shall only be heard as concerns the performance of the writing , the seal or the fingerprint , on the document subject to investigation , by the person to whom the document was attributed to .

#### **Article 25**

1 - The Court will fix a hearing to be attended by the opposing parties in order to submit all documents in their possession to carry out the investigation by comparison , agree on those documents serving this purpose and have the party challenging the veracity of the document to give a specimen of his handwriting . Should the party challenging the veracity of the document abstain , without justification , from attending in person to give a specimen of his handwriting , the court may decide the veracity of this document . Should the party in charge of proving the veracity of the handwriting , the signature , the seal or the fingerprint fail to appear , the documents submitted to investigation by way of comparison adequate for this purpose .

2 - The judge presiding the hearing shall order the remittance of the document subject to verification , the papers to be compared and those serving as test for the handwriting , to the clerks' office after apposing his signature and that of the session clerk who shall both sign , as well , the report prepared by the president in which the condition and specifications of the document subject to verification shall be stated .

### **Article 26**

1 - The verification by comparison of the contested handwriting , signature , seal , or fingerprint , as it is , will be for the party against whom the document subject to verification stands as a proof , as concerns the handwriting , signature , seal , or the fingerprint .

2 - In the absence of an agreement between the parties , shall only be admitted for verification by comparison , the following :

a - The handwriting , signature , seal , or fingerprint apposed on formal documents .

b - The part of the document , subject to verification , which the opponent admits its veracity .

c - His handwriting or signature which he writes before the Court or the fingerprint apposed before it .

### **Article 27**

In case the court has adjudicated the veracity of the whole document , the contesting party shall be condemned to a fine ranging between a minimum of five hundred and a maximum of two thousands Dirham .

## **SECTION THREE**

### **CHALLENGE FOR FORGERY**

#### **Article 28**

1 - Challenge for forgery may be raised at any stage of the litigation . The challenger shall specify the points of alleged forgery , his evidence and the investigation process to be followed for proving it . All this shall be stated in a memorandum to be submitted to the court or mentioned in the minutes of the session . In case the challenge shall give a result in the case and the facts and documents in the case are not sufficient to convince the court of the veracity or forgery of the document , and in case the court deems that the investigation requested by the challenger may give a result and is acceptable , the court shall order the carrying out of the investigation whether through verification by comparison or witnesses testimony or both in accordance with what is stated in the preceding articles .

2 - The party challenged for forgery may interrupt the process of investigation at whatever stage it may be , if he abandons insisting on adhering to the challenge document . Should this be the case , the court shall order the seizure of the document or its filing if requested by the challenger having a licit interest in such request .

### **Article 29**

1 - The challenger for forgery shall remit to the clerks' office the challenged document , if in his possession , or the copy thereof notified to him . In case the document is in the hands of the court or the clerk , it should be deposited with the clerks' office and , if in the hands of the opponent , the presiding judge , upon filing the challenge for forgery , shall order its immediate delivery to the clerks' office otherwise he shall order its seizure and deposit with the clerks' office . Where the opponent refuses to deliver the document and its seizure is revealed impossible , the document shall be considered non - existing but this shall not prevent its seizure later on if possible .

2 - Under all circumstances , the presiding judge shall , together with the clerk , sign the document prior to its deposit with the clerks' office .

### **Article 30**

Without prejudice to the conservative measures , the order to carry out the investigation shall render the challenged document not fit for execution .

### **Article 31**

Even in the absence of a challenge for forgery , the court may order the return and invalidity of any document if it appears clearly from its condition or from the circumstances of the case , that it is forged . The court , in this case , must state in its judgment the circumstances and the presumptions from which it reached this conclusion .

### **Article 32**

If the challenge for forgery was dismissed or the right of the challenger to prove it forfeited , he shall be condemned to a minimum fine of five hundred but not in excess of three thousand Dirham . He shall not be penalized if part of his allegations were true and if it is established that the document is forged , the court shall forward it with the copies of the relevant reports to the public prosecution in order to take the criminal measures in its regard .

