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The Impact of Islamic Law Principles in The Use of Documentary Evidence

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Abstract

The paper delved into the importance of writing and the promotion of all transaction among the Ummah to be documented in a safe and secured manner. This notion is in line with the areas of documentary evidence by considering the authorities associated with documentary findings as most cases are dependent upon the circumstance, through which such document is secured and produced for evidential value. The paper also tries to look at what a document is confined to be, its content and what information it provides for the sake of admissibility associated with the required testimony before a court of law or any judicial tribunal or panel of inquiry. The paper further considered the modern reforms provided in the areas of documentary evidence in our modern world, i.e evidential value of the modern electronic and other forms of evidence in forms of document or from other perspective associated with it. The paper concluded by providing some useful findings, recommendations towards the present global sophistication in the area of documentary evidence. These sophistications that can be made available to our court to utilizes for the sake of providing the needed justice delivery to all parties before our courts. As evidence is an information that tends to establish a fact which is materially important to an investigation and which may assist in substantiating or disproving an allegation, whether physical or documentary.

Keywords

Al-kitabah, documentary, ummah

Introduction

Right from the advent of Islamic religion, the art of writing was not all that pronounces and it remain scarce among the Ummah, only few disciples could read and write. As a result of these development, the Prophet of Islam may PBUH, encouraged the Ummah to learn the art of writing. This postulation can be seen in the Prophet's action in the battle of Badar where captives who can teach Muslims the art of writing were given their freedom (set free). This was necessitated by the few number of Muslim who mastered the art of writing during this period.

Amongst the disciples who can write are Zaid Ibn Thabit, Muaz Ibn Jabal, Abdullahi Ibn Masoud e.t.c together with the four guided Khaliphs (may Allah be pleased with them).¹

As a result of the importance of writing a verse of the Holy Quran provides and reads that “O you who believe, when you deal with each other in transaction involving future obligations in a fixed period of time reduce them to writing.”²

This verse purely, provides the importance of writing down our dealings with each other in whatever form, in order to prevent or to avoid any future doubt or dispute that may arise as a result of not documenting our dealings in writings.

Therefore, the importance of documenting or writing down issues relating to our day-to-day activities cannot be overemphasize. The Prophet was reported to have said that anyone who Allah has endowed with wealth should as a matter of practice and faith ordered to when making a will (Wasiyyah) should reduce it to a write-up whenever he intend to do so.³

The Prophet also encourage writing down an issue that relates to agreement of whatever form, issues of reconciliation among different classes of parties involving different kind of obligations, all with the hope of providing a better means of providing proof in case of uncertain obligation that may come up among the Ummah.⁴ Despite its importance as a means of reducing whatever transaction in writing the art of writing among early jurist did not give greater importance to any written evidence as a means of proof when compare to admission, or oath, or any oral testimony. But in today's world as a result of social complexities, where more importance is attached to technology and the growing means of communication gadget, which has seriously expanded the scope of proving documentary evidence in different forms either in the form of digital or electronic documents which tend to be useful in today's world as a means of evidence with useful information in the form of a disc, tape, films, sound track and other modern means of providing evidence if they are reliably considered to be authentic and acceptable to be in line with what al-Kitabh stands for or signifies.⁵ This information can be in form of data symbol, signs or in form of a letter which contain the required information needed to constitute a document for proving a case, in a befitting format that is reliable, in a tangible form, readable, and understandable to all. This shows that all class of electronic materials that are authenticated can fully fall within the context of Islamic documentary evidence. Therefore, documentary evidence has now stands to become one of the most important means of proving cases before our courts once if the authenticity of the document or documents are confirmed to be authentic as well as an acceptable means.⁶ Therefore, writing or the art of writing have today provided us with the means of proving dispute documentarily among practice in a simplified way either in our courts, tribunal or any types of panel established for the purpose of settling disputes.

