CHAPTER 6

THE EVIDENCE ACT.

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CHAPTER 6

THE EVIDENCE ACT.

Commencement: 1 August, 1909.

An Act relating to evidence.

PART I—PRELIMINARY.

1. Application.

This Act shall apply to all judicial proceedings in or before the Supreme Court, the Court of Appeal, the High Court and all courts established under the Magistrates Courts Act, but not to affidavits presented to any court or officer nor to proceedings before an arbitrator.

2. Interpretation.

(1) In this Act, the following words and expressions are used in the following senses, unless a contrary intention appears from the context—

(a) "court" includes all judges, magistrates, jurors and assessors and all persons, except arbitrators, legally authorised to take evidence;

(b) "document" means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;

(c) "documentary evidence" means all documents produced for the inspection of the court;

(d) "evidence" denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes statements by accused persons, admissions, judicial notice, presumptions of law, and ocular observation by the court in its judicial capacity;

(e) "fact" means and includes—

(i) any thing, state of things, or relation of things, capable of being perceived by the senses; and

(ii) any mental condition of which any person is conscious;

(f) "fact in issue" means and includes any fact from which, either by itself or in connection with other facts, the existence,

nonexistence, nature or extent of any right, liability or disability, asserted or denied in any suit or proceeding, necessarily follows;

Explanation.—Whenever, under the provisions of the law for the time being in force relating to civil procedure, any court records an issue of fact, the fact to be asserted or denied in the answer to that issue is a fact in issue.

(g) "monogamous marriage" means a marriage which is by law necessarily monogamous and binding during the lifetime of both parties unless dissolved by a valid judgment of a court;

(h) "oral evidence" means all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry.

(2) One fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

(3) A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it exists.

(4) A fact is said to be disproved when, after considering the matters before it, the court either believes that it does not exist, or considers its nonexistence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it does not exist.

(5) A fact is said not to be proved when it is neither proved nor disproved.

3. Presumptions.

(1) Whenever it is provided by this Act that the court may presume a fact, it may either regard that fact as proved, unless it is disproved, or may call for proof of it.

(2) Whenever it is directed by this Act that the court shall presume a fact, it shall regard that fact as proved, unless it is disproved.

(3) When one fact is declared by this Act to be conclusive proof of another, the court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

PART II—RELEVANCY OF FACTS.

4. Evidence may be given of facts in issue and relevant facts.

Subject to any other law, evidence may be given in any suit or proceeding of the existence or nonexistence of every fact in issue, and of such other facts as are hereafter declared to be relevant, and of no others.

5. Relevancy of facts forming part of the same transaction.

Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or at different times and places.

6. Facts which are the occasion, cause or effect of facts in issue, etc.

Facts which are the occasion, the cause or the effect, immediate or otherwise, of relevant facts, or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction, are relevant.

7. Facts showing motive or preparation; conduct influencing or influenced by a fact in issue or relevant fact.

(1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

(2) The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to that suit or proceeding, or in reference to any fact in issue in the suit or proceeding or relevant to it, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if that conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent to the fact in issue or relevant fact.

Explanation 1.—The word “conduct” in this section does not include statements, unless those statements accompany and explain acts other than

statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or her or in his or her presence and hearing, which affects that conduct, is relevant.

8. Facts necessary to explain or introduce relevant facts.

Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant insofar as they are necessary for that purpose.

9. Things said or done by conspirator in reference to common design.

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of those persons in reference to their common intention, after the time when that intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy and for the purpose of showing that any such person was a party to it.

10. When facts not otherwise relevant become relevant.

Facts not otherwise relevant are relevant—

(a) if they are inconsistent with any fact in issue or relevant fact;

(b) if by themselves or in connection with other facts they make the existence or nonexistence of any fact in issue or relevant fact highly probable or improbable.

11. In suit for damages, facts tending to enable the court to determine amount are relevant.

In suits in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded is relevant.

12. Facts relevant when right or custom is in question.

Where the question is as to the existence of any right or custom, the following facts are relevant—

(a) any transaction by which the right or custom in question was created, claimed, modified, recognised, asserted or denied, or which was inconsistent with its existence;

(b) particular instances in which the right or custom was claimed, recognised or exercised, or in which its exercise was disputed, asserted or departed from.

Explanation.—The words "right" and "custom" in this section shall be understood to comprehend all rights and customs recognised by law.

13. Facts showing existence of state of mind or of body or bodily feeling.

Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill will or good will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

Explanation 2.—But where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of that person shall also be a relevant fact.

14. Facts bearing on question of whether act was accidental or intentional.

When there is a question of whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

15. Existence of course of business, when relevant.

When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

Admissions.

16. Admission defined.

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

17. Admission by party to proceeding or his or her agent; by party in representative character; by party interested in subject matter.

(1) Statements made by a party to the proceeding or by an agent of any such party, whom the court regards, in the circumstances of the case, as expressly or impliedly authorised by him or her to make them, are admissions.

