Hearing Testimony in English Law: Comparative Study with Islamic Sharia

Wael M. Jalaluldeen

Department of Public Administration, Cihan University-Erbil,
Kurdistan Region, Iraq

***Abstract*—This research aims to compare the hearing testimony of English law with hearing testimony in Islamic Sharia. The article uses comparative analytical descriptive method by comparing English law as a basis with Islamic law. The data were collected from secondary data extracted from books, scientific journal, and websites. The result showed that the testimony on hearing is not in place of the incident to be proven, but rather the opinion of the people in this incident. Furthermore, English law defines several types of testimony on hearing, the most important of which are: Oral testimony on hearing, certificate written on the auscultation, and certification of tolerance through a specific behavior. The research provide some recommendations including the adoption of the testimony of tolerance in the Iraqi Evidence Law, in the manner of Islamic Sharia and by proposing a legal article as: It is permissible to accept the testimony of what people hear, in cases of lineage, death, and marriage, and in what the witness did not suffer. Finally, the witness's testimony is accepted if he is told by two just men, or a man and two women, who he trusts.**

***Keywords*—Auditory testimony, Auscultation, English law, Hearing, Islamic Sharia, Testimony.**

I. Introduction

This research deals with the study of the evidence base on hearing testimony, which is a testimony of what people hear without its owner narrating about a specific person or about the incident in particular. The basic principle in testimony is that it is not permissible for a witness to testify about something that someone has not seen by eye or by hearing himself. And the hearing testimony may sometimes be mixed with the testimony of hearing and the testimony of public fame. English law defines several types of testimony to inclusion. The study also emphasized the cases in which testimony is taken into account in Islamic Sharia and English law and the opinions of the Islamic jurisprudence schools and Muslim jurists regarding the exceptions to the non-acceptance of testimony on hearing and specifying them, as is the case with the English law, which also specified the exceptions to this rule.

A. Research Objectives

The main objective of this study was to clarify the differences between English laws and Islamic Shria in regard to hearing testimony.

B. Research Importance

The importance of the research lies in the necessity of ascertaining the cases in which the court may adopt the rule of testimony on hearing and identifying it, and knowing the exceptions contained in the prohibition of adopting it, especially in the field or field of pleadings and civil procedures.

C. Methodology

In this study, the researcher used the comparative analytical descriptive method based on secondary data. The data were collected from books, scientific journals, and websites.

II. Introducing the Testimony of Hearing

The testimony on hearing is a type of testimony that does not replace the fact that is required to be proven in particular, but rather focuses on what people hear, or it is replaced by the popular opinion of the masses of people regarding this incident. It is the news of a group of people whose news is known. The important thing is that it is unreasonable for the witnesses to agree on mutilator on lying (Bakr, 2007) while the audio testimony focuses on the fact that is intended to be proven in person. Therefore, we devote this topic to studying the nature of testimony on hearing and dealing with its definition and the distinction between it and other types of testimony that are close to it in terms of legal nature. Then we address the types of testimony on hearing in English law, as follows:

Cihan University-Erbil journal of Humanities and Social Sciences (CUEJHSS)
Volume VII No. 1 (2023) 6 pages
DOI: 10.24086/cuejhss.vol7n1y2023.pp 68-73
Received 26 September 2022; Accepted 22 January 2023; Regular research paper: Published: 10 March 2023
*Corresponding author's e-mail: wael.moayed@cihanuniversity.edu.iq

A. Definition of Testimony on Auscultation

According to English law testimony on auscultation is defined as evidence that is offered by a witness of which they do not have direct knowledge but, rather, their testimony is based on what others have said to them (Graham, 2006).

Another jurisprudence defined it as the testimony that is not in place of the event to be proven, but rather the opinion of people in this event and what prevailed among the general public or their public regarding it.

And the judge (Kingsmill Moore) points out in the case law (Cullen V. Clarke) that it is necessary to underscore the notion that there is no general rule of evidence that a witness cannot give evidence in relation to the statement of another person who has not been certified as a witness by the court.

But there is a general rule that has many exceptions, according to which the evidence of certain statements being made is not acceptable to prove the truth of the facts confirmed by this evidence. The reasons behind this are that the value of these sayings or words cannot be ascertained by cross-examination and they do not have the legal value or legal validity of the oath or oath. This rule is known in the English law of evidence as the counter rule of the evidence of testimony on hearing.

In the aforementioned Cullen case, the plaintiff had obtained material benefits as a result of his partial disability under the provisions of the Workmen's Compensation Act 1934, which was superseded by the Social welfare consolidation Act 2005 (Williams, 1963).