Definition Of Documentary Evidence

A document is generally referred to under Islamic law as al-kitabah or al-khat, it simply signifies to what is written on a paper or any item. The most important thing to observe here is the content of the written item or the information that is so provided on the document. However, with the present modern technologies which provided different source of information that contain an authentic, acceptable, reliable and relevant information in a form of a document that can be of importance to be utilized in legal proceedings or in proving an issue can equally be considered as al kitabah.

¹ Muhammad Shattima, Evidence and Proof in Islamic Law. Published and printed by ABU Press ,(2023).

² Al- Bakarah 2;282

³ Hanafi A .Hammed, Islamic Law of Evidence And Administration in Nigeria, Published and Printed by Princeton and Associate Publishing co .Ltd, Lagos,(2022).

⁴ Muhammad Shattima, Evidence and Proof in Islamic Law. Published and printed by ABU Press ,(2023).

⁵ Hanafi A ,Hammed and Khadijat-K. Documentary and Electronic Evidence and the Role of Expert Opinion in Common and Islamic Law (2005)1, Kwara State University Law Journal,77

⁶ Abdulraham Ibrahim Abdul-al-Humaid, Al-Qadawa Nizamuh Min al-Kitabi, 140411/1984).439

The Legal Basis About Al-Kitabah

It is widely an accepted position that the legality for any documentary acceptance can be found from the Holy Quran and the Sunnah and the consensus of the renowned Islamic jurist.

The Quran said, "O you who have believed, when you contract a debt for a specified term, write it down".⁷

In the story of Bilqis, the Queen of Yemen, Allah said, "She said, "O eminent one's indeed, to me has been delivered a noble letter, indeed it is from Solomon and indeed, it is (an reads); in the name of Allah, the entirely merciful 'Be not haughty with me but come to me in submission (as Muslims)'. It is clear from the above verse, that Prophet Suleiman has used the medium of writing as evidence of his prophet hood to call the queen of Yemen towards Islam and the queen acted based on the content provided in the letter. This clearly shows that documentary evidence was used to call others towards the religion of Islam. Therefore, one can comfortably say that written documents if authenticated can equally be used to proof the rights of people before any court of law.

Also, the Prophet PBUH once said, "it is not permissible for any Muslim who has a will to make to stay for two nights without having his last will and testament written and kept ready with him"⁸. This Hadith has been considered as the basis for reliance on the objectivity of hand written evidence even if is not accompanied with testimony. The Hadith clearly encouraged the Ummah to write their will and also pin pointed to the importance of relying on written documents to be the basis of proof of evidence in any case before a judges⁹. This has further added more weight to the argument that documentary evidence is about the maxim, Al-Kitab Ka al Khitab (written statement is the same as oral declaration) which simply means written correspondence have the same legal implication as oral statements. Because all written words are usually the product of oral statement and once reduced to writing they are more authentic than even the oral evidence, as they cannot be altered in any form compared to the oral testimony.¹⁰

Though, al-Kitabah is a recognized means of proof, it has been authenticated i.e by calling the maker or those that has witnessed the making of such a written document to witness it. As a result of this, the Quran says; " But take witnesses when you conclude a transaction, let neither nor scribe be harmed but if you do so, (such harm) indeed, it is (grave) disobedience in you, so be afraid of Allah; and teaches you. And Allah is the knower of each and everything"¹¹. Therefore, from the above verse, it is categorically clear to state that Allah in His infinite mercy shows to us that the only way to authentic documentary evidence is through calling available and reliable witnesses in order to corroborate the fact before the court. By this Allah teaches mankind that a witness is one of the method of authenticating all sort of documents presented before any court of law, whether it is electronic evidence via website or other source of electronic evidence is considered such evidence is considered authentic and admissible once the rules associated with admissibility are complied with,¹² under Islamic law documentary evidence is dependent upon the circumstances where such document is presented and the means through which it was secured. This procedure plays a central role in the admissibility or refusal to admit such a document before the court.