## **SECTION FOUR**

### **THE CASE OF SIGNATURE VERIFICATION AND THE ORIGINAL CASE**

### **Article 33**

The holder of an informal document may file a principal case , through the ordinary procedures , against the person involved in this document to admit that it is in his own handwriting , his signature , seal or fingerprint , even if the embodied obligation is not due for payment . If the defendant appears and avows , the court shall record his acknowledgment and the plaintiff shall assume all expenses . The document shall be considered as acknowledged , if the defendant keeps silent or does not deny it or attribute it to someone else . If , however , the defendant denies the handwriting , the signature , the seal or the fingerprint , an investigation shall be carried out according to the preceding rules ; and if he refuses to appear without plausible excuse , the court shall adjudicate in his absence the veracity of the handwriting , signature , seal or fingerprint .

### **Article 34**

Whoever apprehends that he may be confronted with a forged document , may sue the holder of such document , and whoever benefits from it , to hear the judgment that it is a forged document . The case in this respect shall be a principal case filed through the ordinary proceedings

## **TITLE THREE**

### **TESTIMONY OF THE WITNESSES**

#### **Article 35**

1 - In the absence of an agreement or a law provision to the contrary , and excluding commercial matters , evidence as to the existence of an act or as to its extinction may not be established by testimony of witnesses where the value involved exceeds five thousands Dirham , or is of an undetermined value .

2 - In the assessment of the obligation , its value at the moment of performing the act , without adding the accessories to the principal , shall be taken into account .

3 - If the lawsuit includes several claims arising from a number of sources , proof may be established by testimony of witnesses for each claim not exceeding in value five thousands Dirham , although the total value of the claims exceeds this amount , or although they arise from dealings between the parties to the litigation themselves or from transactions of the same nature .

4 - For the purpose of establishing partial payment , the value of the principal obligation shall be taken into account .

#### **Article 36**

Evidence by testimony of witnesses is not admitted even if the value does not exceed five thousands Dirham , in the following instances :

1 - when it is required to disprove or to go beyond the contents of a written document .

2 - If the object of the claim consists in the balance or part of a right which may only be established in writing .

3 - If the claim of one of the parties to the litigation exceeds in value five thousands Dirham , then he renounced to the excess .

### **Article 37**

Evidence by testimony of witnesses may be resorted to in matters that had to be established by written evidence , in the following instances :

1 - when there is a commencement of proof . A commencement of proof is deemed to exist when there is a written document emanating from the party against whom the claim is made tending to make the existence of the alleged act probable .

2 - when written evidence cannot be obtained as a result of a material or moral bar .

3 - when the creditor has lost his written title as a result of a cause beyond his control .

4 - when the court deems justified to allow evidence by testimony .

5 - when the documentary is challenged on basis that includes a matter prohibited by law or contrary to public policy or morals .

### **Article 38**

Testimony shall be admitted as a result of eye - witnessing or inspection . Nevertheless it may be tolerated in the following circumstances :

1 - Death

2 - Descent

3 - The original constituting the charitable endowment and its conditions .

### **Article 39**

1 - The party to the litigation asking to prove by witness testimony has to specify the facts he wants to establish in writing or verbally in the session .

2 - The sentence ordering submission of evidence by way of witnesses' testimony must state every fact included in this order and the day on which shall commence the examination of witnesses .

3 - If the Court allows to one of the parties to the litigation to prove a fact by testimony of witnesses , the other party may disprove this fact in the same manner .

4 - The Court may , ipso jure and if deems it to the interest of reaching the truth , decide submission of evidence by testimony of witnesses in the cases where the law admits the submission of proof in such a manner . Whenever the court decides to accept proof by testimony of witnesses and under all circumstances , summon to give his testimony whoever it deems necessary to reveal the truth .

#### **Article 40**

The testimony of public servants , employees and those to whom is entrusted a public service , even after leaving service , is not accepted , as concerns information which came to their knowledge during performance of their duties and which the competent authority did not authorize to divulge . The said authority may , nevertheless authorize them to testify upon request of the court or one of the parties .

