

Islamic Law of Evidence in Confession (*Iqrār*): Definitions and Conditions

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ABSTRAK

Tulisan ini cuba untuk membandingkan secara umum antara Undang-Undang Keterangan dan Prosedur Islam dengan apa yang diamalkan oleh Undang-Undang Keterangan dan Prosedur moden khususnya mengenai takrif dan syarat-syarat pengakuan salah atau iqrar. Di dalam Islam, pengakuan salah merupakan salah satu cara yang sah bagi mensabatkan tertuduh di dalam mahkamah keadilan. Pengakuan di dalam mahkamah terhadap tuduhan kesalahan yang dilakukan secara tekniknya dikenali sebagai pengakuan bersalah. Namun, tidak semua pengakuan bersalah boleh diterima oleh mahkamah. Oleh itu terdapat beberapa syarat yang mesti diikuti sebelum hakim boleh menerima pengakuan bersalah bagi menjatuhkan hukuman terhadap tertuduh.

ABSTRACT

This article is an attempt to compare generally between Islamic Law of Evidence and Procedure with those of Modern Law especially pertaining to its definitions and conditions. In Islam, confession is one of the important legal methods to convict an accused in the court of justice. The admission before a court of a charge of commission of offence is technically known as confession. Yet, not all confession are admissible by the court. There are several conditions to be valid under Islamic law before the judge can accept such a confession and impose the punishment on the accused.

INTRODUCTION

The cornerstone of the both Islamic law of Evidence and Procedure and Common Law system is that everyone is presumed innocent until proven guilty in a court of law. In Islamic law, this principle is fundamental. The corollary to this principle is that the burden of proof is on the complainant. These rules are revealed in the Qur'anic verse:

“And those who produce not four witnesses to support their allegation, flog them with eighty stripes” (*al-Nur*, (24):4)

The rules are also found in the following tradition of the Prophet:

If men were to be granted what they claim, some will claim the wealth and lives of others. The burden of proof is on the proponent; an oath is incumbent on him who denies (al-Tarmīzī 1931. 2)

These fundamental principles run throughout both Islamic law and Common law. They are especially important in criminal law as they embody the presumption of innocence and place the burden of proof of the accuser.

The object of the Islamic law of evidence is to formulate principles which are essentials for proving facts relevant for disposal of a case. In article 77 of the Mejlle it is provided:

The object of evidence is to prove what is contrary to the apparent fact, the object of oath is to ensure the continuance of the original state.

A fact can be proved in four ways before a court of law:

- a) Admission/Confession (*al-Iqrār*)
- b) Testimony of witnesses (*al-Shahādah*)
- c) Oath (*al-yamin*)
- d) Circumstantial Evidence (*al-Qarīnah*)

Confession is one of the important legal methods to find someone guilty in the court of law. When someone was accused on a certain crime and he admits it or makes a confession about his offence, then the judge when he feels satisfied that the admission made without any doubt or ambiguity, must convict the accused and impose the punishment on the defendant.

DEFINITION OF *IQRĀR*

Literally *iqrār* means declaration or recognition or admission. In Islamic law, the Muslim jurists have different points of views about the definitions of *iqrār*:

- a) The Shafei school defined *iqrār* as:
 - i. Informing a right of another by informal against himself or;
 - ii. acknowledgment (al-Khatib 1958, 229)
 - iii. referring to something not belonging to a person making it (al-Nawawī n.d., 189)

Whereas the Hanafi School defined *iqrār* as:

1. The notification or avowal of the right of another upon one's self (Hedaya 1987, 426)

- ii. The notification of right or inference of another against oneself (Madkur 1964, 79)

According to Article 1572 of the Majelle, *iqrār* is:

For someone to admit the right of another against himself

Article 64 of the *Islamic law of Evidence* (Pakistan) defined *iqrar* as:

Giving of information by a person that he is under some obligation to another person in respect of some right.

Whereas section 17(a) of the *Evidence Act of The Shariah Court* (Federal Territory) 1989 defined *iqrār* as:

A statement, oral or documentary or using gesture, by a person that he is under some obligation to another person in respect of some right, and which is made by any person and under any circumstances herein after mentioned.

