

Islamic Law and Broom's Legal Maxims of Evidence: A comparative study in the context of present era

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Abstract

In the system of justice, the settlement of cases and disputes is based on the 'Law of Witness' in the same way that the backbone of a human body provides support. Because the judgment of civil and criminal cases is based on the testimony of witnesses, if the Law of Witness is weak in any system of justice, then the demands of justice are either not fulfilled or are complicated, leading to a lengthy process that causes significant financial and emotional harm to both parties. Therefore, it is essential that the law of any country reflects its fundamental principles and beliefs. If this is not the case, the citizens of that country will become disconnected from their fundamental principles and their lives will be in conflict with them. This situation is extremely disastrous for any country. This comparative study examines the principles of evidence in Islamic law and Broom's legal maxims of evidence, with a focus on their relevance in the present era. Islamic law, based on the Quran and the Hadith, provides a comprehensive framework for gathering and evaluating evidence in legal proceedings. Broom's legal maxims, on the other hand, are a set of principles that have been developed over time to guide the evaluation of evidence in common law systems. Despite their differences, both systems share a common goal of ensuring justice and fairness in the administration of law. The study begins by reviewing the principles of evidence in Islamic law, including the concept of "hujjah" (evidence) and the importance of "shahada" (witness testimony). It also examines Broom's legal maxims, including the principles of "nemo audiatur propria vocem" (no one should be heard on their own behalf) and "nemo judicatur propria causa" (no one should be judged on their own behalf). The study then conducts a comparative analysis of the two systems, highlighting areas of convergence and divergence. It also explores the implications of these differences for the administration of justice in different legal systems.

In conclusion, this study demonstrates that both Islamic law and Broom's legal maxims of evidence

share a commitment to ensuring justice and fairness in the administration of law. However, their differences in approach and emphasis reflect fundamental differences in their underlying philosophical and theological frameworks. As such, this study provides valuable insights for lawyers, scholars, and policymakers seeking to understand and navigate the complex issues surrounding evidence and justice in different legal systems.

Keywords: *Islamic Law, Broom's legal maxims, Evidence, Present Era*

Introduction

The concept of evidence is a fundamental aspect of any legal system, and Islamic Law is no exception. In Islamic Law, the admissibility of evidence is governed by the principles of jurisprudence, which are based on the Quran, the Hadith, and the consensus of the Muslim scholars. One of the most important principles of evidence in Islamic Law is the principle of "al-daruratu-tahri" (necessity is a justification), which allows for the use of evidence that may not be normally admissible in order to achieve a just outcome. In contrast, Western legal systems, such as those based on common law, have their own set of rules and principles for admissible evidence. One of the most well-known sets of rules is Broom's legal maxims, which were first published in the 19th century. These maxims provide a framework for evaluating the admissibility of evidence and have been widely adopted in many jurisdictions around the world. Despite these differences, both Islamic Law and Broom's legal maxims share a common goal: to ensure that justice is served through the use of reliable and trustworthy evidence. In this context, it is useful to examine the similarities and differences between Islamic Law and Broom's legal maxims in order to better understand the principles and rules that govern the admissibility of evidence in these two systems. This comparative study will explore the principles and rules governing the admissibility of evidence in Islamic Law and Broom's legal maxims, with a focus on their relevance and applicability in the present era. The study will also examine the challenges and limitations faced by both systems in ensuring that justice is served through the use of reliable and trustworthy evidence. Some possible subtopics that could be explored in this study include:

The role of evidence in Islamic Law and its relationship to other legal principles

The application of Broom's legal maxims in Western legal systems

The challenges and limitations faced by Islamic Law and Broom's legal maxims in ensuring that justice is served through the use of reliable and trustworthy evidence
The impact of globalization and technological advancements on the principles and rules governing the admissibility of evidence in both systems
The potential for convergence between Islamic Law and Broom's legal maxims in terms of their principles and rules governing the admissibility of evidence
By exploring these topics, this study aims to provide a comprehensive understanding of the principles and rules governing the admissibility of evidence in Islamic Law and Broom's legal maxims, as well as their relevance and applicability in the present era.

Problem Statement:

In the context of the present era, the application of Islamic law (Shari'ah) in legal proceedings is often met with challenges and controversies. Meanwhile, Broom's legal maxims of evidence, a well-established framework for evaluating evidence in common law systems; have not been extensively applied in Islamic law. This raises questions about the compatibility and effectiveness of these two frameworks in resolving disputes in a modern context. This study aims to investigate the relationship between Islamic law and Broom's legal maxims of evidence, with a focus on their potential applications in resolving disputes in the present era.

Research Questions:

- What are the fundamental principles and guidelines governing evidence in Islamic law, and how do they compare with Broom's legal maxims of evidence?
- How can Islamic law and Broom's legal maxims of evidence be harmonized to facilitate effective dispute resolution in the present era?
- What are the potential benefits and limitations of applying Broom's legal maxims of evidence in Islamic law?

Objectives:

- To analyze the principles and guidelines governing evidence in Islamic law and Broom's legal maxims of evidence.
- To identify areas of convergence and divergence between Islamic law and Broom's legal maxims of evidence
- To propose a framework for integrating Islamic law and Broom's legal maxims of evidence to facilitate effective dispute resolution in the present era.

Methodology:

This study will employ a comparative analysis approach, combining both qualitative and quantitative methods.

The research will involve:

- ✓ A thorough review of relevant literature on Islamic law, Broom's legal maxims of evidence, and their applications
- ✓ A critical analysis of primary sources, including Qura'nic verses, Hadiths, and Fiqh texts, to understand the principles and guidelines governing evidence in Islamic law.
- ✓ A comparative analysis of the principles and guidelines governing evidence in Broom's legal maxims of evidence
- ✓ A case study approach to illustrate the application of Islamic law and Broom's legal maxims of evidence in resolving disputes

The Authors Contributed work:

The authors, who have contributed to this article, where *Dr. Zainab Amin* as Principle author has reviewed the material in a comparative and critical manner, have presented their work. *Dr. Muhamamd Nawaz* has

organized the references and material in a cohesive manner as well as translated the content into English from its original sources. *Dr. Anisa Rehman* has compiled and researched the principles of jurisprudence and the Broom's Legal Maxims.

Significance:

This study aims to contribute to a better understanding of the relationship between Islamic law and Broom's legal maxims of evidence, which is essential for effective dispute resolution in modern societies. The findings will be useful for judges, lawyers, scholars, and policymakers seeking to develop more effective and harmonious approaches to resolving disputes in diverse legal systems.

By exploring the intersection of Islamic law and Broom's legal maxims of evidence, this study hopes to shed light on the potential benefits and limitations of integrating these two frameworks, ultimately contributing to the development of more effective and inclusive dispute resolution mechanisms.