#### **Article 41**

1 - Each witness shall give his testimony separately without the presence of the other witnesses who did not yet . The witnesses for the defense shall be heard in the same session at which the witnesses for the prosecution were heard , unless there is an impediment . Should the session be adjourned , the decision pronouncing the postponement shall in itself serve as summons to the present witnesses to attend the session fixed in the decision , unless the court expressly exempted them from attending .

2 - The witness will take the following oath : " I swear by the Mighty God to say all the truth and nothing but the truth " . The oath will , upon his request , be according to his religious creed .

#### **Article 42**

1 - Should the party to the litigation fail to bring his witness or fail to summon him to attend the session fixed , the court shall order him to bring his witness or summon him to attend the following session otherwise he shall forfeit his right to have his witness testify . This does not have any bearing on any penalty that the law may impose for the delay caused .

2 - If the witness refuses to attend in reply to the convocation of the party to the litigation or of the court , the said party or the clerks' office of the court , as the case may be , has to summon him in order to attend and give his testimony twenty four hours , at least , prior to the date fixed for the hearing of his testimony , the distance delays not included . In urgent cases this period may be reduced and the witness shall be asked to appear before the court , by cable sent by the clerks' office in compliance with an order issued by the court .

3 - If the witness has been duly summoned to appear and did not comply , the court shall condemn him to a fine not exceeding five hundreds Dirham and the judgment will be recorded in the minutes of the session and is not subject to challenge . In cases of extreme urgency , the court may subpoena the witness . In other than the mentioned cases of extreme urgency , the court shall , where necessary , order repeating the summons to appear and the witness shall bear the expenses of this summons . If he does not comply , he shall be condemned to a fine ranging between two hundred and a thousand Dirham , the judgment being not subject to challenge , and the court may issue a subpoena against him .

4 - The Court may , in all circumstances , exempt the witness from paying the fine if he appears and submits an acceptable excuse .

### **Article 43**

1 - If the witness appears and refuses to take the oath or abstains without a legal excuse from answering , he shall be condemned to the penalty prescribed in the penal law .

2 - If the witness has an excuse preventing him from attending , the delegated judge may go to him to hear his testimony . In case the investigation takes place before the court , it may delegate one of its judges for this purpose . The court or the delegated judge shall fix the date and place of testifying and the clerks' office shall notify the absent parties and shall draw - up a report to be signed by the delegated judge and the clerk .

### **Article 44**

1 - The court shall address the questions to the witness who will first answer the questions asked by the party who asked him to testify then the questions of the other party and the party who questioned him first may question him again . Once the interrogation by the party to the litigation completed , the witness may not be asked new questions except with the authorization of the court .

2 - The judge presiding the session or any of its members and the delegated judge , as the case may be , shall directly address to the witness the questions he deems useful to reveal the truth . Testimony is oral and it is not allowed to be assisted by written notes without the permission of the court or the delegated judge and provided the nature of the case so allows . Should the witness omit mentioning something that should be mentioned , the court or the delegated judge shall him about it .

### **Article 45**

The answer of the witness shall be recorded in the report , then read to him and signed by him after correcting what he deems necessary to be corrected . Should he abstain from signing , this and the reason therefore shall be mentioned in the report .

## **Article 46**

If the court notices , during the examination of the case or when deciding the merits thereof , that the witness gave a false testimony , it shall draw a report and send him to the public prosecution to take the criminal measures that are necessary .

## **Article 47**

1 - Whoever fears losing the opportunity of having a witness testify in a matter not yet submitted to the court but is likely to be so , may request , in the presence of all persons concerned , that this witness be heard . The request shall be submitted through the normal channels to the judge of summary matters and all the expenses involved shall be born by the requester . In case of necessity , the judge shall give his decision to hear the witness whenever the fact is one that may be evidenced by testimony of the witnesses .

2 - The Judge may , upon request of the other party hear witnesses for the defense , to the extent required by the urgency of the circumstances in the case .