Iqrar is therefore a specific admission or acknowledgment as a means of proof to clearly indicate a right or interest of another against oneself, or to admit of an offence or liability against oneself. It is a relative proof in that it affects only the person making such a confession.

In Western Common law, various of definitions are given by the western jurists. Unlike Islamic law, they divide *iqrar* into two divisions i.e. admission and confession with different scopes and ideas.

Webster's *New Twentieth Century Dictionary* (Webster 1983) defines admission and confession:

Admission is an assential fact or matter, the necessity of proving which is removed by the opposite party admitting it. Admission are either upon the record or by agreement between the parties to suit.

Confession is an acknowledgment of guilty by a person charged with a crime. A judicial confession is made before a magistrate or court, whether to an official or non official.

Whereas Jerome Prince in his book *Richardson on Evidence* (Prince 1964, 279) defines admission and confession:

An admission is a statement made or an act done which amount to a prior acknowledgment by one of the parties to an action, or by his predecessor in interest, that one of the facts relevant to the issues is not as the party now claims.

A confession is a direct acknowledgment of guilt made by the defendant in a criminal prosecution.

In the *Malaysian Evidence Act 1950*, “admission” and “confession” are defined as follows:

An admission is a statement, oral or documentary which suggest any inference as to any fact in issue as relevant fact, and which is made by any of the persons and under the circumstances herein after mentioned.

[Section 17(a)]

A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence.

[Section 17(b)]

In the above definitions, we see that there is a distinct difference between an admission and a confession. A confession is a special type of admission made by the accused stating or suggesting the inference that he committed the offence. An admission on the other hand, is a statement that merely suggests any inference as to any fact in issue as relevant fact, and which is made by any of the persons and under the circumstances herein after mentioned.

DISTINCTION BETWEEN ADMISSION AND CONFESSION

As mentioned before, there is no special distinction between admission and confession in Islamic Law of Evidence and Procedure. The both are the same. That is why under Sec. 17 *Enactment Evidence of Shariah Court (Kelantan) 1989*, only admission is mentioned. The word *iqrār* or *i'tirāf* is used instead of admission whether in Islamic Criminal or Civil cases.

In Western Criminal Law, confession generally means an acknowledgment of guilt; admission is acknowledgment of some facts not involving criminal intent (Fields 1982, 481). The distinction then lies in the fact that a confession is an express acknowledgment of guilt, whereas an admission is circumstantial evidence of guilt (*People v Bretagna*, 298 N.Y 323 N.E 2d 537).

The word confession might suggest that only direct admissions of guilt are covered by the doctrine now being discussed. This is not so. A distinction is taken in some countries between an admission of a fact from which guilt is directly deducible or which within and of itself imports guilt, which is a confession, and admission of a particular act or acts or circumstances which may or may not involve guilt and which is dependent for such result upon other facts or circumstances to be

established (Elliot 1980, 184), which is not a confession but merely an admission (*State v Porter* 1897, 32 OR. 135).

But this distinction is not taken in England, where all criminal admissions by an accused person count as confessions (*Commissioners of Customs & Excise v Harz*, [1967] 1 AC 670). So there is no difference in this respect between “Yes, I killed him” and “I was near at the scene of the crime”.

The Indian case in *Imperatrix v Pandharinath* (LR 6 BOM 34) falls far short of holding that admissions and confessions are the same thing (*Queen Empress v Meher Ali Mullick* 15 Cal. 589, 593). This fact is almost the same with Islamic Law of Evidence. Sections 25, 26, 27 and 30 of Indian Evidence Act form part of chapter II dealing generally with the admissions as defined in Sec. 17 of the same act. The obvious reason being that all confessions are inculpatory admissions on the part of the maker thereof. Thus to be a confession, admission should contain an acknowledgment of the guilt (*A. Nagesia v Bihar State* AIR 1966 Sc. 119). Therefore, all confessions are admissions but every admission may not be a confession.