Literature Review

The book '*Principle of Evidence in Islam*' has shown Prof. Dr. *Anwarullah's* vast knowledge on Sharia law. In this book, he had divided the chapter into seven chapters. However, the profound message of this book is how the author had given a thorough explanation on the six sources of evidence in the Islamic law through these seven chapters. The six sources – as mentioned in the book – are testimony or *shahadah*, admission and confession or *iqrar*, circumstantial evidence or *qarain*, evidence by experts, oath and also knowledge of the *Qazi*. By providing the explanation of these contents through the opinions of the Muslim scholars and jurists, the author as well made a vivid distinction between of what stands by Islamic law and common law. In the introduction of the book, *Anwarullah* also pointed out the importance of utilizing the valuable works of Islamic jurists. Hence, according to him, it is crucial for the modern books of Islamic law to be improvised and rearranged in order to be useful for the present day requirements. In a point, *Anwarullah* made an attempt to arrange the information on law according to its specific fields or cases as a means to systemize the pattern of the knowledge

BEGUM ASMA Siddiquas' Ph.D. desertion under Title: "*DEVELOPMENT OF THE LAW OF EVIDENCE IN PAKISTAN AND BANGLADESH WITH SPECIAL REFERENCE TO WITNESS TESTIMONY*" The thesis aims to look into the law of witness testimony in Pakistan and Bangladesh. In the last decade Pakistan has launched an Islamization program affecting many areas of life including witness testimony. The changes brought about in Pakistan in the area of witness testimony through recent legislation from 1979 onwards are discussed, and compared with the status quo maintained in the same area by Bangladesh, formerly East Pakistan, for more than a century. The case law of both countries is used as the primary source in understanding the development of the law of witness testimony. The finding of the thesis is that although in theory Pakistan has moved away from the century old law, it in fact still follows in practice the old law in a new framework of Islamic law.

The book "*Islam-Ka-Qanoon-e-Shahadat*" by *Muhammad Muteen Hashami* provides comprehensive details

on the Islamic law of evidence and includes contemporary documentation as well. It serves as an encyclopedia of Islamic law of evidence, In Urdu. *QANUN-E-SHAHADAT ORDER, 1984*, (Bhut 2019) Procedural Reforms: *The Qanoon-i-Shahadat* (Anon n.d.-e) “*The Law of Evidence in the Islamic Criminal Justice System: A Critical Appraisal in the Light of Modern Technology*” by Souha Korbatieh, (M Res) thesis Macquarie Law School Macquarie University Sydney, 2009. This thesis Sharia has continuously developed since Islam’s inception in the seventh century CE. This thesis focuses on hudud criminal law evidentiary requirements, particularly adultery, and critically assesses the impact of modern technology on these laws. Many modern Muslim states implementing sharia or a part of it are struggling to incorporate technological advancements into their criminal evidence rules. In assessing the desirability of updating sharia proofs, this thesis establishes modern technology can be comfortably incorporated as circumstantial proof in sharia under the legal concept of ijihad. Such proof, however, means it cannot be used to prove *hudud* crimes, such as adultery, which would contravene *maqasid* of sharia and *hudud*, including contravening sharia privacy principles. Instead, modern technology, such as DNA testing, should be used as paternity verification at a wife’s request to establish her innocence in li’an cases or to prove paternity under family laws to provide welfare rights to children. In a similar vein, CCTV footage may beneficially be treated as admissible evidence in establishing truth and justice in Islamic criminal law. This thesis concludes by (a) finding that, while modern technology can be incorporated within sharia evidence laws, there are restrictions on its use due to the unique aspects of hudud and its sharia objectives; and (b) offering pragmatic recommendations to integrate modern technology in the sharia criminal law of evidence.

In addition to this, there are many articles, but a comparative analysis of legal principles has not been conducted. However, references are provided at certain points. The focus of the present article is on the unique subject of testimony in relation to the Western legal scholar and critic, Herbert Broom.

1. Research Design

- **Type:** The study employed a qualitative research design, focusing on comparative analysis.
- **Approach:** A doctrinal approach was taken, examining both primary sources (Islamic legal texts and Western legal maxims) and secondary sources (scholarly articles, books, and commentaries).

2. Literature Review

- **Objective:** A comprehensive review of existing literature on Islamic law of evidence and Broom’s legal maxims was conducted.
- **Sources:** Classical Islamic legal texts (Quran, Hadith, Fiqh books) and Broom's writings, along with contemporary studies on the law of evidence in both Islamic and Western contexts, were identified and reviewed.

3. Data Collection

- **Primary Sources:**
 - Islamic legal sources such as Quranic verses, Hadith collections, and classical Fiqh literature were used.
 - Herbert Broom's legal maxims, especially those related to the law of evidence, were analyzed.
- **Secondary Sources:**
 - Scholarly articles, books, and legal commentaries on both Islamic law and Western legal systems were reviewed.
 - Comparative studies between Islamic law and Western law, focusing on evidence and legal principles, were explored.

4. Comparative Analysis

- **Thematic Comparison:**
 - Key principles of evidence in Islamic law were identified and categorized.
 - Relevant legal maxims from Broom's work were extracted and categorized.
- **Point-by-Point Comparison:**
 - The principles of evidence in Islamic law were compared with Broom's legal maxims.
 - Similarities, differences, and unique aspects of both legal systems were highlighted.
- **Contemporary Relevance:**
 - The applicability of both sets of principles in the modern context was analyzed.
 - The strengths and limitations of Islamic and Western approaches to evidence in contemporary legal scenarios were assessed.

5. Critical Analysis

- **Evaluation:**
 - The applicability of Broom's legal maxims within Islamic jurisprudence was critically evaluated.
 - The challenges and opportunities in reconciling Islamic law with Western legal principles were discussed.
- **Case Studies:**
 - Case studies or practical examples where Islamic law and Western legal maxims intersected, particularly in cases of evidence, were included.

6. Conclusion

- **Findings:**
 - The findings of the comparative study were summarized.

- The implications of these findings for contemporary legal practice were discussed.
- **Recommendations:**
 - Recommendations for legal scholars and practitioners on integrating or adapting these principles in modern legal systems were provided.

7. References and Documentation

- **Citations:** All sources were properly cited using a recognized academic citation style (e.g., APA,).
- **Documentation:** A bibliography of all primary and secondary sources used in the study was included.

Discussion with detail:

1. Linguistic definition of "Shahadah" (testimony):

In linguistics, the term (*shahadat*) actually refers to a witness or testimony, and it is indeed used to describe a statement or evidence that is given as proof or confirmation of something..

It is a universally accepted fact that testimony plays a crucial role in all matters, including decisions, justice, and the protection of rights. In other words, testimony is the foundation of the "Court of Justice".

In the context of testimony, Islamic scholars have derived rules and principles from the Quran and Hadith, and have established permanent codes and laws regarding testimony.

In Islamic law, evidence refers to the proof or testimony that is used to establish the truth or falsehood of a claim or allegation. In Islamic jurisprudence, the concept of evidence is based on the principles of the Quran, Hadith (the sayings and actions of the Prophet Muhammad), and the practices of the early Muslim community

1. Definition of Evidence (*Shahdah*) According the Islamic Law

1.1. Linguistic definition

The linguistic definition of "*Shahadah*" (شهادة) in Arabic refers to the act of bearing witness or giving testimony.(Jawhari 1995) The term is derived from the root word "شَهِدَ" (*shahida*), which means "to witness," "to testify," or "to declare." In its broader sense, it signifies providing a statement or evidence about something that one has directly observed or experienced, often in a legal or religious context.

Shahadah, in its literal sense, refers to decisive or conclusive information(Ibn Mandhur 1988)

Shahadah means to give testimony. Testimony refers to the information that is presented before a judge exactly as it was witnessed, either by seeing it with one's own eyes or hearing it with one's own ears..