3 - Except for the above , rules and procedures mentioned in the preceding articles shall be followed in testimony In this case , copy of the interrogation report may neither be delivered nor be submitted to court unless the court , while judging the merits , deems that the fact may be established by testimony of witnesses ; the concerned party in the litigation may file an opposition with this court , as to the acceptance of this evidence , and may request hearing witnesses for the defense in his favor .

# **TITLE FOUR**

## **PRESUMPTIONS AND RES JUDICATA**

### **Article 48**

Presumptions of law relieve the party in whose favor it exists of the necessity of producing any other evidence . These presumptions may be rebutted by evidence to the contrary , unless the law provides otherwise .

The judge may deduce other evidential presumptions , in the circumstances in which evidence by testimony is allowed .

### **Article 49**

Res Judicata judgments are absolute proof as to the matters finally decided of the litigation , and no proof is admitted against the legal presumption resulting therefrom , provided that such judgments refer to rights between the parties



themselves acting in the same capacities and having the same object and the same cause .

The court , by its own initiative , shall decide the incontestable character of this proof .

### **Article 50**

A penal decision only binds a judge in a civil suit as regards the facts on which the penal court gave its decision and upon which the court had to give its decision . Nevertheless , the civil judge is not bound by the judgment acquitting the accused unless it is based on denying attribution of the fact to him .

## **TITLE FIVE**

### **ACKNOWLEDGMENT AND INTERROGATION OF OPPONENTS**

#### **CHAPTER ONE**

#### **ACKNOWLEDGMENT**

### **Article 51**

An admission is an acknowledgement made by a human being of a right owed by him to another .

Admission is judicial if a party to litigation acknowledges before the court of a fact alleged against him during the examination of the case relative to this fact .

Admission is extrajudicial if it occurred outside the court or during a dispute raised in another case .

### **Article 52**

In a judicial admission , the admitter must , in what he acknowledged , be of sound mind , of legal age , and free will and not interdicted .

### **Article 53**

The juridical admission constitutes proof against the admitter who may not retract it .

#### **CHAPTER TWO**

### **THE INTERROGATION OF THE OPPONENTS**

## **Article 54**

Parties to the litigation may not be heard as witnesses in a case but the court may however interrogate those present in court , and each one of them may request the interrogation of his attending opponent . The court may also , on its own or upon request of his opponent order summoning a party to the case to interrogate him . The party summoned for interrogation has to attend the hearing fixed in the order .

## **Article 55**

The court may , in case of total or partial incapacity of a party , interrogate his representative as it may decide to interrogate the incapable , if discerning , in the matters he is authorized to perform . Juristic persons may also be interrogated through their legal representatives . In any case the person to be interrogated must have the capacity to dispose of the disputed right .

## **Article 56**

1 - The court shall direct to the concerned party to the litigation the questions it deems appropriate or those asked by his opponent to be addressed to him by the court . The answer should be given at the same hearing unless the court deems proper to grant him a delay to answer .

2 - The answer will take place in the presence of the party requesting the interrogation , but the interrogation is not made contingent on his presence .

3 - The questions and answers will be recorded in the minutes of the hearing , signed by the presiding judge , the clerk and the interrogated party . Should the said party abstain from answering or signing , his refusal and its reason shall be mentioned in the minutes .

4 - Should a party to the litigation fail to attend for interrogation without acceptable excuse or refuse to answer without legal justification , the court will draw its own conclusions and may accept evidence by testimony of witnesses or by presumptions in cases where this was not allowed .

5 - If the party to the litigation has an acceptable cause prohibiting him from appearing before the court for questioning , the court may delegate one of the judges thereof for questioning .

# **TITLE SIX**

## **OATH**

## **Article 57**

1 - Each party may , at any status of the case , tender the decisive oath to the other provided the fact subject to oath concerns the party to whom the oath is tendered , and if not personal to him then it should focus on his mere knowledge thereof . The judge may , however , refuse to allow the oath to be tendered if the party who tenders the oath does so vexatiously .