The broad distinction between an admission and a confession is that the latter is a statement made by an accused person which is sought to be proved against him in a criminal proceeding to establish the offence, while under the former they are comprised all other statements amounting to admissions as defined in Sec. 18 of *The Indian Evidence Act* (5 MLJ Art. 12, 15). In order to determine whether a statement is a confession of guilt or an admission of a criminalizing circumstances, a court must look to the statement itself.

Ratanlal concludes four main differences between admission and confession (Waight & Williams 1990, 56). There are:

- A. A confession is a statement made by an accused person which is sought to be proved against him in a criminal proceeding to establish the commission of an offence by him; while an admission is usually applied to a civil transaction and comprises all statements amounting to admissions as defined in Sec. 18 of *The Indian Evidence Act*.
- B. A confession if deliberately and voluntarily made may be accepted as conclusive in itself of the matters confessed, while an admission is not a conclusive proof of the matters admitted, but may operate as an estoppel.
- C. A confession always goes against the person making it, while an admission may be used on behalf of the person making it under the Exceptions provided in Sec. 21 of the said act.

D The confession of one of two or more accused jointly tried for the same offence can be taken into consideration against the co-accused (Sec. 30). But an admission by one of several defendants in a suit is no evidence against another defendant.

Therefore there is a difference in the definition of *iqrār* under the *Shari'ah*, and admission and confession under the Modern Evidence Acts. Only confession and a part of admission that is against maker's interest would be similar with *iqrār* under the *Shari'ah*. Admissions for maker's interest would be contrary to the idea of *iqrār* under the *Shari'ah*.

DISTINCTION BETWEEN *IQRĀR* AND *SHAHĀDAH* (TESTIMONY)

Beside confession, the other fact to be proved is the testimony of witnesses or *al-shahādah*. Both Islamic law and Common Law recognised that the testimony of witnesses plays the important role to ensure the facts before a court shall be proved. Without *al-shahādah*, such case shall be rejected. In Islamic law, *shahādah* is the second to confession or *iqrār* as a means of proof. That means, in the *Shari'ah* court, when someone was accused on a particular crime and he denies it, then the burden of proof is on the plaintiff. Thus, the judge should ask the plaintiff to bring his witnesses or whatever evidence to support his claimant.

Under Sec. 2(i) of the *Islamic Evidence Act* (Pakistan) 1982, *shahādah* is defined as:

To give true information for the purpose of proving any right, in or before a court, in the presence of parties, whether present in person or by an agent or presumed to be legally present by uttering the word '*ashhadu*' or by use of any synonymous expression.

From that definition, there are several distinction between them. They are:

A. Testimony of witnesses is not accepted if it is made without charges or commencement of actions, but confession is admissible at any time without waiting the commencement of actions.

B. Testimony of witnesses is null and void if the matter/person which is the subject of testimony is unidentified, but according to Ahmad Fathi Bahansi (Bahansi 1971, 162), it is accepted either the subject of admission is identified or not. For example, if one person makes confession that he has committed adultery but he did not know the woman's name, then his

confession is accepted, but the testimony of witnesses is invalid without identified the girl.

C. Testimony of witnesses is a proof to convict the accused whether oneself or many but confession only implicates the accused but not his accessories or conspirators. Article 75 of the Mejlle clearly states that “a person is bound by his own admission” Thus, confessing to adultery with a certain woman does not render her guilty, if the legal evidence against her is not present.

D Testimony of witnesses is valid if it is required by the court but confession of not guilty can be made at any time whether before the court or out of court.

E. Testimony of witnesses cannot be retracted after the punishment was imposed, but the retracting of confession is accepted and it can be made at any time before or after sentencing (al-Mulla 1964, 19-20).

Some of the Muslim jurists opine that there is no differences between *iqrār* and *shahādah* regarding to the result of a trial. When an accused person admits committing theft without any doubt, the punishment cannot be executed unless the plaintiff comes and makes the accusation. Nevertheless, majority of the muslim jurists including Abū Yūsuf and Imam al-Shāfi‘i held that the both *iqrār* and *shahādah* are two different things.