In linguistic terms, the root word for "Shahadah" encompasses various meanings, including:

- Being present in a meeting
- Seeing
- Making something present
- Appointing someone as a witness
- Calling someone to testify
- Seeking assistance in testimony
- Becoming a martyr in the path of Allah
- Reciting the Tashahhud (a part of Islamic prayer)
- Unrefined honey (honey that has not been purified from wax)
- Certain news
- An oath
- Death in the path of Allah
- The apparent or manifest world
- The earth
- A place where people gather
- The place of a martyr's death
- A woman whose husband is present
- The Day of Judgment
- Friday (Jummah)

Shahadah refers to a statement or testimony based on something that has been seen or acknowledged through knowledge. It is stated that while knowing both the unseen and the seen is important, giving testimony is much better when done in person. Testimony involves direct observation. Generally, testimony (*Shahadah*) refers to a statement based on knowledge gained through visual observation or direct perception. A statement made with complete knowledge and certainty, whether that knowledge is gained through visual observation or insight.

The word evidence is derived from the Latin word evidens or evidere that means to show clearly, to make clear to the sight, to discover clearly, to ascertain, to prove.(Bouvier 1856)

According to Fitzjames Stephen the word evidence may mean testimony, relevancy, exhibiting things in the Court, and facts proved to exist by the exhibition of things.(Anon n.d.-d)

It may also be defined as a method, means or procedure prevailing by means or procedure of which some fact, documents, or condition of things relevant to the issue in a trial or an action is proved, or disproved, and

it includes all legal means allowed, which tend to either prove or disprove the fact in issue; but it does not include mere arguments.(Kinney 1914)

1.2. Terminology Definition

In terminology, *Shahadah* (testimony) is defined as the declaration or evidence provided by a witness, based on their direct observation or experience of a fact or event. It involves presenting information that one has seen, heard, or directly witnessed, and it is used to establish the truth in legal or judicial contexts.

Evidence is a statement or declaration that is made to support a legal right and is against a third party, and it is based on true knowledge of the facts. It is presented in front of an authorized judge.

The term "testimony" or "witness" in common usage refers to the act of a person accurately conveying to others what they know with certainty about an event or thing.

In legal terminology, "testimony" refers to the act of honestly and accurately presenting facts related to cases and parties before a judge, using one's visual and auditory knowledge. This is done with the aim of enabling the judge to make a just decision in the cases and matters at hand.

This means that testimony refers to providing information about an event based on one's observation and direct experience, rather than relying on assumptions or guesses.

Testimony is the definitive and conclusive statement given in a legal court regarding a matter that the witness has clearly observed.

Testimony is the act of presenting an eyewitness account before a court in relation to a case at hand. It is distinct from confirmation or affirmation. A person provides testimony by stating that a particular event is something they have witnessed firsthand and are now recounting.

Civil and criminal cases are decided primarily on the basis of the law of evidence. If the law of evidence in a judicial system is weak, the requirements of justice are either not fulfilled at all or become so complicated that it becomes difficult for the judge or ruler to make a decision. Drawing from the principles provided in the Quran and Hadith regarding testimony, Islamic jurists have developed comprehensive rules and laws governing testimony.

According to Islamic Sharia, appearing as a witness is considered a religious duty. Truthful testimony is regarded as a communal obligation (*Fard Kifaya*), and concealing testimony is considered a major sin. Therefore, hiding testimony or refusing to testify is not permissible in any way.(Anon n.d.-a)

For instance, regulations regarding cross-examination and other matters, such as summoning a witness, questioning in court, or a judge's independent inquiry, can be established. For such technical matters, the Prophet Muhammad (peace be upon him), through his actions, and the Companions and jurists, through

their experiences, wisdom, and reasoning over time, have provided guidance.

Types of Evidence in Islamic Law: Islamic Law of Evidence consists of three types:

1. *Shahadah* (Testimony)
2. *Iqrar* (Confession)
3. *Halaf Bil Yameen* (Oath-Taking)

Testimonies of witnesses are required to present evidential facts for establishing or inferring material facts. (ZUCKERMAN 2014) For admitting witness testimony the witness has to be competent. The general requirement of understanding of the fact in issue seems to be part of all legal systems. What is proved directly by the evidence in Court involves for the most part asking whether witnesses can be believed in their testimony on what they did or perceived. (Samuel 2015)

Islamic law and Sharia are often interchangeably used. Sharia is a broader concept including ethical principles which are not provided with definite legal sanction. Islamic law of evidence consists of both witness testimony and general proof with more emphasis to the former. There is disagreement among the jurists as to whether general proof can be applicable to criminal matters of *Hudud*. General proof is a means by which truth is manifested. Evidence is necessarily limited to confession of the accused or witness testimony for a *Hadd* offence. (Anon n.d.-b)

The concepts of testimony and witness have been briefly explained here, along with the Islamic law of evidence, because extensive work has already been done on this topic. The purpose here is to provide a comparative analysis of the witness section of the Broom's legal Maxim and Islamic Legal maxim. Therefore, after this, an introduction to Broom and its legal maxim will be presented.

3. Introduction to Broom and His Legal Maxims

Herbert Broom (1815–1882) was an English legal scholar and barrister known for his work in legal education and his contributions to the understanding of legal principles. Broom's most notable work is his book "**A Selection of Legal Maxims**" (first published in 1845), which became a cornerstone for legal students and practitioners alike. This book organizes and explains the fundamental principles and maxims that underlie common law, offering a clear and systematic presentation of these guiding concepts. (Anon 2022)

Overview of Broom's Legal Maxims

Legal maxims are short, pithy statements that encapsulate important legal principles and are often used in legal reasoning and decision-making. Broom's work categorized these maxims into various branches of law, including contracts, property, torts, and equity, among others. His book is valued not just for the maxims themselves but for the detailed explanations, historical context, and illustrative cases that accompany them.

Key Features of Broom's Legal Maxims:

1. **Systematic Organization:** Broom's maxims are organized in a way that reflects the structure of legal reasoning. Each maxim is explained in context, showing how it applies to various legal situations.

This organization helps readers to understand not only the maxim itself but also its relevance to broader legal principles.

2. **Historical and Jurisprudential Analysis:** Broom provides historical background for each maxim, tracing its origins and development over time. This historical analysis helps in understanding how these principles have evolved and been applied in different legal systems.
3. **Illustrative Cases:** To help in the practical application of the maxims, Broom includes references to cases where these principles have been applied. This case law provides concrete examples of how legal maxims function in the courtroom and in legal reasoning.
4. **Influence on Legal Education:** Broom's work became a fundamental part of legal education in the English-speaking world. It was widely used as a textbook for law students, and its influence extends into the practice of law, where understanding these maxims is crucial for effective legal reasoning.

Examples of Broom's Legal Maxims:

1. **"Actus non facit reum nisi mens sit rea":**(BROOM, 1874)
 - *Translation:* The act is not wrongful unless the mind is guilty.
 - *Explanation:* This maxim underlines the importance of intention in criminal law. A person cannot be held criminally liable for an act unless there is a guilty mind (mens rea) behind it.
2. **"Caveat emptor":**(BROOM, 1874)
 - *Translation:* Let the buyer beware.
 - *Explanation:* This principle is foundational in contract law, particularly in the sale of goods. It places the responsibility on the buyer to inspect the goods before purchase, emphasizing that the buyer cannot hold the seller responsible for defects that could have been discovered upon reasonable inspection.
3. **"Equity aids the vigilant, not the indolent":**(BROOM, 1874)
 - *Explanation:* This maxim highlights the principle that those who delay in asserting a right may lose the ability to enforce it. It underscores the importance of timely action in equity.