2 - The party to whom the oath has been tendered may tender back the oath to the other party . The oath cannot , however , be tendered back when it concerns only a fact in which the two parties did not both participate , but concerns only the person to whom the oath has been tendered .

3 The party tendering the oath or tendering it back may not retract whenever the opposing party has accepted to take the oath .

### **Article 58**

The guardian , the trustee or the proxy for the absent may neither tender a decisive oath nor tender it back except where this falls within his authority , according to the law .

### **Article 59**

An oath may not be tendered for a fact contrary to public policy or morals .

### **Article 60**

The party to whom the oath is tendered and who has refused it without tendering it back to the other party and the other party to whom the oath has been tendered back and who has refused to take it , will lose his case .

### **Article 61**

When the oath tendered or tendered back has been taken , the other party is not entitled to prove that the oath is false . When , however , such an oath is established to be false by a Penal sentence , the party injured as a result of the false oath may claim damages without prejudice to his right of challenging the judgment rendered against him .

### **Article 62**

1 - The judge may , on his own initiative and at any stage of the proceedings , tender the supplementary oath to either party to the litigation with a view to deciding on the merits of the case or on the amount of his judgment . The judge may tender the oath when the case is neither completely proved , nor devoid of any proof .

2 - The party to whom this supplementary oath has been tendered may not tender it back to the other party .

### **Article 63**

The judge may only tender the suppletory oath to the plaintiff as regards the amount of the case , when it is impossible to fix this amount in any other way . The judge , in this case , will fix a maximum amount up to which the plaintiff should take the oath .

#### **Article 64**

1 - Whoever tenders oath to his opposing party in the litigation must state accurately the facts that constitute the object of the oath and he must mention clearly the text of the oath ( 1 ). The court may amend the text of the oath to be tendered so that the paper on which is written the fact on which oath shall be taken is tendered clearly .

2 - In case the party to whom the oath is tendered did neither object to its feasibility nor to its relation to the case , has , if attending in person , to immediately take the oath or tender it back to his opponent , otherwise he will be considered in default . The court , if it deems it appropriate , may grant him a delay to take the oath . If he is not present , he must be notified of the text of the oath as approved by the court in order to attend the hearing fixed for taking the oath . Should he appear on the date fixed and abstain without disputing it or absent himself without excuse , he shall be considered , as well , in default .

3 - Should the person to whom the oath is tendered disputes its admissibility or its relation with the case and the court rejects his objection and ordered him to take the oath , the court must state in the judgment the text of the oath which shall be notified to the other party , if not attending in person and the procedure provided for in the preceding clause shall be followed .

#### **Article 65**

If the person to whom oath is tendered has an excuse preventing him from being present , the court shall move to where he is or delegate one of its judges to have him take the oath .

#### **Article 66**

1 - Oath shall be taken by saying " I swear by the Almighty God " then followed by the formula approved by the court . Whoever is called to take oath may , if he asks , take it in accordance with the conditions prescribed in his religion .

2 - In taking the oath , abstaining therefrom or tendering it back by a dumb , his usual sign shall be taken into consideration , if he ignores writing , otherwise his taking the oath abstaining therefrom or tendering it back shall be done in writing .

3 - A report on taking oath shall be drawn up signed by oath taker , the presiding judge and the clerk of the session

## **TITLE SEVEN**

### **SURVEY AND ACTION ESTABLISHING LEGAL STATUS**

#### **Article 67**

1 - The Court may , upon the request of any of the opponents or by its own initiative , decide to move , or delegate one of its Judges in order to survey the object of litigation and shall fix in its decision the date and place of the survey . The court or the judge shall make a report detailing all the acts concerning the survey .

2 - The court or the judge delegated by it shall appoint an expert to assist in the survey process . The court or the judge may hear the testimony of the witness deemed appropriate to be heard who shall be convened for attendance through a request , even verbal , addressed by the court clerk .