LEGAL PRINCIPLE OF *IQRĀR*

Three important element are involved in the confession process, namely:

- i. *Muqarrun*: The person who makes such confession.
- ii. *Muqarrun lahu*: The person in whose favour the confession is made.
- iii. *Muqarrun bihi*: The subject matter of confession (Saedon 1990, 43)

THE AUTHORITY OF *IQRAR*

There are verses of al-Qur’an and reports of Traditions of the Prophet which show that *iqrār* is accepted as a means of proof;

- a) Nay, man will be evidence against himself, even though he were to put up excuses (*al-Qiyāmah*, (75):14)
- b) Let him who incurs the liability dictate, but let him fears in Lord God, and not diminish ought of what he owes (*al-Baqarah*, (2):282)

- c) God said, do you agree and take my covenant as binding on you?, They said, we agree. He said, then bear witness and I am with you among the witnesses (*Al Imrān*, (3):81)

In one *hadīth*, the Prophet (PBUH) directed to Maiz;

It has come to me that you had intercourse with a particular slave?, Maiz said: Yes. He admitted until four times with this, then it was ordered that he be stoned to death. (al Shawkānī 1987, 12)

In another tradition, the Prophet ordered his companion named Unays al-Aslamī to go to the wife of the other man and if she confessed she will be stoned to death. She confessed and was stoned to death. (al-Bukhārī n.d, 552)

CONFESSION IN ISLAMIC LAW POINT OF VIEW

In fact, all the Muslim jurists are in agreement that confession is a fact can be proved before a court of law in order to convict a person accused of the act done. Imam Malik opines confession as an admissible statement which binds only on confessor with special ways and conditions. Article 78 of the Mejlle states;

Evidence is an absolute proof in that it effects third person; admission is a relative proof in that it effects only the person making such admission.

An accused person can be convicted and sentenced under the law on the basis of his confession, provided that the judge is satisfied that the confession has not been extorted in any manner and that it is voluntarily made by the accused. These facts will be further discussed under Conditions of Confession.

In *hudūd* cases, a retracted confession cannot be acted upon and sentence awarded to the accused has to be suspended (Al-Sayūti 1936, 67). In civil cases on the other hand, if a person admits the right of another person, then no proof is required for de creeing the claim. The admission will be bending upon the person admitting the claim and effective decree can be passed against him (Siddiqui 1985, 347).

CONFESSION AT COMMON LAW VIEW

While the common law recognised that a confession might be both reliable and cogent as evidence of guilt, and indeed saw no objection to a conviction in cases where a confession was the only evidence against the

defendant (*R v Baldry*, cce [1852] 1 Den. cc 430), the law also recognised that a confession could be regarded as reliable only when it is made freely and voluntarily. If coerced or forced, the reliability of the confession might be fatally compromised, and the integrity of the system of administration of justice itself made to suffer (Murphy n.d, 210). So far as matters of fact are concerned, we have seen that admission should be founded upon the personal knowledge of the maker of the statement, and will be rejected as evidence of the facts admitted where the admission is based upon pure hearsay as to which the maker has no personal knowledge (Murphy n.d, 211).

CONDITIONS OF CONFESSION (*IQRĀR*)

There are several conditions before an *iqrār* can be accepted under Islamic law and a judge can accept it and impose the punishment upon the accused. These conditions can be divided into four sections:

- a) Conditions of the person making such confession (*Muqarrun*);
- b) Conditions of the person in whose favour the confession is made (*Muqqarrun lahu*);
- c) Conditions of the matter which is the subject of the confession (*Muqqarun bihi*); and
- d) Conditions of the terms of *sighah*.

CONDITIONS OF THE PERSON MAKING SUCH CONFESSION (*MUQQARUN*)

SOUND MIND (‘*ĀQIL*)

Islam lays down a condition that the person who makes the *iqrār* must be sane or of sound mind. Article 1573 of the *Majelle* provides that the admission of a madman or person of unsound mind is not good. According to Section 18 (2) (b) of the *Islamic Evidence Act (Federal Territory) 1989* that the admission of a person who is insane and unsound mind shall not be accepted.