This worker demanded that his condition be treated as complete disability. Through his claim, he tried to rely or rely on statements, sayings or words made by employers regarding the reasons for their refusal to hire him. The Court decided that statements made outside the court's walls are not admissible under the provisions of the rule of testimony on hearing because it was clear that the plaintiff was he tries to rely on the truth of what was contained in the data that supported his claim that he obtained the material benefits arising from a state of total disability and not partial disability. Judge (Moore) emphasized that testimony on hearing is a general rule that the testimony given by a witness regarding statements, words, statements or documents provided by a person or arising from a person who was not appointed by the court as a witness, then this testimony is not acceptable if it is given to establish the facts or the facts confirmed by this certificate (McGrath, 2005).

B. Distinguishing between Testimony on Hearing and Other Cases of Testimony

We have previously mentioned that the testimony on listening is a testimony of what people hear and does not focus on the incident that is intended to be proven in particular, but on the common opinion among the masses of people regarding this incident and what has been rumored among the masses about it. Hearing and testimony of public fame and as follows through the following two subcategories:

Distinguishing between testimony on hearing and auditory testimony

Hearing testimony is indirect testimony and it is also called second-degree testimony, so direct testimony or what is called the original testimony or testimony of the first degree is the predominant form of testimony, as the witness is usually called to the Judicial Council to say what he saw or heard of the facts related to the case. As for the auditory testimony, in it the witness testifies to what he heard a narration from others, and then the testimony was auditory, and thus the auditory testimony differs from the original testimony. In the original testimony the witness testifies that he saw this event with his own eyes if it was from what he saw or heard it with his permission if it was from what he hears.

As for the Personal Status Law No. (188) of 1959, in Article (44) of it, the testimony of the hearing in proof of the separation was taken into account, and it stipulated that (it is permissible to prove the reasons for the separation by all means of proof, including the testimonies received on the hearing, if they are frequent, and its assessment is back to the court with the exception of cases where the law specifies certain means to prove them.

Distinguishing between witnessing to be heard and bearing witness to public fame

Certification of public prominence is not a certification in the strict sense of the word. Rather, it is a written paper that is edited in front of an official body that records or lists certain facts and witnesses who know these facts through public fame (Al-Sanhoury, 2000). This case assumes the presence of a public official, a notary, or a judge who presents witnesses before him with the information they possess regarding the incident to be proven and that they must have personal knowledge of this incident, through public fame. It is this personal knowledge that represents the strength of evidence or authenticity on which this testimony is based. And public fame is what makes it a collective testimony in the eyes of the judiciary. As it is clear, this case also differs from the testimony by hearing in that the testimony by hearing does not focus on the incident that is intended to be proven. What is common among the public is that the testimony of public fame is witnessed by witnesses who know the facts through personal knowledge.

C. Types of Certificate of Hearing in English Law

As we mentioned earlier that the testimony of conciliation in English law represents statements about facts that people hear or spread among them outside the court (out of court statement), but it is given before the court to prove a certain fact, in other words, it represents a statement made by someone other than the witness assigned to present it before the court (Kelly, 2006).

(Hearsay is evidence of a statement that was made other than by a witness while testifying at the hearing in question and that is offered to prove the truth of the matter stated). On this basis, the English law defines the following types of testimony of hearing:

Certificate of oral auscultation

Statements, words, or spoken words represent one of the types of the English listening testimony base, as the witness transmits or gives what people hear, or what is familiar, or what is common among the public, that is, the audience of

people. He saw it with his own eyes or heard it with his permission at the place of the event or the place where the incident occurred. The witness does not narrate about a specific person or about a specific incident in particular, but rather testifies to what people have heard about this incident and what was rumored among the general public about its occurrence. (Out of court oral statement). Which was given by a person without legal capacity as an eyewitness or direct witness was inadmissible evidence when it was presented to establish the fact or content of this fact. In the same direction went the judicial precedent (Teper V.R), according to which the body formed in the Privy Council ruled (Graham, 2006).

Testimony on written hearing

It is well established that certification of hearing applies not only to oral statements, but also to written statements, which include a broad spectrum or multiple types of data, including letters, medical reports, medical records, business records, and public records such as records of births and deaths (in the case-law known as) Hughes V. Staunton regarding the allegation of a physician's negligence or negligence in an operation, the Court has delivered Or it has taken it for granted that the existence of a large number of medical records and reports related to the issues in dispute cannot be accepted because the persons from whom these documents, records or reports were issued, or who edited or organized them are not present in the court arena to be subject to the procedures of interrogation before the court, and in the absence of The agreement is that, in general, documentary records are not acceptable if they are included to prove their contents or contents.