#### **Article 68**

1 - Whoever apprehends the loss of the features of a fact that may constitute an object of dispute before the courts , may request , in the presence of those concerned and in the usual manner , from the judge of summary matters to proceed with the survey and , in this case , the preceding provisions shall be observed .

2 - In the foregoing case , the judge of summary matters may delegate an expert to move , survey and hear witnesses without oath ; the judge then shall fix a hearing to take knowledge of the observations made by the parties to the litigation on the expert's report and acts . The rules provided for in the Title concerning Expertise shall be followed .

## **TITLE EIGHT**

### **EXPERTISE**

#### **Article 69**

When necessary , the court may delegate one or more expert ( s ) from among the State civil servants , or from the experts registered in the schedule of experts , to have their opinion on matters required for deciding the case . The court shall assess the amount to be deposited with the court treasury on account of the expert's expenses and his remuneration , specify the party liable to effect such deposit , the period allowed to make the deposit and the amount which the expert is allowed to draw for his expenses .

## **Article 70**

If the parties agree to select an expert or more , the Court would approve their agreement . Excepting this case , the Court will select the expert from among those admitted before it , unless otherwise necessitated by special circumstances and , if this be the case , the court shall have to specify these circumstances .

## **Article 71**

Should the court decide to delegate an expert or more , its decision must include the following :

- 1 - An accurate statement of the expert's duties and the urgent measures he is allowed to take .
- 2 - the period fixed for depositing the expert's report .
- 3 - the date of the session to which the case is adjourned for oral pleadings , in case the deposit is made , otherwise the court shall fix a nearer session to examine the case .

## **Article 72**

If the amount in trust is not deposited by the party in charge of this task or by any other party , the expert is not bound to perform the task entrusted to him and the court shall declare the party , who did not deposit the amount , forfeited from his right to avail himself of the decision appointing the expert in case it considers unacceptable the excuses he submitted for this purpose .

## **Article 73**

The Court clerks' office shall , within the two days following the deposit , convene the expert to peruse the papers deposited in the case file , without taking possession thereof , unless authorized by the court or the parties , and he shall be delivered copy of the judgment .

## **Article 74**

If the name of the expert does not appear in the schedules , he is required to take oath before the court that he will perform his duties with truth and honesty , otherwise the task performed will be void . The presence of the parties is not required when the expert takes the oath . A report evidencing taking the oath shall be made .

## **Article 75**

1 - Within the five days following taking delivery of a copy of the judgment from the clerks' office , the expert may ask to be excused from performing the assignment entrusted to him and , in urgent cases the court may decide in its judgment to shorten this period .

2 - The Court , that appointed him , may exempt the expert from his assignment , if it deems that the excuses submitted by him are acceptable .

### **Article 76**

In case the expert does not perform his assignment and is not exempted from I , the court which delegated him may condemn him to pay all the expenditures he caused to be spent uselessly and the damages , if applicable , without prejudice to the disciplinary sanctions .

### **Article 77**

The parties to a litigation may object to the nomination of an expert if there is reason to believe that he cannot perform his duties impartially and namely if he is a relative by blood or a brother - in - law to one of the parties up to the fourth degree , a proxy to one of them in his personal affairs , a guardian or tutor or working for one of the parties or if he or his spouse is in actual litigation with one of the parties in the case or with his spouse , unless the dispute was brought to court after nominating the expert in order to challenge his nomination .

### **Article 78**

The challenge of the expert's nomination shall be by a request submitted by the challenger , in person , within one week as of the judgment appointing him , if rendered in the presence of the challenger , otherwise within the week following the notification of the judgment to him . The right to challenge the nomination of the expert shall not be forfeited in case the reasons therefore have occurred after the said period or if the challenger proves that he was not aware of these reasons except after the expiry of the period .

### **Article 79**

If the expert has been appointed by agreement of the parties , the challenge by one of them is not admitted unless the reason for the challenge occurred after his appointment , or if proves that he was not aware of the reason upon his appointment .