The rationale behind this requirement is that a person who is not sound mind cannot be imposed the obligations of the *Sharī‘ah* (*Taklīf*) (Hamilton 1987, 427). The *Hadīth* Maiz is a best example to show that the Prophet (PBUH) wanted to ensure Maiz was really an ‘*āqil*’ person by asking him to admit four times. In other narrations the Prophet asked Maiz that he may have merely kissed her or just only saw her.

This requirement is in parallel with Section 118 the Malaysian Evidence Act 1950 that all persons are competent witnesses unless the

court consider that they are prevented from understanding the questions put to them or giving rational answer to those questions by disease, whether of body or mind.

Section 77 (3) of the *Police and Criminal Evidence Act* (United Kingdom) 1984 defines a person as mentally handicapped when “he is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning” Where the confessions of a mentally handicapped person is nonetheless admitted in evidence, Section 77 imposes on the court a duty, in certain circumstances, to warn the tribunal of fact of the dangers of convicting such a person reliance on his confession.

Thus, for both *Sharī‘ah and Malaysian Evidence Act 1950, a person who is insane or unsound mind cannot make a valid admission and confession.*

ATTAIN AGE OF PUBURTY (*BALĪGH*)

As a general rule, a child is not allowed to make an *iqrār* under the *Sharī‘ah*. Section 2 of the *Islamic Evidence Act* (Pakistan) states that *balīgh* means a person who has attained being a male the age of eighteen or being a female the age of sixteen years or has attained puberty which ever is earlier. While under Section 3 of the *Islamic Evidence Act* (Federal Territory) 1989 defines *balīgh* as a person who has attained the age of puberty according to Islamic Law.

Article 1573 of the *Mejelle* states that it is a condition that a person who makes confessions should have arrived at discretionary age. Therefore the confession of an infant is not good.

Both Sections of the *Islamic Evidence Act* Pakistan and Section 18 (1) (Federal Territory) provide that *iqrār* must be made a person who is Aqil and Baligh. While under Section 18 (2) of the same act states that the confession of a minor shall not be accepted. An exception of this rules that a minor who (is *Mumayyiz* and) has been authorised by his Wali or guardian to carry on business and deed with people, shall be regarded an adult for the purpose of the Sections above and the admission made by him shall be accepted as valid in respect of matters relating to business and dealing such as debt, trust, *mudārabah* etc. This is also stated in Section 18 (3) of the *Evidence Enactment of The Shariah Court* (Kelantan) 1991.

Whereas under the Malaysian law of evidence, persons of tender years are not competent to testify if they cannot understand the questions put to them or give rational answers. This is provided for under Section 118 of the *Evidence Act 1950*.

The Malaysian Evidence Act however is silent as to the age when a person is considered as tender age and unable to understand the

questions put to him or give rational answer. This is a question of law to be derived by the court upon an assessment of the person of tender age.

FREE PERSON

Under Islamic Law, an *iqrar* of a free man is valid and accepted for all matters. The *iqrar* of a slave is also valid for all matters including *hudud* and *qisas* if he has been given permission by his master to be involved in “*mu‘āmalat*”

This requirement is not stated in the Malaysian Evidence Act 1950. However under Article 6 of the Malaysian Constitution provides that no person shall be held in slavery. Thus, the requirement of this condition is not relevant under Malaysian Evidence act 1950.

FREE WILL AND CONSENT

Under Islamic law, an *iqrār* must be made voluntarily and consciously. *Iqrār* which is obtained by force or when the person is unconscious or asleep is invalid. Article 1575 of the *Majelle* provides:

“With regard to an admission, the consent of the person who makes the admission is a condition. Therefore an admission made by compulsion or force is not good”

Section 18 (5) of the *Islamic Evidence Act* (Federal Territory) 1989 and *Evidence Enactment of the Shariah Court* (Kelantan) 1991 state that an admission shall be made voluntarily without coercion. Section 18 (7) of the same Act provides that an admissions made under the influence of intoxicants shall not be accepted in cases liable to *hudūd* in accordance with Islamic law. This provision is also provided under Section 65 (2) and 65 (3) of the *Islamic Evidence Act* (Pakistan).