Impact and Legacy

Herbert Broom's "A Selection of Legal Maxims" remains a key reference for understanding the foundational principles of common law. His work has had a lasting impact on both legal education and the practice of law. It provides a bridge between the historical roots of legal principles and their application in contemporary legal systems.

Broom's approach to organizing and explaining legal maxims makes his work accessible and practical, ensuring that these ancient principles continue to be relevant in modern legal contexts. His contribution to the field of law is not just in the maxims themselves but in the way he has illuminated the logic and reasoning behind them, making his work an enduring resource for legal scholars, students, and practitioners.(Anon n.d.-

c)

3.2. Broom's Legal Maxims in the Law of Evidence

Broom's legal maxims often reflect principles applied in evidence law within common law systems. Here are a few relevant maxims:

1. "**Ei incumbit probatio qui dicit, non qui negat**" - The burden of proof lies on the one who asserts, not on the one who denies.
2. "**Nemo tenetur seipsum accusare**" - No one is bound to accuse them (privilege against self-incrimination).
3. "**Res ipsa loquitur**" - The thing speaks for itself.
4. "**Falsus in uno, falsus in omnibus**" - False in one thing, false in everything (if a witness lies about one thing, they may be disbelieved in all things).

3.3. Islamic Legal Maxims (Qawa'id Fiqhiyyah) in the Law of Evidence

Islamic legal maxims also provide guidance in matters of evidence. Some relevant maxims include:

1. "**Al-bayyina 'ala man idda'a, wal-yamin 'ala man ankara**" - The burden of proof is on the claimant, and the oath is on the one who denies.
2. "البينة لإثبات خلاف الظاهر واليمين لبقاء الأصل" "The evidence is for proving what contradicts the apparent, and the oath is for maintaining the original state."
3. "**Al-asl bara'at al-dhimma**" - The original state is freedom from liability.
4. "دلالة الشيء في الأمور الباطنة يقوم مقامه" "The indication of a thing in hidden matters takes the place of the thing itself."

4 Comparative Analysis in the Law of Evidence

1. *Ei incumbit probatio qui dicit, non qui negat*" (BROOM, 1874) - The burden of proof lies on the one who asserts, not on the one who denies.

Burden of Proof

- **Broom's Maxim:** "*Ei incumbit probatio qui dicit, non qui negat*" reflects that the burden of proof is on the party who makes the claim.

The principle "No man can be compelled to criminate himself" is a fundamental legal doctrine that means an individual cannot be forced to provide testimony or evidence that could incriminate themselves, leading to their own conviction or punishment.

Explanation:

1. **Legal Right:** This principle is a key aspect of many legal systems, particularly in common law jurisdictions. It is often referred to as the right against self-incrimination. It ensures that individuals have the right to remain silent during investigations and legal proceedings if their statements or evidence could be used to prove their guilt.
2. **Fifth Amendment (U.S.):** In the United States, this principle is enshrined in the Fifth Amendment to the Constitution, which states that no person "shall be compelled in any criminal case to be a witness against himself." This is commonly known as "pleading the Fifth."
3. **Protection from Coercion:** The principle protects individuals from being coerced, whether physically or psychologically, into confessing guilt or providing incriminating evidence. This ensures that confessions or evidence used in court are given voluntarily and are not the result of pressure or duress.
4. **Application in Legal Proceedings:** During trials or police interrogations, an individual can invoke this right to avoid answering questions that may lead to self-incrimination. If the right is not respected, any evidence obtained through coercion can be considered inadmissible in court.
5. **Importance:** This principle upholds the fairness of the legal system by ensuring that the burden of proof remains on the prosecution, and it prevents abuses of power by law enforcement and the judiciary.

In summary, the principle that "no man can be compelled to criminate himself" is a critical safeguard in legal systems, protecting individuals from being forced to contribute to their own prosecution.

4.2 Islamic Maxim: (البَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى مَنْ أَنْكَرَ) "*Al-bayyina 'ala man idda'a, wal-yamin 'ala man ankara*" echoes a similar principle, placing the burden of proof on the claimant.

Explain some jurisprudential terminologies.

- Evidence is a strong proof.
- *Tawatur* (continuous testimony) is the report of a group of people whose agreement on a lie is inconceivable by reason.
- Absolute ownership is ownership that is not restricted by any of the causes of ownership, such as inheritance or purchase. As for ownership that is restricted by any of these causes, it is called... (The text cuts off here).

- The possessor is the one who physically holds an object or whose actions resemble those of an owner.
- The outsider is the one who is free from possession and acts of ownership in the described manner.
- Administering an oath means requiring one of the disputing parties to take an oath.
- Mutual oaths refer to requiring both disputing parties to take oaths.
- Adjudicating based on the current state means making a judgment based on the present condition, which falls under the concept of presumption of continuity. Presumption of continuity is the ruling that a certain established matter remains as it was, meaning that what was previously established continues to be regarded as such. (Tyser 1980, Article 1975 to 1683)

The burden of proof is on the claimant, and the oath is upon the one who denies." This is a well-known legal maxim in Islamic jurisprudence (Fiqh) that outlines the fundamental principles of burden of proof in legal disputes.

Explanation:

1. Context in Islamic Jurisprudence:

- This maxim is a foundational principle in Islamic legal procedures, particularly in matters of civil disputes. It originates from a hadith (saying of the Prophet Muhammad, peace be upon him) that is reported in several Hadith collections, including Sahih Bukhari and Sahih Muslim.
- **Reference:** The hadith is narrated by Abdullah ibn Abbas:
"If people were to be given whatever they claimed, some people would claim the wealth and lives of others. But the oath is upon the one who denies." (Bukhārī, No 4552n.d Sahih Muslim, Hadith No. 1711.) **"البَيْتَةُ عَلَى الْمُدَّعَى" (The Burden of Proof is on the Claimant):**
- **Claimant's Responsibility:** In any dispute, the person who makes a claim (the plaintiff or claimant) bears the responsibility to provide evidence or proof to support their claim. Without sufficient proof, the claim cannot be upheld in a court of law. (Al-Burnu 1997)
- **Reasoning:** This principle ensures that anyone who seeks to take something from another, whether it is property, money, or a legal right, must substantiate their claim with credible evidence. The rationale is to prevent frivolous or false claims from being made without accountability.

2. **"الْيَمِينُ عَلَى مَنْ أَنْكَرَ" (The Oath is Upon the One Who Denies):**

- **Defendant's Role:** If the claimant provides insufficient evidence or if the evidence is disputed, the defendant (the one who denies the claim) may be required to take an oath to assert their denial.
- **Purpose of the Oath:** In Islamic law, taking an oath is a serious matter. It is a solemn declaration before God, and it serves as a final resort to resolve disputes when evidence is inconclusive. The purpose is to deter false denials, as lying under oath is considered a grave sin.
- **Application:** If the defendant swears the oath, the claim against them is typically dismissed unless the claimant can bring further proof. This shifts the focus back to the claimant's need to provide convincing evidence.(Anon 1995)

3. Legal and Ethical Implications:

- **Justice and Fairness:** This principle is designed to protect individuals from false claims and to ensure that justice is based on evidence, not mere accusations. It aligns with the broader Islamic legal ethos, which emphasizes fairness and accountability.
- **Moral Responsibility:** The seriousness of taking an oath in Islam serves as a moral check against dishonesty. By requiring an oath from the defendant, Islamic law acknowledges the limits of human evidence and places ultimate accountability in the hands of God.