(2) Statements made by parties to suits, suing or sued in a representative character, are not admissions, unless they were made while the party making them held that character.

(3) Statements made by—

(a) persons who have any proprietary or pecuniary interest in the subject matter of the proceeding, and who make the statement in their character of persons so interested; or

(b) persons from whom the parties to the suit have derived their interest in the subject matter of the suit,

are admissions, if they are made during the continuance of the interest of the persons making the statements.

18. Admissions by persons whose position must be proved as against party to suit.

Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions, if those statements would be relevant as against those persons in relation to such position or

liability in a suit brought by or against them, and if they are made while the person making them occupies such position or is subject to such liability.

19. Admissions by persons expressly referred to by party to suit.

Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

20. Proof of admissions against persons making them, and by or on their behalf.

Admissions are relevant and may be proved as against the person who makes them, or his or her representative in interest; but they cannot be proved by or on behalf of the person who makes them or by his or her representative in interest, except in the following cases—

(a) an admission may be proved by or on behalf of the person making it, when it is of such a nature that if the person making it were dead, it would be relevant as between third persons under section 30;

(b) an admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when that state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable;

(c) an admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

21. When oral admissions as to contents of documents are relevant.

Oral admissions as to the contents of a document are not relevant, unless the party proposing to prove them shows that he or she is entitled to give secondary evidence of the contents of the document under the rules hereafter contained, or unless the genuineness of a document produced is in question.

22. Admissions in civil cases, when relevant.

In civil cases, no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or in circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

Explanation.—Nothing in this section shall be taken to exempt any advocate from giving evidence of any matter of which he or she may be compelled to give evidence under section 125.

23. Confessions to police officers and power of Minister to make rules.

(1) No confession made by any person while he or she is in the custody of a police officer shall be proved against any such person unless it is made in the immediate presence of—

(a) a police officer of or above the rank of assistant inspector; or

(b) a magistrate,

but no person shall be convicted of an offence solely on the basis of a confession made under paragraph (b), unless the confession is corroborated by other material evidence in support of the confession implicating that person.

(2) The Minister may, after consultation with the Chief Justice, make rules prescribing generally the conduct of and procedure to be followed by police officers when interviewing any person and when recording a statement from any person, in the course of any investigation.

24. When confessions irrelevant.

A confession made by an accused person is irrelevant if the making of the confession appears to the court, having regard to the state of mind of the accused person and to all the circumstances, to have been caused by any violence, force, threat, inducement or promise calculated in the opinion of the court to cause an untrue confession to be made.

25. Confession made after removal of impression caused by violence, etc.

If such confession as is referred to in section 24 is made after the impression caused by any such violence, force, threat, inducement or promise has, in the opinion of the court, been fully removed, it is relevant.

26. Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence

of a deception practised on the accused person for the purpose of obtaining it, or when he or she was drunk, or because it was made in answer to questions which he or she need not have answered, whatever may have been the form of those questions, or because he or she was not warned that he or she was not bound to make the confession, and that evidence of it might be given against him or her.

27. Consideration of proved confession affecting person making it and others jointly under trial for same offence.

When more persons than one are being tried jointly for the same offence, and a confession made by one of those persons affecting himself or herself and some other of those persons is proved, the court may take into consideration such confession as against that other person as well as against the person who makes the confession.

Explanation.—"Offence", as used in this section, includes the abetment of, or attempt to commit, the offence.

28. Admissions not conclusive proof, but may estop.

Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereafter contained.

29. Information leading to discovery of facts.

Notwithstanding sections 23 and 24, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, so much of that information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Statements by persons who cannot be called as witnesses.

30. Cases in which statement of relevant fact by person who is dead or cannot be found, etc. is relevant.

Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases—

(a) when the statement is made by a person as to the cause of his or her death, or as to any of the circumstances of the transaction which resulted in his or her death, in cases in which the cause of that person's death comes into question and the statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his or her death comes into question;

(b) when the statement was made by such person in the ordinary course of business, and, in particular, when it consists of any entry or memorandum made by him or her in books kept in the ordinary course of business or in the discharge of professional duty, or of an acknowledgment written or signed by him or her of the receipt of money, goods, securities or property of any kind, or of a document used in commerce written or signed by him or her, or of the date of a letter or other document usually dated, written or signed by him or her;

(c) when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or her or would have exposed him or her to a criminal prosecution or to a suit for damages;

(d) when the statement gives the opinion of any such person as to the existence of any public right or custom, or matter of public or general interest, of the existence of which, if it existed, he or she would have been likely to be aware, and when that statement was made before any controversy as to the right, custom or matter had risen;

(e) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised;

(f) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when the statement was made before the question in dispute was raised;

(g) when the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned

in section 12(a);

(h) when the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

31. Relevancy of certain evidence for proving, in subsequent proceeding or later stage of the same proceeding, the truth of facts stated in the evidence.

Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding or in a later stage of the same judicial proceeding the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his or her presence cannot be obtained without an amount of delay or expense which, in the circumstances of the case, the court considers unreasonable if—

(a) the proceeding was between the same parties or their representatives in interest;

(b) the adverse party in the first proceeding had the right and opportunity to cross-examine; and

(c) the questions in issue were substantially the same in the first as in the second proceeding.

Explanation.—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements made in special circumstances.

32. Entries in books of account, when relevant.

Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statement shall not alone be sufficient evidence to charge any person with liability.

33. Relevancy of entry in public record, made in performance of duty.

An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his or her official duty or by any other person in performance of a duty specially

enjoined by the law of the country in which the book, register or record is kept, is itself a relevant fact.

34. Relevancy of statements in maps, charts and plans.

Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale or in maps or plans made under the authority of the Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

35. Relevancy of statement as to fact of public nature contained in certain Acts or notifications.

When the court has to form an opinion as to the existence of any fact of a public nature, any statement of it—

(a) made in a recital contained in any Act of Parliament;
(b) in a notification by the Government published in the Gazette; or
(c) in any printed paper purporting to be the Government Gazette of any country of the Commonwealth,

is a relevant fact.

36. Relevancy of statements as to any law contained in law books.

When the court has to form an opinion as to a law of any country, any statement of that law contained in a book purporting to be printed or published under the authority of the Government of that country and to contain any such law, and any report of the ruling of the courts of that country contained in a book purporting to be a report of such rulings, are relevant.

How much of a statement is to be proved.

37. What evidence to be given when statement forms part of a statement, conversation, document, book or series of letters or papers.

When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the

court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances in which it was made.

Judgments of courts of justice, when relevant.

38. Previous judgments relevant to bar a second suit or trial.

The existence of any judgment, order or decree which by law prevents any court from taking cognisance of a suit or holding a trial is a relevant fact when the question is whether the court ought to take cognisance of the suit or to hold the trial.

39. Relevancy of certain judgments in probate, etc. jurisdiction.

(1) A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character or the title of any such person to any such thing is relevant.

(2) Such judgment, order or decree is conclusive proof—

(a) that any legal character which it confers accrued at the time when the judgment, order or decree came into operation;

(b) that any legal character to which it declares any such person to be entitled, accrued to that person at the time when the judgment, order or decree declares it to have accrued to that person;

(c) that any legal character which it takes away from any such person ceased at the time from which the judgment, order or decree declares that it had ceased or should cease; and

(d) that anything to which it declares any person to be so entitled was the property of that person at the time from which the judgment, order or decree declares that it had been or should be his or her property.

40. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 39.

Judgments, orders or decrees, other than those mentioned in section 39, are

relevant if they relate to matters of a public nature relevant to the inquiry; but those judgments, orders or decrees are not conclusive proof of that which they state.

41. Judgments, etc. other than those mentioned in sections 38 to 40, when relevant.

Judgments, orders or decrees, other than those mentioned in sections 38, 39 and 40, are irrelevant unless the existence of the judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

42. Fraud or collusion in obtaining judgment, or incompetency of the court, may be proved.

Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 38, 39 or 40, and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or was obtained by fraud or collusion.

Opinions of third persons, when relevant.

43. Opinions of experts.

When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to the identity of handwriting or finger impressions, are relevant facts. Such persons are called experts.

44. Facts bearing upon opinions of experts.

Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when those opinions are relevant.

45. Opinion as to handwriting, when relevant.

When the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant fact.

Explanation.—A person is said to be acquainted with the handwriting of another person when he or she has seen that person write, or when he or she has received documents purporting to be written by that person in answer to documents written by himself or herself or under his or her authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him or her.

46. Opinion as to existence of right or custom, when relevant.

When the court has to form an opinion as to the existence of any general custom or right, the opinions as to the existence of that custom or right, of persons who would be likely to know of its existence if it existed, are relevant.

Explanation.—The expression "general custom or right" includes customs or rights common to any considerable class of persons.

47. Opinion as to usages, tenets, etc., when relevant.

When the court has to form an opinion as to—

(a) the usages and tenets of any body of men or family;

(b) the constitution and government of any religious or charitable foundation; or

(c) the meaning of words or terms used in particular districts or by particular classes of people,

the opinion of persons having special means of the knowledge thereon are relevant facts.

48. Opinion on relationship, when relevant.

When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of the relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact; but such opinion shall not be sufficient to prove a marriage in proceedings under the Divorce Act, or in prosecutions under section 153 of the Penal Code Act.

49. Grounds of opinion, when relevant.

Whenever the opinion of any living person is relevant, the grounds on which

that opinion is based are also relevant.

Character, when relevant.

50. In civil cases, character to prove conduct imputed irrelevant.

In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him or her is irrelevant, except insofar as that character appears from facts otherwise relevant.