How Document Are Considered in Evidence

Oral evidence is considered as the original means of providing proof in a court of law, therefore, court are always expected to rely on document only in the absence of admission. Here it clearly shows that the primary means of proof is the primary evidence associated with testimony i.e oral evidence and in this regards all jurist agreed that only where there is no primary evidence that the court are advice to resort to evidence on documents, even with these it is not any document that are entertained in evidence, and it is only such documents that are written and signed by the

⁷ Al-Bakarah 2;282

⁸ Muhammad bin ismail bin Ibrahim bin al- mughirah al bukhari, sahih al bukhari Darussalam Riyadh,1997) Hadith No 2738

⁹ Muhammad bin Abi hakr Ayyub al zaribin al qayyim al Jauziyyah,al Turug Al Hukmiyyah fi Al –siyasah al-shariyyah matbe 'at Al-madina,Cairo,)201

¹⁰ Muhammad Shattima, Evidence and Proof in Islamic Law. Published and printed by ABU Press ,(2023).

¹¹ Al Bakarah 2;282

¹² Hanafi A Hammed Islamic Law of Evidence and Administration of Justice in Nigeria, Published and Printed By Princeton and Associate,Lagos.(2022)

defendant, or a document written or signed by a person whose whereabouts are not known or where the risk of travelling is difficult or where a document written and signed by a person who from all indication is dead and there is no oral evidence to support such case in court.¹³ In such a situation such documents can be considered if the signature belongs to the deceased person if there is no doubt regarding the writing or signature of the deceased person. By handwritten documents, what the law referred to is that all written documents that are involved in a particular case that has no official element to support it or either a stamp to back it to assert its credibility as a document. But where there is no any available ground reasonably presented to discredit the authenticity of such a document, Islamic law has recognized its importance in terms of admissibility before a court of law.

In a narrated Hadith from Anas bin Malik, may Allah be pleased with him who said; The Prophet PBUH once intended to write a letter to the rulers of Byzantines, but he was told that, they do not read letters presented to them unless such letters are sealed (stamped). Therefore, upon hearing this the Prophet ordered for a silver ring, to be fixed upon the letter in form of an engraving of a seal.¹⁴ This culture of not reading letters that are not stamped is also been used by the Romans which Prophet did not recognize. But the Prophet also sent several letters that are not stamped and is authoritative and considered effective whether stamped or unstamped will always have the desired legal effect.

Modern Reforms to Documentary Evidence

The earlier disagreement between earlier jurists regarding the acceptability of written documents as evidence in our courts has been brought to rest, as later generation of Islamic jurists came to the position of accepting all sorts of authenticated written documents in evidence, because most of these documents these days are usually used in official and business functions where experts in the field of identifying handwriting have the order of the day, where such documents are accepted as a means of proving issues involving dispute between parties in courts.¹⁵ This resulted to their acceptance as a means of proving its usage by our courts more than ever before. In 1864-1876, the Ottoman empire which was among the strongest empires with a vibrant Islamic background and following the Hanafi law codified a book on civil transactions titled "The Majallat Al-Adillah; in that book there was a very strong emphasis in its provisions to the effect that evidence on written documents which are verified to be authentic and free from any suspicious or any sources of falsification should be entertained, in the adjudication of cases in courts and other judicial panels and such written documents are acceptable as documentary evidence. In another similar position in the Sudan, the country's Shariah courts organization regulations of (1902) as amended in 1915 had equally expanded the number of sections through which documentary evidence was given a serious credence and acceptance and its usage was promoted and entertained in adjudication before their courts, also a guided emphasis was accorded to the fact that both oral and written evidence are accorded the same recognition in their legal system.¹⁶