4. Contemporary Relevance:

- **Modern Legal Systems:** The concept of "the burden of proof" is universally recognized in legal systems around the world, not just in Islamic law. In many modern legal frameworks, this principle is reflected in the idea that "the burden of proof lies with the plaintiff" in civil cases.
- **Islamic Courts:** In Sharia courts, this maxim is actively used to guide judges (Qadis) in adjudicating cases, ensuring that the process is grounded in both evidence and ethical responsibility.(Kamali 2013)

Both systems emphasize that the party making an assertion must provide evidence, ensuring that claims are substantiated.

Self-Incrimination

- **Broom's Maxim:** "*Nemo tenetur seipsum accusare*" upholds the privilege against self-incrimination.

1. Understanding the Maxim: Broom's Maxim, "*Nemo tenetur seipsum accusare*," translates from Latin to "No one is bound to accuse himself." This legal principle forms the basis of the privilege against self-incrimination, which ensures that individuals cannot be compelled to testify or provide evidence that could incriminate them.

2. Historical Context: The principle has deep roots in legal history, originating in Roman law and later becoming entrenched in English common law. It was incorporated into various legal systems worldwide, including the United States, where it is famously embodied in the Fifth Amendment to the Constitution.

3. The Privilege in the Modern Legal Framework: In the contemporary legal landscape, the privilege against self-incrimination remains a cornerstone of criminal justice systems across the world. It serves to protect the rights of individuals during legal proceedings, ensuring that the burden of proof lies with the prosecution and that defendants are not coerced into providing evidence against themselves.

Key Aspects in the Present Era:

a. Constitutional Protections: In many democratic nations, the privilege against self-incrimination is constitutionally protected. For example:

- **United States:** The Fifth Amendment guarantees that "No person... shall be compelled in any criminal case to be a witness against himself."
- **United Kingdom:** The right is recognized under the common law and reinforced by the Human Rights Act 1998, which incorporates the European Convention on Human Rights.
- **India:** Article 20(3) of the Constitution provides that no person accused of any offense shall be compelled to be a witness against himself.

b. Scope of the Privilege: The privilege against self-incrimination covers both oral testimony and the production of documents or other evidence. However, the scope of this protection varies by jurisdiction:

- **Testimony vs. Physical Evidence:** While the privilege generally protects against forced testimony, it may not extend to physical evidence, such as fingerprints or DNA samples.
- **Corporate Entities:** In some jurisdictions, corporations do not enjoy the same privilege as individuals, meaning that corporate officers may be required to produce incriminating documents on behalf of the company.

c. Application in Various Legal Contexts:

- **Criminal Proceedings:** The privilege is most commonly invoked in criminal cases, where defendants have the right to remain silent and refuse to testify.
- **Civil Cases:** In some jurisdictions, the privilege can be invoked in civil cases, particularly when the testimony could lead to criminal liability.
- **Administrative Proceedings:** The privilege may also apply in administrative or regulatory hearings, although the specifics vary widely.

4. Challenges and Criticisms in the Present Era:

a. Balancing Public Interest and Individual Rights: One of the ongoing debates surrounding the privilege against self-incrimination is the balance between protecting individual rights and serving the public interest. For example, in cases involving national security or public safety, governments may seek to limit the privilege

to gather crucial information.

b. The Rise of Digital Evidence: The digital age has introduced new challenges to the privilege against self-incrimination. Courts are grappling with issues such as whether forcing someone to unlock a smartphone or decrypt data constitutes a violation of the privilege.

c. Erosion of the Privilege: In some jurisdictions, there has been a gradual erosion of the privilege, with courts allowing exceptions in certain cases. Critics argue that this undermines the fundamental principle that individuals should not be forced to incriminate themselves.

5. Contemporary Relevance and Future Directions:

a. The Importance of Legal Safeguards: The privilege against self-incrimination remains vital in ensuring a fair and just legal process. It protects individuals from coercive interrogation techniques and helps maintain the integrity of the judicial system.

b. Adapting to Technological Advances: As technology continues to evolve, legal systems must adapt to ensure that the privilege against self-incrimination is preserved in new contexts. This may involve updating laws and legal precedents to address issues such as digital privacy and electronic evidence.

c. International Perspectives: While the privilege is recognized globally, its application varies by country. International human rights organizations continue to advocate for the universal adoption of this principle, particularly in regions where legal protections are weak.

Conclusion: Broom's Maxim, "*Nemo tenetur seipsum accusare*," remains a foundational legal principle in the modern era. The privilege against self-incrimination is crucial in protecting individual rights and ensuring a fair legal process. However, as legal systems confront new challenges, particularly in the digital age, the interpretation and application of this privilege must evolve to maintain its relevance and effectiveness.

Islamic Law: This principle is also recognized in Islamic jurisprudence, where an individual is not compelled to testify against themselves.

Both legal traditions protect individuals from self-incrimination, emphasizing the importance of voluntary testimony.

4.2 Inference from Circumstantial Evidence

- **Broom's Maxim:** "*Res ipsa loquitur*" (BROOM, 1874) allows for inferences to be drawn from the circumstances surrounding an event.

1. Understanding the Maxim: "*Res Ipsa Loquitur*" is a Latin phrase meaning "The thing speaks for itself." In legal terms, it refers to situations where the nature of an accident or injury is such that it implies negligence on the part of the defendant, even in the absence of direct evidence.

2. Historical Context: The doctrine of "*Res Ipsa Loquitur*" emerged from English common law in the 19th century and was first articulated in the case of **Byrne v. Boadle (1863)**. In this case, a barrel of flour fell from a warehouse window and injured a passerby. The court held that the mere occurrence of the accident,

under such circumstances, was sufficient evidence of negligence.

3. The Doctrine of "Res Ipsa Loquitur":

a. Basic Elements: To invoke the doctrine of "Res Ipsa Loquitur," certain conditions must typically be met:

1. **Control:** The instrumentality or object that caused the injury must have been under the exclusive control of the defendant.
2. **No Voluntary Action:** The injury must have occurred without any voluntary action or contribution from the plaintiff.
3. **Ordinary Course:** The accident must be of a type that does not ordinarily happen without negligence.

If these elements are present, the court may infer that the defendant was negligent, shifting the burden of proof to the defendant to show that they were not negligent.

b. Application in Tort Law: "Res Ipsa Loquitur" is most commonly applied in tort law, particularly in cases of personal injury or medical malpractice. It allows plaintiffs to establish a prima facie case of negligence without direct evidence of the defendant's breach of duty.

c. Examples of Application:

- **Medical Malpractice:** If a surgical instrument is left inside a patient's body after surgery, "*Res Ipsa Loquitur*" may apply because such an event typically does not occur without negligence.
- **Product Liability:** If a consumer is injured by a product that fails in an unusual and dangerous manner, such as a bottle of soda exploding, the doctrine may be invoked to suggest that the manufacturer was negligent.
- **Transportation Accidents:** If a passenger is injured in a train derailment or an airplane crash, "*Res Ipsa Loquitur*" may be used to infer negligence on the part of the transportation company.

4. The Effect of "*Res Ipsa Loquitur*":

a. Shifting the Burden of Proof: When a court accepts that "*Res Ipsa Loquitur*" applies, the burden shifts to the defendant to provide an explanation or evidence showing that they were not negligent. If the defendant fails to do so, the court may find in favor of the plaintiff.

b. Rebuttable Presumption: It's important to note that "*Res Ipsa Loquitur*" creates a rebuttable presumption of negligence. The defendant can still provide evidence to counter the presumption, such as demonstrating that they exercised all reasonable care, or that the accident occurred due to an unforeseeable event.

