

BY ALLAH

The manner and significance of
swearing an oath for a Muslim

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(Published in the Journal of the Academy of Experts,
The Expert and Dispute Resolver, Summer 2011 edition)

There are many legally recognised oaths, including oaths of allegiance, on accepting judicial, parliamentary or public office – and when giving evidence in a court of law, with which this article is concerned.

As a child, many years ago, the most solemn oath I knew was, “Cross my heart and hope to die,” that is, if I’m not telling the truth! As I grew older and more aware, it became apparent that life did not end with death; that there was another phase of existence beyond death; and that being truthful or not could mean the difference between going to heaven or to hell.

And then I came across people who were quite prepared to lie if they could get away with it; and others who did not believe in a Supreme Being or life after death, but who nevertheless recognised the importance of being truthful.

And then I became a lawyer and entered a world where it is so important to be truthful when giving evidence before a court because this can mean the difference between people being free or imprisoned, between their being enriched or impoverished.

This is partly why it is so important for a witness to be able to give a recognisably solemn form of undertaking to be truthful before giving evidence.

The leading pre-digital-era common law case of *Omychund v Barker*¹ not only confirmed the best evidence rule (that no evidence is admissible unless it is “the best that the nature of the case will allow”), but also laid down that witnesses ought to be sworn, “according to the peculiar ceremonies of their own religion or in such manner as they might declare binding on their consciences.”

Historically, in the British Isles, for several centuries only an Anglican Christian form of oath was legally acceptable; then the Roman Catholic and Jewish forms were eventually recognised – and for those who objected on religious grounds or because they did not believe in God and the Last Day, the secular form of affirmation also came into being.² Other forms of oaths became accepted under this umbrella, including oaths for Quakers, Moravians, Arabs, Chinese, Hindus, Buddhists, Sikhs and Muslims.

As recently as fifty years ago, the oath for a ‘Muhammadan Witness’ was described thus: “A copy of the Qur’an is handed to the witness. He places his right hand flat upon the book and puts the other hand upon his forehead, bringing his head down to the book and in contact with it. He then regards the book for some moments. **Officer of the court:** “Are you bound by the ceremony you have performed, to speak the truth?” **Witness:** “Yes.”³

Nowadays this quaint ceremony has been dispensed with and a Muslim witness holds a copy of the Qur’an in the right hand and swears by Allah to tell the truth. This is probably

based on the Christian and Jewish forms – but what are the actual requirements of the *Shari'a* (defined briefly as: “lit. road, the legal modality of a people based on the Revelation of their Prophet;”) ⁴ as regards swearing an oath?

As well as the direct human transmission of the teachings and practices of Islam from person to person, the main written sources of Islamic law and customary practice are firstly the *Qur'an* (defined briefly as: “the Holy Book, the Living Miracle, revealed from Allah as a guidance to mankind via the angel Jibril to the Prophet Muhammad, may Allah bless him and grant him peace;”) ⁵ and then the *hadith* (defined briefly as: “reported speech of the Prophet.”) ⁶

In swearing an oath a Muslim makes a solemn covenant or promise in the presence of Allah – Who says of Himself in the Qur'an:

“We created man and We know what his own self whispers to him. We are nearer to him than his jugular vein. And the two recording angels are recording sitting on the right and on the left. He does not utter a single word without a watcher by him, pen in hand!” ⁷

The Qur'an stresses the importance of keeping one's word:

“Allah commands justice and doing good and giving to relatives. And He forbids indecency and doing wrong and tyranny. He warns you so that hopefully you will pay heed. Be true to Allah's contract when you have agreed to it, and do not break your oaths once they are confirmed and you have made Allah your guarantee. Allah knows what you do.” ⁸

Muslims believe that being truthful is a means to arriving in the Garden in the next life – and that being untruthful is a means to arriving in the Fire in the next life. For those believing Muslims who know that Allah has power over everything and that Allah knows everything and that after death there will come for each one of us the Day of Resurrection and Judgment and a place either in the Garden or in the Fire, the prospects of this ultimate reward or punishment from Allah provide them with powerful incentives to keep their word and not to break it:

“The Messenger of Allah, may Allah bless him and grant him peace, said, ‘Whoever cuts off the right of a Muslim by his oath, Allah forbids him the Garden and obliges the Fire for him.’ They said, ‘Even if it is something insignificant, Messenger of Allah?’ He said, ‘Even if it is a tooth-stick, even if it is a tooth-stick,’ repeating it three times.” ⁹

It is also clear that a Muslim who is swearing an oath should only swear by Allah:

“The Messenger of Allah, may Allah bless him and grant him peace, was speaking to ‘Umar ibn al-Khattab while he was travelling with a troop and ‘Umar swore by his father and he (the Messenger) said, ‘Allah forbids you to swear by your fathers. If anyone swears, let him swear by Allah or keep silent.’” ¹⁰

Two points are clear from this hadith: *firstly*, when a Muslim is swearing an oath it is not necessary to hold a Qur'an, since the oath is “by Allah” and not “on the Qur'an”; and *secondly*, a Muslim should only swear by Allah.

Thus the practice in an English court of law of a Muslim witness holding a Qur'an in the right hand when swearing by Allah to tell the truth does not derive from the *sunnah*

(defined briefly as: “the customary practice of a person or group of people. It has come to refer almost exclusively to the practice of the Messenger of Allah and to the first generation of Muslims.”)¹¹ It is most probably based on the earlier, well established practice of the Jews and Christians of holding in their right hands respectively a copy of the Old Testament (or of the Pentateuch) or of the New Testament when swearing by Almighty God to tell the truth.

Since Allah is always present, He knows exactly what was intended and exactly what happened and exactly what was said and therefore He knows whether or not the oath is sincere and whether or not the testimony is accurate or inaccurate, or true or false. Whoever knows that Allah knows, knows that there can be no greater oath than an oath “by Allah” – and that therefore holding a Qur’an or referring to the Qur’an while swearing the oath does not really add anything to the immensity or weight of the oath.

Although holding a Qur’an or referring to the Qur’an when swearing an oath by Allah is not necessary, it is not forbidden by the Shari’a. It would be fair to say that for many Muslims, holding a copy of the Qur’an when swearing an oath by Allah is an outward demonstration to those who are present that they intend by this action to emphasise that their oath is a sincere and solemn oath.

If a Muslim witness refuses to take an oath “on the Qur’an”, no adverse inference should be drawn from this, provided that he or she willingly swears an oath “by Allah”.

If a Muslim avoids doing so, either by refusing to swear an oath by Allah or by electing to make some other form of oath such as an oath of affirmation, it can safely be inferred from this that he or she either fears or knows that he or she will not be telling the whole truth – or that he or she no longer considers him or her self a Muslim.

If a Muslim finds him or her self in a jurisdiction which does not recognise an oath “by Allah”, he or she should make his or her oath by whatever name of the Supreme Being is recognised by that jurisdiction, knowing in his or her heart that since there is only One Supreme Being, the oath will nevertheless be “by Allah.”

I recently asked my nine-year old daughter how I could be sure that she would keep her promise to me. “Cross my heart and hope to die if I lie!” she smiled. We both still have much to learn.

1 (1745) 1 Atk, 21, 49; 26 ER 15

2 See *inter alia* the Oaths Acts 1838, 1888, 1909, 1961 & 1978

3 *Oaths & Affirmations*, p. 109, Boland & Sayer, Stevens & Sons Ltd, 1961

4 *A Glossary of Islamic Terms*, Aisha Bewley, Ta-Ha Publishers, London, 1998

5 Ibid.

6 Ibid.

7 *THE NOBLE QUR’AN – a New Rendering of its Meaning in English*, 50.16-18, translated by Abdalhaqq & Aisha Bewley, Bookwork, Norwich, 1999

8 Ibid., 16.90-91

9 *Al-Muwatta* of Imam Malik, 36.8.11, translated by Aisha Bewley and Yaqub Johnson, Diwan Press, Norwich, 1982

10 Ibid., 22.9.14

11 See note 4