51. In criminal cases, previous good character relevant.

In criminal proceedings the fact that the person accused is of a good character is relevant.

52. Bad character in criminal proceedings only relevant in certain circumstances.

In criminal proceedings, subject to section 133(2) of the Magistrates Courts Act and section 98 of the Trial on Indictments Act, the fact that an accused person has a bad character is irrelevant, unless—

(a) evidence has been given or a question or questions asked by the accused person or his or her advocate for the purpose of showing that he or she has a good character;

(b) the proof that he or she has committed or been convicted of another offence is admissible evidence to show that he or she is guilty of the offence with which he or she is charged;

(c) the nature or conduct of his or her defence is such as to involve imputations on the character of the complainant or the witnesses for the prosecution; or

(d) he or she has given evidence against any other person charged with the same offence as that with which he or she is charged.

53. Incriminating questions.

In criminal proceedings an accused person giving evidence may be asked any question in cross-examination that would tend to incriminate him or her as to the offence with which he or she is charged.

54. Character as affecting damages.

In civil cases the fact that the character of any person is such as to affect the amount of damages which he or she ought to receive is relevant.

Explanation.—In sections 50, 51, 52 and 54 the word "character" includes both reputation and disposition; but, except as provided in section 52, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

PART III—PROOF.

Facts which need not be proved.

55. Facts judicially noticeable need not be proved.

No fact of which the court will take judicial notice need be proved.

56. Facts of which court must take judicial notice.

(1) The court shall take judicial notice of the following facts—

(a) all Acts and Ordinances enacted or hereafter to be enacted, and all Acts of Parliament of the United Kingdom now or heretofore in force in Uganda;

(b) all Orders in Council, laws, statutory instruments or subsidiary legislation now or heretofore in force, or hereafter to be in force, in any part of Uganda;

(c) the course of proceeding of Parliament, and of the councils or other authorities for the purpose of making laws and regulations established under any law for the time being relating thereto;

(d) the accession and the sign manual of the Head of the Commonwealth;

(e) the seals of all the courts of Uganda duly established; all seals of which the English courts take judicial notice; the seals of courts of admiralty and maritime jurisdiction and of notaries public, and all seals which any person is authorised to use by any Act of Parliament or other written law;

(f) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of Uganda, if the fact of their appointment to that office is notified in the Gazette;

(g) the existence, title and national flag of every State or Sovereign recognised by the Government;
(h) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Gazette;
(i) the territories of the Commonwealth;
(j) the commencement, continuance and termination of hostilities between the Government and any other State or body of persons;
(k) the names of the members and officers of the court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates and other persons authorised by law to appear or act before it;
(l) the rule of the road on land or at sea.

(2) In all these cases and also on matters of public history, literature, science or art, the court may resort for its aid to appropriate books or documents of reference.

(3) If the court is called upon by any person to take judicial notice of any fact, it may refuse to do so until that person produces any such book or document as it may consider necessary to enable it to do so.

57. Facts admitted need not be proved.

No fact need be proved in any proceeding which the parties to the proceeding or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings; except that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Oral evidence.

58. Proof of facts by oral evidence.

All facts, except the contents of documents, may be proved by oral evidence.

59. Oral evidence must be direct.

Oral evidence must, in all cases whatever, be direct; that is to say—
(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he or she saw it;

(b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he or she heard it;

(c) if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he or she perceived it by that sense or in that manner;

(d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds,

except that—

(e) the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which those opinions are held, may be proved by the production of those treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable; and

(f) if oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of that material thing for its inspection.

Documentary evidence.

60. Proof of contents of documents.

The contents of documents may be proved either by primary or by secondary evidence.

61. Primary evidence.

Primary evidence means the document itself produced for the inspection of the court.

Explanation 1.—Where a document is executed in several parts, each part is primary evidence of the document. Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

Explanation 2.—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where they are all copies of

a common original, they are not primary evidence of the contents of the original.

62. Secondary evidence.

Secondary evidence means and includes—

(a) certified copies given under the provisions hereafter contained;

(b) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with those copies;

(c) copies made from or compared with the original;

(d) counterparts of documents as against the parties who did not execute them;

(e) oral accounts of the contents of a document given by some person who has himself or herself seen it.

63. Proof of documents by primary evidence.

Documents must be proved by primary evidence except in the cases hereafter mentioned.

64. Cases in which secondary evidence relating to documents may be given.

(1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases—

(a) when the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the court, or of any person legally bound to produce it, and when, after the notice mentioned in section 65, that person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his or her representative in interest;

(c) when the original has been destroyed or lost, or is in the possession or power of any person not legally bound to produce it, and who refuses to or does not produce it after reasonable notice, or when the party offering evidence of its contents cannot, for any other reason not arising from his or her own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;
(e) when the original is a public document within the meaning of section 73;
(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in Uganda, to be given in evidence;
(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.