### **Article 80**

The Court will give its decision , by way of urgency , on the request for challenge and the judgment rendered in this respect is not challengeable by any means . In case the request for challenge is rejected , the challenger shall be condemned to a fine ranging between two hundreds Dirham as a minimum and five hundreds as a maximum .

### **Article 81**

1 - The expert will specify a date for the commencement of his work , provided he convenes the parties seven days , at least , and mention in the convocation the place of the first meeting , its day and hour .

2 - In case of urgency , he may convene the parties forthwith by cable .

3 - Failure to convene the parties shall entail the voidance of the expert's work .

## **Article 82**

1 - The parties will appear before the expert in person or by proxy .

2 - The expert may perform his duties even in the absence of the parties who have been duly convened to appear before him .

3 - Any governmental , or otherwise , body may not refuse , without legal justification , to let the expert take knowledge of whatever books , registers , documents or papers in their possession , in implementation of the judgment delegating the expert .

## **Article 83**

The expert shall prepare a report of his works , which will include the following :

1 - A statement of the opponents' attendance , declarations , and remarks signed by them , unless they have an impediment preventing them from signing , then it must be mentioned in the report .

2 - A detailed statement of the works performed by the expert and the declarations made by the persons heard by him of his own initiative or upon request of the parties .

## **Article 84**

The expert must submit a report signed by him stating the results of his works , his opinion and the grounds on which he based himself . In case there are more than one expert , each one of them is entitled to submit an independent report of his opinion , unless they agree to submit a single report .

## **Article 85**

1 - The expert shall deposit his report , minutes of his works , and all papers received by him , with the clerks' office of the court which had delegated him .

2 - The Court clerks' office will notify the parties of this deposit , within twenty four hours of its occurrence .

3 - The expert shall send a copy of his report to each party within the three days following the deposit .

## **Article 86**



1 - Should the expert fail to submit his report within the period fixed in the judgment appointing him , he must , before the expiry of this period , deposit with the clerks' office of the court that delegated him , a memorandum stating the works performed and the reasons that obstructed him from achieving his assignment .

2 - In case the Court finds in the expert's memorandum a justification for his delay , it will grant him an additional time to achieve his assignment and deposit his report , or appoint a substitute and obligate the defaulting expert to retribute all amounts , drawn from the deposit in trust , to the clerks' office , without prejudice to the disciplinary sanctions and damages , if applicable .

3 - The judgment , ordering the substitution of the expert and obligating him to retribute what he has drawn from the deposit , is not challengeable .

### **Article 87**

If the court notices , after taking knowledge of the memorandum submitted by the expert according to the preceding article , that the delay is due to a fault from a party to the litigation , it shall sentence him to a fine not in excess of one thousand Dirham and it may decide the forfeiture of his right to avail himself of the judgment appointing the expert .

### **Article 88**

1 - The Court will , on its own initiative or upon request of the parties , order convening the expert to a hearing fixed by it to discuss his report and it may address to him any questions it deems useful in the case .

2 - It shall order the expert to complete the shortcomings in his work and adjust any noticed mistakes , or assign this mission to one or more other experts .

### **Article 89**


The Court may appoint an expert to give his opinion verbally at the hearing without submitting a report . His opinion will be recorded in the minutes .

### **Article 90**

1 - The expert's opinion is not binding to the Court .

2 - If the Court renders a judgment contrary to the expert's opinion , it shall state in the judgment the reasons that motivated disregarding this opinion totally or partially .

### **Article 91**

1 - The expert's expenses and remuneration , in consideration of his efforts , will be assessed  by the court that appointed him by virtue of an order on petition , without pleadings . Each of the parties and the expert may file a

grievance against the assessment order within the eight days following his notification .

2 - The grievance shall be submitted by a report deposited with the court clerks' office and shall result in staying the enforcement . This grievance shall be decided by another judge or another circuit in the court after hearing the aggrieved party and the judgment rendered in this respect shall be final and by no means challengeable .

## **Article 92**

The expert shall obtain the amount assessed to him from the deposit in trust and the assessment order for the excess balance must be executed by the party who was condemned to the expenses .