Evidence for a certain behavior

In this third type of testimony of hearing, it is possible to identify many forms such as signs, insinuations, drawings, charts, maps and photographs, which represent data that can be identified or their features can be identified as representing forms of testimony of hearing. A side of jurisprudence holds that there is less certainty about whether the hearsay rule can be applied to non-verbal conducts or statements which the person making them does not intend to use as evidence. The two scholars (Lederman) and (Bryant) refer to the common view that the behavior of a person whose purpose is to assert or assert can be categorized within the list of negatives or disadvantages suffered by the evidence base with testimony on tolerance.

III. Cases in which Testimony of Conciliation is Taken Into Account in Islamic Sharia and English Law

We mentioned previously that the testimony on listening does not narrate the witness by quoting a specific person or a specific incident, but rather testifies to what is common among people and what is transmitted by tongues, that is, what people hear about this incident or what is popular among the masses about it, and it is not subject to investigation and it is not acceptable except In exceptional cases for that, we will try, through this topic, to study the cases in which it is permissible to take into account the testimony of tolerance in both Islamic Sharia and English law, as follows, through the following two requirements:

A. The First Requirement

Cases in which it is permissible to take the testimony of conciliation in Islamic law: Since it is difficult to investigate the face of truth in this type of testimony (Sultan, 2005), most schools of Islamic jurisprudence have unanimously agreed that this type of testimony is not accepted as a general principle and that it is permissible as an exception in certain cases, including testimony by lineage, death, marriage by consummation, the origin and conditions of the endowment, dowry, the guardianship of the judge, and manumission and loyalty. We will study the most important of these cases or exceptions to the non-acceptance of testimony on hearing, which is the testimony by lineage, death, marriage, and the guardianship of the judge, through the following branches:

Certification of Symmetry

There are several opinions of Islamic jurisprudents with regard to the testimony of genealogy. Some of the jurists of the Hanafi madhhab (Ibn Juza', 1935) have stated that one of the conditions for bearing the testimony is that the endurance is by examining the witness by himself and not by someone else, except in specific things in which it is permissible to bear with hearing from people based on his saying, peace and blessings be upon him (for the witness, if you know like the sun, testify, and otherwise pray). It is clear from this that it is not possible to know the knowledge of certainty except by examining it from the person himself, so the testimony is not released by listening except in specific things, including lineage, as it is one of the cases in which testimony is carried by hearing from people, even if the person does not witness that himself. Because these things are based on fame, so fame takes the place of inspection. It is clear from the position of Hanafi jurisprudence that testimony is not accepted by listening except in specific issues, the famous five of which are testimony by lineage, death, marriage, consummation, and the guardianship of a judge. Imam Abu Hanifa (may God have mercy on him) permitted the martyrdom by listening in places including lineage. And in his opinion, the witness does not testify until he hears that from a group who does not imagine their complicity in lying, and he becomes famous and is extensive and the news is frequent. If two men or a man and two women tell him, the testimony is not permissible for him unless he enters the limit of frequency and it falls in his heart the truth of the news. Likewise, according to Imam Muhammad ibn al-Hasan al-Shaibani (may God have mercy on him) that the basic principle is that this is well-known and elaborated and the news spread by it or transmitted without collusion, because it is established by mutawatir and perceptible by sight and hearing. If two men or a man and two women tell him, it is not permissible for him to testify unless he enters the limit of mutawatir, and if two just men or a man and two women tell him that this is the son of so-and-so or the wife of so-and-so, it is not permissible for him to testify about that, and the judge may pass judgment on the testimony of two

witnesses without inspection, but rather with their news. The basic principle is that it is not permissible for a witness to testify about something that he has not seen by eye or by hearing himself. Or it is the approval of his reason, and the face in it is that they are matters that are concerned with examining their causes by special people who are not aware of them except them, and they may be related to provisions that remain at the end of centuries, and they are usually associated with what they are famous for. Did not accept that led to embarrassment and disruption of provisions and embarrassment is legally motivated (Al-Kasani, 1910). It is not permissible for a witness to testify by listening to him unless what he testifies about is a frequent matter that he heard from a group whose complicity in lying is not imaginable, and it became well-known and extensive and the news was frequent with him and his truthfulness fell in his heart because what is proven by mutawatir and tangible, whether he tells him about it - and without martyrdom - is two just men or a man and two just women Thus, he obtains a kind of facilitating knowledge in the right of what is witnessed, and it ranks among them what benefits knowledge, such as the testimony of mutawatir, and some of them benefit a strong conjecture that approaches definitiveness, such as the testimony of lengthening.