Under the Malaysian law of evidence, a confession must be free from any inducement, threat, promise or oppression. This was stated under Section 24 of the *Malaysian Evidence Act 1950*. This Sections also make it clear that the inducement, threat or promise should provide to the accused person grounds which would appear to him to be reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him. As to the issue of intoxication, Section 29 (1), of the same act provides that if the confession is relevant pursuant to Section 24, it does not become irrelevant merely because it was made when the accused was drunk, such a confession would be valid under the Malaysian law of evidence.

HEALTHY

Actually in Islamic law, unwell or sick is not a precondition. Thus, generally admissions made regarding corporeal property while in mortal sickness is acceptable if there is no suspicion. Section 19 of the *Islamic Evidence Act* (Federal Territory) 1989 and *Evidence Enactment of The Shariah Court* (Kelantan) provide that admission by a person of other person's right upon him at the time of death illness may be accepted according to Islamic Law

Admissions made by a person who has no heirs but made while in mortal sickness is a kind of bequest and is held good. Article 1598 of the *Majelle* provides:

“If someone after he has made, while in mortal sickness, an admission that existing corporeal property, or a debt, belongs to one of his heirs dies, it is dependent on the permissions of the other heirs. If they permit it, his admission is held good, if they do not permit it, his admission is held not good”

However, if someone who is in mortal sickness makes admission to a strange woman as to property, and afterwards he has married her and dies, the admissions is invalid. Article 1601 provides:

“The admission of a sickman, in a time of mortal sickness to a stranger i. e to someone who is not one of his heirs, although it embraces the whole of his property, whether existing corporeal property or a debt, is good.”

If a sickman makes an *iqrār* that he owes so much debt to so many parties, his *iqrār* is accepted and the debts are all treated as having the same status. If a sick person admits that he owes certain person debts that he secured (*al Dayn al Qawīyy*) and unsecured creditors debts that are not (*al Dayn al Da'īf*), the secured debtors shall be paid in precedence over unsecured debtors.

Under the Malaysian law of evidence, a person is not competent if he is prevented from understanding the question put to him or from giving rational answers to those questions by extreme old age or disease whether of body or mind (Section 118). However, if the person although of extreme old age or of disease can still understand the questions put to him or can give rational answers to those questions, then he is still competent. According to David Baker in his book *The Modern Law of Trust*, he says although such person is competent, the validity of a gift made by him through an admission which has not been perfected yet depends on the following four principles;

- i. The gift must have been made in contemplation of death;
- ii. The gifts must have been made under circumstances indicating that the subject matter of the gift is conditional on death;
- iii. The donor must have delivered the subject matter of the gift to the donee or alternatively the means or part of the means of getting at the subject matter; and
- iv. The property must be capable of being the subjects matter of such a gift (Baker 1983, 51-53).

NO SUSPICION

The person who makes an admission, under Islamic law must be clear and free from all doubts or suspicions. If there are doubts, the confessions cannot be accepted.

Under the Malaysian law of evidence, the validity of an admission or confession is not governed by general concepts like doubt and suspicion. It is determined by specific principles. Admission is valid if it can fall within any of the *Malaysian Evidence Act 1950*. A confession is valid if there is no inducement, threat, promise or oppression as provided in Section 24 of the same act.

INTENTIONALLY MADE

A person who makes an admission must be serious and intentionally under Islamic Law. An *iqrār* made in unseriously is invalid. The seriousness of *iqrār* can be traced known through the words used and situation in which the *iqrār* is made (Mahmud Saedon 1990, 49).

Whereas under Malaysian law of evidence, there is no specific provision about this requirement. However, under Section 118 of the *Malaysian Evidence Act 1950*, that "giving rational answers to those questions" can be inferred that such an admission must be made seriously

A PERSON WHO MAKES AN *IQRĀR* MUST BE IDENTIFIED

Islam lays down a condition that the person who makes the *iqrār* and the matter which is the subject of the *iqrār* must be identified. This condition is important in order to ensure that the person can be subjected to claim.