5. Limitations and Criticisms:

a. Limited Scope: "*Res Ipsa Loquitur*" is not applicable in every case of negligence. It only applies where the circumstances of the injury or accident clearly point to negligence as the most plausible explanation.

b. Potential for Misuse: There is a risk that the doctrine could be misused to impose liability on defendants

without sufficient evidence. Courts must carefully evaluate whether the conditions for "Res Ipsa Loquitur" are genuinely met before applying the doctrine.

c. Erosion in Modern Law: With the advancement of technology and the availability of more direct evidence, the use of "Res Ipsa Loquitur" has been somewhat reduced. Modern plaintiffs often have access to detailed expert testimony and evidence that can establish negligence without relying on this doctrine.

6. Contemporary Relevance:

a. Ongoing Use in Legal Systems: Despite its limitations, "Res Ipsa Loquitur" remains a useful tool in the legal system. It continues to be applied in cases where the plaintiff lacks direct evidence of negligence, but the nature of the incident strongly suggests that the defendant is at fault.

b. Adaptation to Modern Contexts: The principle has been adapted to suit modern legal contexts, including complex medical procedures, high-tech product failures, and other situations where direct evidence is difficult to obtain but negligence is likely.

7. Conclusion: "Res Ipsa Loquitur" is a significant legal doctrine that allows courts to infer negligence based on the mere occurrence of certain types of accidents. By shifting the burden of proof to the defendant, it provides a means for plaintiffs to pursue justice in cases where direct evidence is lacking but the circumstances clearly indicate negligence. Despite its reduced application in some modern contexts, the doctrine continues to play a crucial role in the legal landscape, ensuring that those harmed by likely negligence have a pathway to relief

4.3. Islamic Legal maxim : "دلالة الشيء في الامور الباطنة يقوم مقامه" - The Indication of a Thing in Hidden Matters Takes the Place of the Thing Itself

1. Understanding the Principle:

The phrase "دلالة الشيء في الامور الباطنة يقوم مقامه" translates to "The indication of a thing in hidden matters takes the place of the thing itself." This principle suggests that in cases where the true nature or essence of something is not directly observable, signs, indicators, or circumstantial evidence can serve as a substitute for the thing itself. This is particularly relevant in matters that are internal, concealed, or not directly accessible to external observation.

2. Historical Context:

Historically, this principle has roots in Islamic jurisprudence (fiqh) and legal traditions where it was often applied in matters where direct evidence or direct observation was not possible. For example, in cases of intent, belief, or internal conditions, external indicators were used to determine the true state of affairs.

3. Application in the Present Era:

In the modern context, this principle continues to be relevant in various fields such as law, psychology, finance, and even technology. Below are some detailed explanations of how this principle is applied in today's world:

a. Legal Applications:

In legal contexts, particularly in criminal and civil law, direct evidence may not always be available. For example:

- **Intent in Criminal Cases:** In many criminal cases, the defendant's intent is a crucial element that must be proven. Since intent is a mental state, it cannot be directly observed. Instead, circumstantial evidence, such as the defendant's actions, statements, or the context of the crime, is used to infer intent.
- **Fraud Cases:** In cases of fraud, where deceit or misrepresentation is involved, direct evidence of the fraudster's intentions or inner workings may be unavailable. Here, indicators such as inconsistent financial records, suspicious transactions, or altered documents can serve as evidence of fraudulent intent.

b. Psychological and Behavioral Analysis:

In psychology and behavioral sciences, internal states like emotions, thoughts, or mental health conditions cannot be directly observed. Instead, practitioners rely on:

- **Behavioral Indicators:** Observable behaviors, such as changes in sleep patterns, eating habits, or social interactions, can indicate underlying mental health issues like depression or anxiety.
- **Body Language and Non-Verbal Cues:** Psychologists often interpret body language, facial expressions, and tone of voice as indicators of underlying emotions or thoughts, especially in therapy or counseling sessions.

c. Financial and Economic Analysis:

In finance, particularly in the analysis of markets, economies, or companies, certain indicators are used to gauge the underlying health or trends:

- **Economic Indicators:** Metrics like GDP growth, unemployment rates, or inflation are used to assess the overall health of an economy, even though the economy itself is an abstract concept.
- **Company Performance:** In assessing a company's performance, financial analysts might use indicators such as profit margins, cash flow, or stock price movements to infer the company's underlying health and future prospects.

d. Technology and Data Science:

In the field of technology, especially in data science and artificial intelligence:

- **Proxy Indicators:** Data scientists often use proxy indicators when direct measurement is not possible. For example, website traffic or user engagement metrics might be used as a proxy for customer satisfaction or product popularity.

- **Machine Learning Models:** In machine learning, algorithms often use indirect data points (features) to make predictions about unseen outcomes. These data points serve as indicators of the underlying target variable.

4. Challenges and Considerations:

a. Reliability of Indicators: One of the key challenges in applying this principle is ensuring the reliability and validity of the indicators being used. If the indicators do not accurately reflect the hidden matter they are supposed to represent, the conclusions drawn can be flawed.

b. Interpretation and Bias: Another challenge is the interpretation of these indicators. Different people may interpret the same indicator in different ways, leading to potential bias. For example, in legal cases, the same piece of circumstantial evidence might be interpreted differently by the prosecution and defense.

c. Ethical Implications: Using indicators in place of direct evidence can raise ethical concerns, particularly if it leads to decisions that significantly impact individuals' lives. For instance, relying on behavioral indicators in psychological assessments without proper context can result in misdiagnosis or unfair treatment.

5. Conclusion:

The principle that "The indication of a thing in hidden matters takes the place of the thing itself" remains highly relevant in the present era across various domains. It highlights the importance of circumstantial evidence, behavioral indicators, and proxy data in situations where direct observation or evidence is not possible. However, the application of this principle requires careful consideration of the reliability, interpretation, and ethical implications of the indicators being used. In a world where much remains hidden or abstract, this principle helps bridge the gap between the observable and the unobservable, allowing for informed decisions and judgments in complex situations.

5 Credibility of Witnesses

- **Broom's Maxim:** "Falsus in uno, falsus in omnibus" suggests that if a witness is found lying in one aspect, their entire testimony may be discredited.

1. Understanding the Maxim:

The Latin phrase "**Falsus in Uno, Falsus in Omnibus**" translates to "**False in one thing, false in everything.**" This legal maxim suggests that if a witness is found to have lied or given false testimony in one part of their statement, the entirety of their testimony may be discredited. The principle is based on the idea that if a person is willing to lie about one aspect, their credibility in other matters becomes questionable.

2. Historical Context:

This maxim has its origins in Roman law and was later incorporated into common law. Historically, it was used as a strict rule of evidence in courts, where the credibility of witnesses was paramount. If a witness was proven to have lied about one fact, their entire testimony could be disregarded by the jury or judge.