Testimony to death

As for the testimony of listening to death, some of the jurists of the Hanafi madhhab (Selim, 2009) have held that the testimony by hearing is accepted in death as well. If a man hears from the people that they say that So-and-so has died or sees them doing to him what he does to the dead, he can testify, even if he does not see death. The basis of that is that it is based on fame and fame in death faster than in marriage and lineage, so the number is stipulated in marriage and lineage, not in death. But he should testify in all of that to the steadfastness and definitiveness, without the detail and the restriction, by saying that I did not witness that, but I heard from so-and-so.

Others of the Hanafi jurists (Al-Kasani, 1910) also went to the view that it is not permissible for a witness to testify about something that he did not see, that is, he did not confirm it from the point of view of visual inspection or hearing, except in relation to lineage, death, marriage, consummation and the guardianship of the judge. It is trusted by two just men or a man and two women, and it is stipulated that the report be in the wording of the testimony. As for death, one is sufficient, and it is not required to pronounce the testimony or to continually report that. It is desirable that the habit is ongoing, because there is no way to know these things other than the news. Death is usually not attended by only relatives, and if they see the funeral and burial, they judge the death of so-and-so.

Testimony to indulgence in marriage

One of the things that the prevailing opinion in Islamic jurisprudence has gone to is the permissibility of witnessing to tolerance in it is marriage. Marriage is not attended by everyone, but they tell each other that So-and-so married So-and-so, and so-and-so is consummated, only known by signs and signs. Some of the jurists of the Maliki school (Ibn Juza', 1935) see that the issues in which it is permissible to accept the testimony by listening are twenty, namely: marriage, breastfeeding, pregnancy, birth, death, lineage, loyalty, freedom, imprisonment, harm, the authority of the judge and his dismissal, the rationalization of the foolish and the orphan, the will that so-and-so bequeaths, obsolete alms, obsolete drinks, division, Islam, justice and injury. If a man hears from people or sees a man entering a woman and hears from people that So-and-so is the wife of So-and-so, or he sees a man and a woman living in a house and each one of them relaxes to the other the husbands are relaxed, he can testify, even if he does not see the marriage contract, because the testimony by listening is to testify about what he did not see. Imam Abu Hanifa (may God have mercy on him), it is not permissible for a witness to testify about the marriage by listening to him unless he witnessed a true testimony, which is what is mutilator.

Testimony to hear the mandate of the judge

Some Muslim jurists are of the view, and as we mentioned earlier, that it is not permissible for a witness to testify about something he did not see, that is, he was not sure of it by visual inspection or hearing, except in certain cases such as lineage, death and marriage, as well as the authority of a judge. The declaration of the wording of the testimony is the authority of the sultan to the judge, and only the elite attend it, and the people attend his sitting and his addressing the rulings.

If a man from among the people hears that So-and-so is the judge of this town, he is able to testify, even if he does not see the imam's tradition of the judge of this town. Testifying by listening, and as we have indicated, is that he testifies to what he has not seen, and acting on what is in the judges' offices is acting on what he has not seen. The basis of that is also the approval and the face of approval is that the habit is going on with this and that there is no way to know such things except the news (Ibn Juza', 1935).

B. Cases in Which Testimony of Hearing is taken into Account in English Law

We have previously shown that the rule of testimony on hearing in English law is an exception to the general principle in the law of evidence, which states that the judge accepts all evidence related to the subject of the right, and it is related to testimony by a witness and with regard to statements mentioned or made by a person who was not appointed by the court as a witness If the testimony was given to prove a certain right or fact. However, this same rule has several exceptions in the English common law, and we will study these exceptions in the following sections:

Public documents

During the 19th century, English courts held that most public documents must be accepted as evidence regarding facts and facts and their contents, which constituted an important exception to the rule of testimony on conciliation. The basis of this exception is the element of reliability and appropriateness, and there is a famous judicial precedent in this regard, which is the decision issued by the English

House of Lords in the case (Sturla v. Freccia), according to which there was a view to consider the document issued by a public official as an exception if it was intended to empower the public from using it. However, the decision of the House of Lords did not consider the relevant document a public document because it was a confidential report issued by the committee appointed by the public authority in Italy to decide a person's fitness or capacity to hold a public office, and the best examples of public documents are birth, death and marriage certificates. It is likely that the public servant who edited it has died and is no longer present at the present time or is alive, but he is unable to remember the facts or facts included in it. Third branch.