(2) In cases (a), (c) and (d) of subsection (1), any secondary evidence of the contents of the document is admissible.

(3) In case (b) of subsection (1), the written admission is admissible.

(4) In case (e) or (f) of subsection (1), a certified copy of the document, but no other kind of secondary evidence, is admissible.

(5) In case (g) of subsection (1), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

65. Rules as to notice to produce.

Secondary evidence of the contents of the documents referred to in section 64(a) shall not be given unless the party proposing to give the secondary evidence has previously given to the party in whose possession or power the document is, or to his or her advocate, such notice to produce it as is prescribed by law, and if no notice is prescribed by law, then such notice as a court considers reasonable in the circumstances of the case; except that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the court thinks fit to dispense with it—

(a) when the document to be proved is itself a notice;
(b) when, from the nature of the case, the adverse party must know that he or she will be required to produce it;
(c) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
(d) when the adverse party or his or her agent has the original in court;
(e) when the adverse party or his or her agent has admitted the loss

of the document;

(f) when the person in possession of the document is out of reach of, or not subject to, the process of the court.

66. Proof of signature and handwriting of person alleged to have signed or written document produced.

If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his or her handwriting.

67. Proof of execution of document required by law to be attested.

If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there is an attesting witness alive, and subject to the process of the court and capable of giving evidence.

68. Proof where no attesting witness found.

If no such attesting witness can be found, it must be proved that the attestation of one attesting witness at least is in his or her handwriting, and that the signature of the person executing the document is in the handwriting of that person.

69. Admission of execution by party to attested document.

The admission of a party to an attested document of its execution by himself or herself shall be sufficient proof of its execution as against him or her, though it is a document required by law to be attested.

70. Proof when attesting witness denies the execution.

If the attesting witness denies or does not recollect the execution of the document, its execution may be proved by other evidence.

71. Proof of document not required by law to be attested.

An attested document not required by law to be attested may be proved as if it were unattested.

72. Comparison of signature, writing or seal with others admitted or proved.

(1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by that person.

(3) This section applies also, with any necessary modifications, to finger impressions.

Public documents.

73. Public documents.

The following documents are public documents—

(a) documents forming the acts or records of the acts—
  (i) of the sovereign authority;
  (ii) of official bodies and tribunals; and
  (iii) of public officers, legislative, judicial and executive, whether of Uganda, of any other part of the Commonwealth, of the Republic of Ireland or of a foreign country;

(b) public records kept in Uganda of private documents.

74. Private documents.

All documents, other than those specified in section 73, are private.

75. Certified copies of public documents.

Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on

payment of the legal fees for the copy, together with a certificate written at the foot of the copy that it is a true copy of that document or part of the document, as the case may be, and the certificate shall be dated and subscribed by the officer with his or her name and official title, and shall be sealed whenever the officer is authorised by law to make use of a seal, and the copies so certified shall be called certified copies.

Explanation.—Any officer who, by the ordinary course of his or her official duty, is authorised to deliver such copies, shall be deemed to have the custody of those documents within the meaning of this section.

76. Proof of documents by production of certified copies.

Such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

77. Proof of other official documents.

(1) The following public documents may be proved as follows—

(a) Acts, orders or notifications of the Government or of the administration of a district—

(i) by the records of the departments, certified by the heads of those departments respectively;

(ii) by any document purporting to be printed by order of the Government or of the administration of a district; or

(iii) by published laws or abstracts or by copies purporting to be printed by order of the Government or of the administration of a district;

(b) the acts of the executive or the proceedings of the legislature of a Commonwealth or foreign country, by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some law of Uganda;

(c) the proceedings of a municipal body in Uganda, by a copy of the proceedings certified by the legal keeper of the proceedings, or by a printed book purporting to be published by the authority of that body;

(d) public documents of any other class in a foreign country, by the original, or by a copy certified by the legal keeper of the document, with a certificate under the seal of a notary public, or

of a foreign service officer, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.

(2) The Documentary Evidence Acts, 1868 and 1882 of the United Kingdom, shall apply to Uganda; and the provisions of those Acts shall apply to all proclamations, orders and regulations issued by the government of a country of the Commonwealth as they apply to the proclamations, orders and regulations referred to in those Acts.

(3) Section 27 of the British Nationality Act, 1948, of the United Kingdom shall apply in Uganda.

Presumptions as to documents.

78. Presumption as to genuineness of certified copies.

(1) The court shall presume every document purporting to be a certificate, certified copy or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in Uganda, to be genuine if the document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The court shall also presume that any officer by whom any such document purports to be signed or certified held, when he or she signed it, the official character which he or she claims in that paper.

79. Presumption as to document produced as record of evidence.

Whenever a document is produced before any court, purporting to be a record or memorandum of any evidence given in a judicial proceeding or before any officer authorised by law to take evidence, required by law to be reduced to writing, and purporting to be signed by any judge or magistrate, or by any such officer as aforesaid, the court may presume that the document is genuine and that the evidence recorded was the evidence actually given; may take oral evidence of the proceedings and the evidence given; and shall not be precluded from admitting any such document merely by reason of the absence of any formality required by law; provided always that an accused person is not injured as to his or her defence on the merits.