3. Application in the Present Era:

In the modern legal system, the application of "**Falsus in Uno, Falsus in Omnibus**" is more nuanced. While the principle is still recognized, courts are generally more cautious in its application. Here's how it plays out in today's legal environment:

a. Credibility Assessment:

- **Witness Testimony:** The credibility of a witness is a crucial aspect of any trial. If a witness is caught lying about one fact, it raises doubts about the reliability of their entire testimony. However, modern courts are more likely to assess whether the falsehood is central to the case or merely a minor detail.
- **Cross-Examination:** During cross-examination, lawyers often attempt to catch witnesses in lies or inconsistencies. If successful, this can undermine the witness's credibility, but judges may instruct juries to consider whether the falsehood affects the overall reliability of the testimony.

b. Judicial Discretion:

- **Context Matters:** Modern courts tend to consider the context and significance of the falsehood. A lie about a minor, unrelated detail may not necessarily lead to the dismissal of the entire testimony. Judges exercise discretion in determining whether the falsehood impacts the case's outcome.
- **Balancing Fairness:** The legal system today seeks to balance fairness with the need to maintain the integrity of the judicial process. Disregarding an entire testimony due to a minor lie might be seen as unjust, especially if the testimony is otherwise reliable.

c. Jurisprudential Shifts:

- **Evidence Law:** In contemporary legal systems, evidence law has evolved to allow for a more flexible approach. The maxim is no longer applied as a rigid rule but as a guiding principle. Judges often instruct juries to consider the overall evidence and the specific impact of any falsehoods rather than applying the maxim strictly.
- **Technology and Forensics:** Advances in technology and forensic science have also influenced the application of this maxim. Objective evidence, such as DNA or digital records, can corroborate or contradict witness testimony, reducing the reliance on the "**Falsus in Uno, Falsus in Omnibus**" principle.

4. Examples of Modern Application:

a. Perjury Cases: In cases where a witness is found to have committed perjury (lying under oath), the maxim may be invoked to discredit their entire testimony. However, the court will carefully consider whether the perjury was material to the case.

b. Criminal Trials: In criminal trials, if a key witness is caught lying about a significant fact, the defense may argue that the witness's entire testimony should be discredited. The prosecution would then need to rely

on other evidence to support their case.

c. Civil Litigation: In civil cases, where damages or liability are at stake, the credibility of witnesses is critical. If a witness for one party is found to be dishonest, the other party may argue that the maxim applies, casting doubt on the entire case.

5. Challenges and Criticisms:

a. Overreach: Critics argue that applying the maxim too broadly can lead to unjust outcomes, particularly if a witness lies about a minor or irrelevant detail. Discrediting their entire testimony might result in the exclusion of otherwise truthful and important information.

b. Human Nature: Human memory is fallible, and witnesses may inadvertently provide incorrect information without any intent to deceive. Applying the maxim strictly in such cases could be unfair, as not all inconsistencies are intentional lies.

c. Impact on Justice: In some instances, over-reliance on this maxim could lead to wrongful convictions or acquittals if the testimony of key witnesses is dismissed entirely based on a single falsehood. This raises concerns about the potential for miscarriages of justice.

Conclusion:

The maxim "*Falsus in Uno, Falsus in Omnibus*" remains a relevant but more carefully applied principle in modern law. It serves as a reminder of the importance of truthfulness in legal proceedings and the potential consequences of dishonesty. However, its application today is more flexible, with courts considering the context, significance, and materiality of the falsehood before discrediting an entire testimony. The evolution of this principle reflects a broader trend in the legal system towards balancing strict rules with fairness and justice, ensuring that the integrity of the judicial process is maintained while avoiding overly harsh or unjust outcomes.

6 Islamic Law: "Al-yaqin la yazulu bi-shakk" implies that a witness's credibility should be carefully assessed, and doubt should not overturn certainty.

1. Understanding the Maxim:

The Islamic legal maxim "**Al-Yaqin La Yazulu Bi-Shakk**" translates to "**Certainty is not overruled by doubt.**" This principle emphasizes that once something is established with certainty, it cannot be undone or negated by mere doubt or suspicion. The maxim is fundamental in Islamic jurisprudence (fiqh) and serves as a guiding principle in resolving legal, ethical, and spiritual matters.

2. Historical Context:

In classical Islamic law, this maxim was often applied to various aspects of legal rulings, particularly in matters where certainty and doubt could influence the outcome of a decision. For example:

- **Ritual Purity (Taharah):** If a person is certain they performed ablution (wudu) but later doubts whether they nullified it, they should act on the certainty of their purity and disregard the doubt.

- **Property and Ownership:** If ownership of a property is established with certainty, it cannot be challenged by someone else's mere suspicion or unfounded claims.

3. Application in the Present Era:

In modern times, the principle of "**Al-Yaqin La Yazulu Bi-Shakk**" continues to be highly relevant across various domains, including legal, ethical, and social matters. Here's how it is applied today:

a. Legal Contexts:

- **Witness Credibility:** In Islamic law, the credibility of a witness is crucial. If a witness's reliability is established with certainty, doubts or minor inconsistencies in their testimony should not lead to the rejection of their entire testimony. Courts will typically uphold the witness's credibility unless there is clear and convincing evidence to the contrary.
- **Burden of Proof:** In legal disputes, once a fact is established with certainty, the burden of proof shifts to the party challenging that fact. Mere doubts or suspicions are insufficient to overturn what has been conclusively proven.

b. Ethical and Moral Applications:

- **Personal Conduct:** The maxim guides individuals in their daily lives, ensuring that they do not act on mere doubts when certainty exists. For example, if one is certain of the correctness of an action but later experiences doubt, they should act on the initial certainty.
- **Decision-Making:** In decision-making processes, especially in ethical dilemmas, this maxim advises that decisions should be based on what is known with certainty rather than being swayed by unfounded doubts or fears.

c. Financial and Commercial Transactions:

- **Contracts and Agreements:** In commercial dealings, once the terms of a contract are established with certainty, they should not be disputed based on mere doubts. For instance, if a buyer and seller agree on a price and terms, later doubts about the fairness of the deal do not invalidate the contract.
- **Investment and Risk Management:** In financial transactions, investors are encouraged to make decisions based on certainty (such as confirmed data and reliable information) rather than acting on rumors, doubts, or speculative uncertainties.

d. Social and Religious Contexts:

- **Community Relations:** In a social context, the principle can be applied to maintain harmony and trust. For example, if a person's integrity is established with certainty within a community, it should not be questioned based on mere doubts or rumors.
- **Religious Practices:** The maxim plays a role in religious practices, such as fasting during Ramadan. If a person is certain they started fasting on the correct day but later doubts it, they should adhere to their initial certainty.

4. Modern Jurisprudential Implications:

a. Balancing Certainty and Doubt: In modern jurisprudence, this maxim helps in balancing the need for certainty in legal and ethical decisions while recognizing that doubt should not easily overturn established facts. Courts and legal systems may use this principle to ensure that justice is not compromised by unfounded doubts.

b. Protecting Rights and Interests: The principle ensures that individuals' rights and interests are protected. For instance, in cases of inheritance or property disputes, once ownership or entitlement is established, it cannot be easily challenged by those who raise doubts without substantial evidence.

c. Risk of Misapplication: While the maxim is vital, there is also a risk of misapplication. Relying too heavily on certainty without considering legitimate doubts could lead to injustice. Therefore, legal systems must carefully assess when to apply this principle, especially in complex cases where new evidence may raise legitimate concerns.

5. Challenges and Considerations:

a. Identifying Certainty: One of the challenges in applying this maxim is determining what constitutes certainty. In some cases, what one party views as certain, another may view as doubtful. Legal systems must have clear criteria for establishing certainty.

b. Evolving Contexts: As societies evolve, so do the interpretations of certainty and doubt. Modern technologies, new types of evidence (such as digital footprints), and changing social norms can influence how this maxim is applied today.

c. Ethical Implications: Ethically, the maxim encourages individuals and legal systems to act with integrity, ensuring that decisions are made based on solid evidence and not on unfounded suspicions. However, it also requires a careful balance to avoid dismissing legitimate doubts that could lead to a fairer outcome.