The Evidential Value of Electronic Evidence

The present global transformation in the information technology has provided an extra step to human development into an era of hi-tech communication system on the digital platform. The information generated through these platforms are collected or retrieved and used as electronic documents. This development has given room for e-transaction, e-economic, e-administration, e-judicial system by our courts, and equally gave our courts the opportunity to decide cases based on e-platforms. The use of all sorts of digital evidence has increased in the areas of commerce and other sources of financial transactions in the past decades because our courts have honorably allowed the use of these digital platforms facilities such as e-mail, digital photographs, ATM transaction logs, words browser historic, data bases, the contents of computers memory, computer backups, computer printouts, global positioning system tracks, logs from electronic door look and digital videos, or audio file etc.¹⁷

¹³ Muhammad Shattima, Evidence and Proof in Islamic Law. Published and printed by ABU Press ,(2023)

¹⁴ Al -Humaidi, Al-Qadi wa Nizamah

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

Therefore, electronic evidence has these days assumed a prominent position in the administration of justice system cutting across all areas in civil and criminal matters before our courts, either common or Islamic law courts. Section 84 of the Nigerian Evidence Act 2011 has provided explicitly for the admissibility of electronic evidence within the realm of documentary evidence, like any other¹⁸ form of document, electronic evidence can be proved like any other form of evidence in court in Nigeria¹⁹. Therefore, any electronically generated evidence generated by way of satellite or through cables, computer and other acceptable forms of storage communication system in whatever acceptable way can be used as evidence in our courts of law. The same evidence Act under Section 258 (1), has provided series of documents and the same Act under section 84 (1), provided that the admissibility of the documents so provided by Section 258 (1) must also fulfil the required conditions spelt out by Section 84 (2) of the Act. Notwithstanding this position of the evidence Act, that encourage the case of electronic documents in evidence in our courts²⁰. But where there is doubt as to the authenticity of the document an expert may be invited to testify and authenticate the contents of the document so presented as electronic evidence or any form of document. Here expert opinion is important as electronic evidence is a combination of law and technology, and authenticating its contents has to be by an expert witness, as this expert would assist the judicial system (the court) to administer the required justice needed in our communities.

Findings

- The paper finds out that it is important to write down all our dealings ie all our transactions, reconciliation, contracts or any other issue relating to our future in order to avoid doubts or dispute that may arose as a result of not documenting or reducing it to writing in the form of a document.
- The study also finds out that all class of electronic materials that are authenticated can orally fall within the content of Islamic documentary evidence.

Recommendation

- The paper recommended that as much as court recognized document in evidence under Islamic law our court should as a matter of law consider only documents that have a seal or stamp or where the witnesses are men of good character.
- The paper recommended that for any document retrieved from the internet an expert should be consulted to ascertain the authenticity of such a document before admitted in evidence.
- All documents that parties rely upon whose proof of its origin is not ascertain either through the internet or otherwise should be discarded from being accepted in evidence.

Conclusion

Documentary evidence is another important means of providing proof in our courts but where the authenticity is not provided such documents should be discarded. Islam as a religion have provided different methods of accepting documents before our courts, this includes written documents or other means that is related to documents, the same system also provided certain procedures before such documents can be admissible as evidence.

Therefore, the importance of document in proofing cases in our courts cannot be over emphasized. Based on this narration the Prophet Muhammad PBUH has encouraged Muslim Ummah to learn how to read and write in order to be able to write down their dealings by preparing documents regarding their dealings relating to contracts, reconciliation issues, treaties etc. Therefore, the importance of documentary evidence is fully recognized by the Shariah as it usually alleviates, or expunge other injustices among our societies as it is designed towards the provision

¹⁸ Ibid

¹⁹ Muzaffar S .A, The Admissibility of Modern Electronically evidence in Criminal cases under Islamic Law; Public Lecture Series delivered at Faculty of Shariah, Slain Islamic University ,Malaysia (USIM)2013.

²⁰ Nigerian Evidence Act 2011

of first-class evidence to our courts. This position was recognized by the early jurist such as the Maliki, Hanafi and other contemporary jurist who equally give credence to documentary evidence as the modern means of proving dispute through documents. These is promoted by the dynamic global system, where things change on daily basis as a result of the modern technological development.