80. Presumption as to Gazettes, newspapers, private Acts of Parliament and other documents.

The court shall presume the genuineness of every document purporting to be the Gazette, or the Government Gazette of any country of the Commonwealth, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by a government printer or in any of the manners mentioned in the Documentary Evidence Act, 1882, of the United Kingdom, and of every document purporting to be a document directed by any law to be kept by any person, if the document is kept substantially in the form required by law and is produced from proper custody.

81. Presumption as to document admissible in the U.K. or Ireland without proof of seal or signature.

(1) When any document is produced before any court, purporting to be a document which, by the law in force for the time being in the United Kingdom or the Republic of Ireland, would be admissible in proof of any particular in any court of justice in the United Kingdom or the Republic of Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed, the court shall presume that the seal, stamp or signature is genuine, and that the person signing it held, at the time when he or she signed it, the judicial or official character which he or she claims.

(2) The document shall be admissible for the same purpose for which it would be admissible in the United Kingdom or the Republic of Ireland.

82. Presumption as to maps or plans made by authority of Government.

The court shall presume that maps or plans purporting to be made by the authority of the Government were so made and are accurate.

83. Presumption as to collections of laws and reports of decisions.

The court shall presume the genuineness of every book purporting to be printed or published under the authority of the government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the courts of that country.

84. Presumption as to private documents executed outside Uganda.

The court shall presume that private documents purporting to be executed out of Uganda were so executed and were duly authenticated if—

(a) in the case of such a document executed in the United Kingdom, it purports to be authenticated by a notary public under his or her signature and seal of office;

(b) in the case of such a document executed (elsewhere than in the United Kingdom) in the Republic of Ireland or in any country of the Commonwealth outside Africa, it purports to be authenticated by the signature and seal of office of the mayor of any town or of a notary public or of the permanent head of any government department in the Republic of Ireland or in any such country of the Commonwealth;

(c) in the case of such a document executed in any country of the Commonwealth in Africa, it purports to be authenticated by the signature and seal of office of any notary public, resident magistrate, permanent head of a government department, or resident commissioner or assistant commissioner in or of any such country; and, in addition, in the case of a document executed in Kenya, it purports to be authenticated under the hand of any magistrate or head of a government department;

(d) in the case of such a document executed in any place outside the Commonwealth and the Republic of Ireland (in this section described as a foreign place), it purports to be authenticated by the signature and seal of office—

(i) of a foreign service officer of Uganda or of a British consul or diplomatic agent in such foreign place; or

(ii) of any secretary of state, undersecretary of state, governor, colonial secretary, or any other person in that foreign place who shall be shown by the certificate of the consul or diplomatic agent of that foreign place in or for Uganda to be duly authorised under the law of that foreign place to authenticate the document;

(e) in the case of such a document executed in any part of the Commonwealth or the Republic of Ireland, which affects or relates to property not exceeding in amount or value two hundred pounds sterling there purports to be appended to or endorsed on the document a statement signed by a magistrate or a justice of the peace of the part of the Commonwealth or the Republic of

Ireland in which the document is executed—

(i) that the person executing the document is a person known to him or her; or

(ii) that two other persons (known to him or her) have severally testified before him or her that the person executing the document is a person known to each of them.

85. Presumption as to powers of attorney.

The court shall presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a notary public, or any court, judge, magistrate, or representative of any government of the Commonwealth, was so executed and authenticated.

86. Presumption as to certified copies of foreign judicial records.

The court may presume that any document purporting to be a certified copy of any judicial record of any country not forming part of the Commonwealth is genuine and accurate, if the document purports to be certified in any manner which is certified by any representative of any government of the Commonwealth in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

87. Presumption as to books, maps and charts.

The court may presume that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, the statements of which are relevant facts, and which is produced for its inspection, was written and published by the person, and at the time and place, by whom or at which it purports to have been written or published.

88. Presumption as to telegraphic messages.

The court may presume that a message, forwarded from a telegraph office to the person to whom the message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the court shall not make any presumption as to the person by whom that message was delivered for transmission.

89. Presumption as to due execution, etc. of documents not produced.

The court shall presume that every document, called for and not produced after notice to produce, was attested, stamped, and executed in the manner required by law.

90. Presumption as to documents thirty years old.

When any document, purporting or proved to be thirty years old, is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of that document, which purports to be in the handwriting of any particular person, is in that person's handwriting and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation.—Documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable. This explanation applies also to section 80.

Exclusion of oral by documentary evidence.

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document.

When the terms of a contract or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence, except as mentioned in section 79, shall be given in proof of the terms of that contract, grant or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he or she is appointed need not be proved.