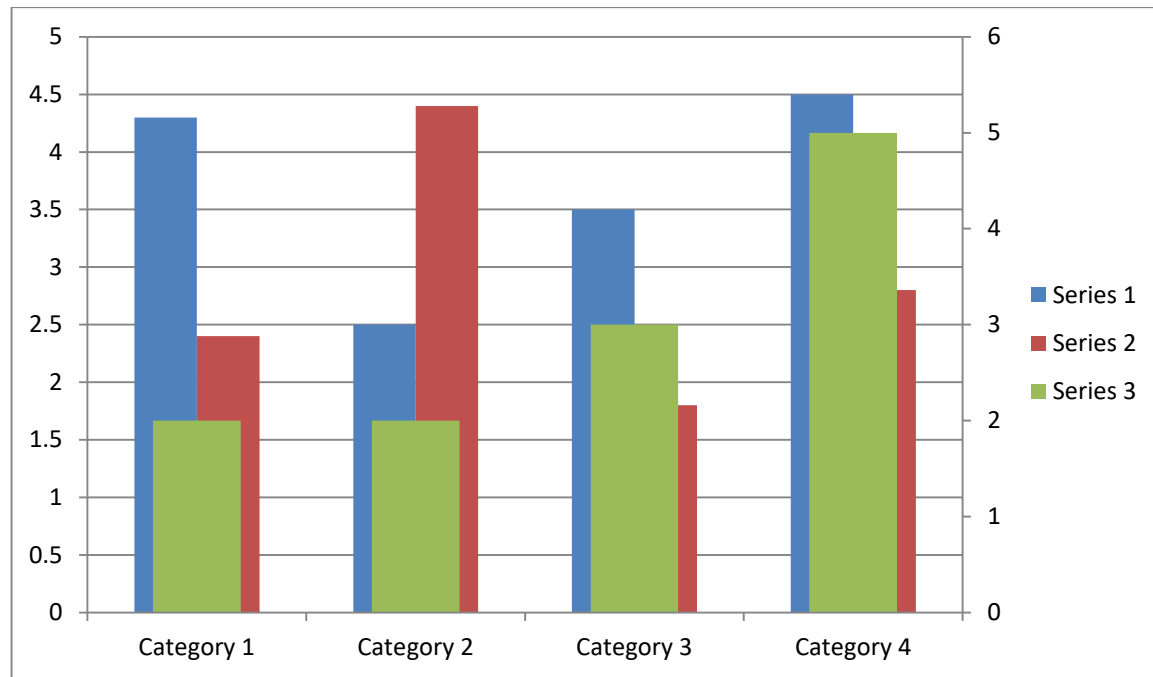
Conclusion:

The Islamic legal maxim "**Al-Yaqin La Yazulu Bi-Shakk**" remains a foundational principle in both classical and modern contexts. It underscores the importance of certainty in legal, ethical, and social decisions, ensuring that once something is established, it should not be easily overturned by mere doubt. In the present era, this principle continues to guide individuals and legal systems in making fair and just decisions, protecting rights, and upholding

the integrity of established facts. However, its application requires careful consideration to ensure that justice is served while also allowing room for legitimate doubts when they arise. This balance is essential in ensuring that the maxim is applied in a way that upholds both certainty and fairness in contemporary legal and ethical matters.

Both systems require careful evaluation of witness credibility, though Islamic law emphasizes certainty over doubt.

Here is a comparative Chart of the specified legal maxims from both common law (Broom’s legal maxims) and Islamic law:



- **Maxims Compared:** "Ei incumbit probatio qui dicit, non qui negat" (Common Law) vs. "Al-bayyina 'ala man idda'a, wal-yamin 'ala man ankara" (Islamic Law).
 - **Explanation:** Both systems strongly align on the burden of proof concept, which might be represented by a higher blue bar in Series 1, with minimal divergence (lower green bar).
2. **Category 2:**
- **Maxims Compared:** "Nemo tenetur seipsum accusare" (Common Law) vs. "Al-asl bara'at al-dhimma" (Islamic Law).
 - **Explanation:** There's partial alignment in protecting the individual's right against self-incrimination, possibly leading to a medium-range blue bar and a corresponding mid-range red bar to show areas of difference.
3. **Category 3:**
- **Maxims Compared:** "Res ipsa loquitur" (Common Law) vs. "دلالة الشيء في الامور الباطنة يقوم مقامه" (Islamic Law).
 - **Explanation:** This might show partial alignment with a focus on evidence that inherently speaks for itself, resulting in balanced blue and red bars.
4. **Category 4:**
- **Maxims Compared:** "Falsus in uno, falsus in omnibus" (Common Law) vs. "الْبَيِّنَةُ لِإثْبَاتِ جَلَابِ الظَّاهِرِ " وَالْيَمِينُ لِبَقَاءِ الْأَصْلِ" (Islamic Law).
 - **Explanation:** There could be significant divergence in how testimony and evidence are treated, leading to a higher green bar in Series 3, indicating differences in approach.

This chart would serve as a visual aid in article, helping readers quickly grasp the areas of alignment, partial alignment, and divergence between Islamic Law and Common Law as related to these specific legal maxims. Each category in the chart can be directly correlated with the maxims discussed in the study, providing a clear and concise representation of the comparative analysis.

Conclusion

In this article, most of the legal maxims were not compared; only a few were. This was to avoid excessive length. In the next paper, the remaining maxims will be compared.

The comparative study of Islamic legal maxims and Broom's legal maxims of evidence reveals both significant overlaps and distinct differences in their approach to justice and the administration of evidence. Both legal traditions, though originating from different historical and cultural contexts, emphasize the importance of truth, credibility, and fairness in judicial proceedings.

Islamic legal maxims, such as "*Al-Yaqin La Yazulu Bi-Shakk*," underscore the primacy of certainty over doubt, ensuring that established facts are not easily overturned by mere suspicion. This principle reflects a deep commitment to protecting the integrity of legal decisions, ensuring that justice is based on solid evidence and established truth. Similarly, the emphasis on witness credibility and the careful evaluation of evidence aligns with modern principles of fairness and justice, making these maxims highly relevant in contemporary legal contexts.

On the other hand, **Broom's legal maxims**, such as "*Falsus in Uno, Falsus in Omnibus*," reflect a stringent approach to the credibility of witnesses, where a single falsehood can undermine an entire testimony. While this principle is grounded in the pursuit of truth, its application in the modern era has become more nuanced, with courts considering the context and significance of any falsehoods. This evolution reflects a broader trend in common law systems towards balancing strict rules with the need for fairness and a holistic evaluation of evidence.

The convergence of these legal principles in the modern era highlights the universal pursuit of justice across different legal systems. Both Islamic law and common law recognize the importance of evidence, credibility, and fairness, though they may apply these principles differently. The comparative analysis also underscores the adaptability of these legal maxims, which continue to evolve and find relevance in contemporary judicial systems.

In conclusion, the intersection of Islamic legal maxims and Broom's legal maxims of evidence offers valuable insights into the administration of justice in the present era. By appreciating the strengths and limitations of each tradition, legal scholars and practitioners can draw from both to enhance the fairness, reliability, and integrity of modern legal systems.

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