There is also no specific provision made under the *Malaysian Evidence Act 1950* about this condition. However, under Section 118 of the said act, that "understanding the question put to them" can be inferred that the person who makes the confession must be identified.

A PERSON WHO MAKES AN ADMISSION SHALL BE A PERSON WHO IS NOT PROHIBITED FROM ADMINISTERING HIS PROPERTY (*MAHJUR ALAYH*)

In Islamic law, if a person who makes an admission shall be a person who is not prohibited to administer his property, then his admission is invalid if the matter which is the subject of the *iqrār* is about a property (Mugniah 1966, 161). This requirement is also stated under Section 18 (6) of the *Islamic Evidence Act* (Federal Territory) 1989 and the *Evidence Enactment of the Shariah Court* (Kelantan) 1991.

A PERSON WHO MAKES AN *IQRAR* MUST UNDERSTAND THE CONSEQUENCE OF HIS *IQRAR*

The last condition is that person who makes an *iqrār* must be told the consequence of his *iqrār*. If he is not being told, then the confession made by him is invalid. This requirement is the same with Common law where an accused is not to be taken at his words when he pleads guilty, unless the plea is expressed in unmistakable terms with full appreciation of the essential ingredients of the offence (Heng Kim Khoo v P P [1972] 1 MLJ 27, 31). The late Sharma J. considered this proposition as a rule of law, to be applied with greater stringency when the offence charged is complicated or serious. Section 173 (b) of the Criminal Procedure Code provides that before a plea of guilty is recorded, the court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit, without qualification, the offence alleged against him.

THE CONDITION FOR THE PERSON IN WHOSE FAVOUR THE CONFESSION IS MADE (*MUQARRUN LAHU*)

- i. The person in whose favour the *iqrār* is made must present at the time of the submission or still alive at the time and passed away later. If the person to receive the *iqrār* is not exist, as such, the *iqrār* is null and void.
- ii. The person also must be eligible to accept the aforesaid of *iqrār*. If it is not eligible, the *iqrār* is null and void.
- iii. The person in whose favour the admission is made must be identified. If two persons have been granted to receive the *iqrār* of certain properties without giving the proportionate between the two persons, it has been considered as null and void. The appointed judge has no power to cancel the *iqrār* but to impose the eligibility of *iqrār*.
- iv. The person in whose favour the *iqrār* is made must be the person who have a reasonable ground in order to get the subject matter of *iqrār* (al-Anbāmī 1913, 81).

THE CONDITION OF THE MATTER WHICH IS THE
SUBJECT OF *IQRĀR* (*MUQARRUN BIHI*)

- i. The matter which is the subject of the *iqrār* must be known (identified). This requirement is important in order to ensure that matter/thing can be claimed by the claimant.
- ii. The terms of *iqrār* must be said orally by the person made the *iqrār*

THE CONDITION FOR THE TERM OF “*SIGHAH*”

There is only one condition for “*sighah*” to be implemented by the parties i.e. consummation (al-Anbānī 1913, 81).

CONCLUSION

From the above discussion, we may conclude that in Islamic law of evidence, there is no special distinction between admission and confession. The both are the same. That was the case of Islamic Evidence Act in Pakistan, Kelantan and even Federal Territory, only “admission” is mentioned. The word “*Iqrār*” or “*Ictirāf*” is used instead of admission whether in criminal or civil cases.

Pertaining to the conditions of Confessions, the Malaysian Evidence Act, 1950 does not emphasize on too many conditions as required in *Shari'ah*. The most crucial one is the ability of a person who makes an admission to understand the questions put to him or give rational answers to those questions. However the conditions of *Iqrār* under *Shari'ah* are almost similar to the Civil law. Notwithstanding for the both ideas may be the same, there are material differences in relation to the scope, effect and some conditions of a valid *iqrār* as shown in the discussion above.

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