Exception 2.—Wills admitted to probate in Uganda may be proved by the

probate.

Explanation 1.—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

Explanation 2.—Where there are more originals than one, one original only need be proved.

Explanation 3.—The statement, in any document whatever, of a fact other than the facts referred to in this section shall not preclude the admission of oral evidence as to the same fact.

92. Exclusion of evidence of oral agreement.

When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 91, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms; but—

(a) any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration or mistake in fact or law;

(b) the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this paragraph applies, the court shall have regard to the degree of formality of the document;

(c) the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved;

(d) the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property may be proved, except in cases in which that contract, grant or disposition of property is by law required to be in writing or has been registered according to the law in force for the time being as to the registration of documents;

(e) any usage or custom by which incidents not expressly mentioned

in any contract are usually annexed to contracts of that description may be proved if the annexing of the incident would not be repugnant to, or inconsistent with, the express terms of the contract;

(f) any fact may be proved which shows in what manner the language of a document is related to existing facts.

93. Exclusion of evidence to explain or amend ambiguous document.

When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

94. Exclusion of evidence against application of document to existing facts.

When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to those facts.

95. Evidence as to document unmeaning in reference to existing facts.

When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

96. Evidence as to application of language which can apply to one only of several persons.

When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.

97. Evidence as to application of language to one of two sets of facts, to neither of which the whole correctly applies.

When the language used applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

98. Evidence as to meaning of illegible characters, etc.

Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

99. Who may give evidence of agreement varying terms of document.

Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.

100. Saving of provisions of Succession Act relating to wills.

Nothing in sections 91 to 99 shall be taken to affect any of the provisions of the Succession Act as to the construction of wills.

PART IV—PRODUCTION AND EFFECT OF EVIDENCE.

Burden of proof.

101. Burden of proof.

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

102. On whom burden of proof lies.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

103. Burden of proof as to particular fact.

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

104. Burden of proving fact to be proved to make evidence admissible.

The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give that evidence.

105. Burden of proving that case of accused comes within exceptions and fact especially within knowledge.

(1) When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he or she is charged and the burden of proving any fact especially within the knowledge of that person is upon him or her; but—

(a) that burden shall be deemed to be discharged if the court is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that those circumstances or facts exist; and

(b) the person accused shall be entitled to be acquitted of the offence with which he or she is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence.

(2) Nothing in this section shall—

(a) prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the person accused is charged;

(b) impose on the prosecution the burden of proving that the circumstances or facts described in subsection (1) do not exist; or

(c) affect the burden placed upon an accused person to prove a defence of intoxication or insanity.

106. Burden of proving, in civil proceedings, fact especially within knowledge.

In civil proceedings, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon that person.

107. Burden of proving death of person known to have been alive within thirty years.

When the question is whether a person is alive or dead, and it is shown that he or she was alive within thirty years, the burden of proving that he or she is dead is on the person who affirms it.

108. Burden of proving that person is alive who has not been heard of for seven years.

When the question is whether a person is alive or dead, and it is proved that he or she has not been heard of for seven years by those who would naturally have heard of him or her if he or she had been alive, the burden of proving that he or she is alive is shifted to the person who affirms it.

109. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent.

When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

110. Burden of proof as to ownership.

When the question is whether any person is owner of anything of which he or she is shown to be in possession, the burden of proving that he or she is not the owner is on the person who affirms that he or she is not the owner.

111. Proof of good faith in transactions where one party is in relation of active confidence.

Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

112. Birth during marriage conclusive proof of legitimacy.

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days

after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. Court may presume existence of certain facts.

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Estoppel.

114. Estoppel.

When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing.

115. Estoppel of tenant or of licensee of person in possession.

No tenant of immovable property, or person claiming through that tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of that tenant had, at the beginning of the tenancy, a title to that immovable property; and no person who came upon any immovable property by the licence of the person in possession of that property shall during the continuance of the licence be permitted to deny that that person had a title to such possession at the time when the licence was given.

116. Estoppel of acceptor of bill of exchange, bailee or licensee.

No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw the bill or to endorse it; nor shall any bailee or licensee be permitted to deny that his or her bailor or licensor had, at the time when the bailment or licence commenced, authority to make the bailment or grant the licence.

Explanation 1.—The acceptor of a bill of exchange may deny that the bill

was really drawn by the person by whom it purports to have been drawn.

Explanation 2.—If a bailee delivers the goods bailed to a person other than the bailor, he or she may prove that that person had a right to them as against the bailor.

Witnesses.

117. Who may testify.

All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.

Explanation.—A lunatic is not incompetent to testify, unless he or she is prevented by his or her lunacy from understanding the questions put to him or her and giving rational answers to them.

118. Dumb witnesses.

A witness who is unable to speak may give his or her evidence in any other manner in which he or she can make it intelligible, as by writing or by signs; but the writing must be written and the signs made in open court. Evidence so given shall be deemed to be oral evidence.