Certificate presented in previous sessions

A statement made by a person when he is a witness, whether his testimony is oral or written. This statement is acceptable to the court in its subsequent sessions between the parties themselves and on the same subject, if the circumstances do not allow the witness to appear before the court to give his testimony. Which constitutes another exception to the rule of testimony on hearing in English law, because the conditions under which the statement was made no longer exist, which calls for concern about the application of the rule of testimony on hearing, which is known as the requirement of unavailability. This is as if the witness has died or may be suffering from a severe disease that prevents him from appearing. It should be noted that the Legal Reform Commission in Britain recommended accepting the rule of testimony on hearing in the framework of civil procedures in some cases, including:

1. When the person making the statement is not present as a witness for the following reasons: To be deceased. to be ill. Not found. To be outside the court's territorial jurisdiction, which makes it difficult to obtain his testimony.
2. When the request from the person making the statement to be a witness leads to an inappropriate delay in the judicial procedures or causes huge expenses.
3. When the court is convinced of the futility or necessity of cross-examination or cross-examination of the witness (Commission of Law Reform, 2010).

IV. Conclusions

The study reached the following results:

1. The testimony on hearing is not in place of the incident to be proven, but rather the opinion of the people in this incident and what prevailed among the common people in this incident and what prevailed among the common people or their public regarding it.
2. English law defines several types of testimony on hearing, the most important of which are:
   Oral testimony on hearing.
   - Certificate written on the auscultation
   - Certification of tolerance through a specific behavior.
3. Most of the schools of Islamic jurisprudence are unanimously agreed on the non-acceptability of the testimony over listening as a general principle and the permissibility of its acceptance as an exception in certain cases, including testimony by lineage, death, marriage, entry, the origin of the endowment, the dowry, the guardianship of the judge, emancipation and loyalty. Twenty, namely: Marriage, breast-feeding, pregnancy, birth, death, lineage, loyalty, freedom, imprisonment, harm, the assumption of the judge, his dismissal, the rationalization of the foolish and the orphan, the bequest that so-and-so bequeaths, obsolete alms, obsolete drinks, division, Islam, justice, and injury.
4. The English law also mentioned many exceptions according to which it is permissible to take the testimony of conciliation, the most important of which is recognition or acknowledgment. And public documents and testimony presented at previous sessions.

The study provides the following recommendations:

1. Adoption of the testimony of tolerance in the Iraqi Evidence Law, in the manner of Islamic Sharia and by proposing a legal article as follows:
   - It is permissible to accept the testimony of what people hear, in cases of lineage, death, and marriage, and in what the witness did not suffer
   - -The witness's testimony is accepted if he is told by two just men, or a man and two women, who he trusts.
2. Adoption of testimony on hearing in the Iraqi Evidence Law, similar to the English law, and with regard to testimony given in previous sessions of the court, and by proposing the following legal article (The court may take testimony on hearing in its subsequent sessions).

If the circumstances do not allow the witness to appear before the court to give his testimony, in the following cases:

- If the witness is dead
- If the witness is seriously ill
- If the court is unable to find the witness.

V. Acknowledgment

The custom or acknowledgment is one of the most important and oldest exceptions to the hearsay rule in English law. The report of the Law Reform Commission indicates that there is a difference between the terms acknowledgment and recognition in terms of the exact meaning of the word, but they mean the same meaning in terms of the legal aspect. In civil cases, the confession is a statement that is presented as evidence and often contradicts the claim of one of the parties to the case, from which the statement was issued (Graham, 2006). In criminal cases, the confession or admission is usually contrary to or contrary to the interest of the accused and is sufficient to convict him. In civil cases, the confession or acknowledgment (or what is known as statements contrary to interest) is usually accepted by the court, as the judge keeps in mind the fact that it is often formed in a neutral environment, but in criminal trials it is often not viewed with satisfaction. Because it arises through police questioning. In English common law customary law

(and subsequent legislation) many legal rules had been developed which were to confer admissibility or admissibility on recognition or acknowledgment, Hence, it seems that the words uttered by a person are at the same time a reality and a means of communication, and that human behavior is closely related to these words to the extent that the meaning or importance of the act cannot be understood without these words, and that fragmenting the words from the act or event may hinder reaching the truth. It should be noted that the proof by testimony on the hearing through oral or written statements made by a person who was not a witness in the case, but that a request was submitted to the court to accept it as evidence supporting the truth or truth of these statements (Oxford dictionary of Law), the testimony on the hearing is not acceptable. However, in the field of pleadings or civil procedures, the English Civil Evidence Act of 1995 abolished the inadmissibility of testimony on hearing and gave the court the discretion to use it and resort to it.

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