119. Judge and magistrate.

No judge or magistrate shall, except upon the special order of some court to which he or she is subordinate, be compelled to answer any questions as to his or her own conduct in court as such judge or magistrate, or as to anything which came to his or her knowledge in court as such judge or magistrate; but he or she may be examined as to other matters which occurred in his or her presence while he or she was so acting.

120. Evidence of spouses in criminal proceedings.

(1) In criminal proceedings, the following provisions shall have effect—

(a) the wife or husband of the accused person shall be a competent (but not compellable) witness for the prosecution without the

consent of the accused person; and

(b) the wife or husband of the accused person shall be a competent and compellable witness for the defence whether the accused person is charged alone or jointly with another person.

(2) In this section, and in section 121, "husband" and "wife" mean respectively the husband and wife of a subsisting marriage recognised as such under any written or customary law.

121. General competency of parties and their husbands and wives in civil proceedings.

In all civil proceedings, the parties to the suit, and the husband and wife of any party to the suit, shall be competent and compellable witnesses.

122. Evidence as to affairs of State.

No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold that permission as he or she thinks fit.

123. Official communications.

No public officer shall be compelled to disclose communications made to him or her in the course of his or her duty, when he or she considers that the public interest would suffer by the disclosure.

124. Information as to commission of offences.

No magistrate or police officer shall be compelled to say from where he or she got any information as to the commission of any offence, and no revenue officer shall be compelled to say from where he or she got any information as to the commission of any offence against the public revenues.

Explanation.—"Revenue officer" in this section means any officer employed in or about the business of any branch of the public revenue.

125. Professional communications.

No advocate shall at any time be permitted, unless with his or her client's

express consent, to disclose any communication made to him or her in the course and for the purpose of his or her employment as an advocate by or on behalf of his or her client, or to state the contents or condition of any document with which he or she has become acquainted in the course and for the purpose of his or her professional employment, or to disclose any advice given by him or her to his or her client in the course and for the purpose of that employment; but nothing in this section shall protect from disclosure—

(a) any such communication made in furtherance of any illegal purpose;

(b) any fact observed by any advocate in the course of his or her employment as such, showing that any crime or fraud has been committed since the commencement of his or her employment.

It is immaterial whether the attention of the advocate was or was not directed to that fact by or on behalf of his or her client.

Explanation.—The obligation stated in this section continues after the employment has ceased.

126. Section 125 to apply to interpreters, etc.

Section 125 shall apply to interpreters, and the clerks or servants of advocates.

127. Privilege not waived by volunteering evidence.

If any party to a suit gives evidence in the suit at his or her own instance or otherwise, he or she shall not be deemed to have consented thereby to such disclosure as is mentioned in section 125; and, if any party to a suit or proceeding calls any such advocate as a witness, he or she shall be deemed to have consented to such disclosure only if he or she questions the advocate on matters which, but for that question, he or she would not be at liberty to disclose.

128. Confidential communications with legal advisers.

No one shall be compelled to disclose to the court any confidential communication which has taken place between him or her and his or her legal professional adviser, unless he or she offers himself or herself as a witness, in which case he or she may be compelled to disclose any such communications as may appear to the court necessary to be known in order

to explain any evidence which he or she has given, but no other.

129. Production of title deeds of witness not a party.

No witness who is not a party to a suit shall be compelled to produce his or her title deeds to any property or any document in virtue of which he or she holds any property as pledgee or mortgagee, or any document the production of which might tend to incriminate him or her, unless he or she has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he or she claims.

130. Production of documents which another person having possession could refuse to produce.

No one shall be compelled to produce documents in his or her possession, which any other person would be entitled to refuse to produce if they were in his or her possession, unless the last-mentioned person consents to their production.

131. Witness not excused from answering on ground that answer will incriminate.

A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to the question will incriminate, or may tend directly or indirectly to incriminate, the witness, or that it will expose, or tend directly or indirectly to expose, the witness to a penalty or forfeiture of any kind, or that it may establish or tend to establish that he or she owes a debt or is otherwise subject to a civil suit; but no such answer, which a witness shall be compelled to give, shall subject him or her to any arrest or prosecution, or be proved against him or her in any subsequent criminal proceeding, except a prosecution for giving false evidence by that answer.

Explanation.—A person who is charged with an offence who applies to be called as a witness shall not be excused from answering any question that may tend to incriminate him or her as to the offence charged.

132. Accomplice.

An accomplice shall be a competent witness against an accused person; and

a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

133. Number of witnesses.

Subject to the provisions of any other law in force, no particular number of witnesses shall in any case be required for the proof of any fact.

Examination of witnesses.

134. Order of production and examination of witnesses.

The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and, in the absence of any such law, by the discretion of the court.

135. Judge to decide as to admissibility of evidence.

(1) When either party proposes to give evidence of any fact, the judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the judge shall admit the evidence if he or she thinks that the fact, if proved, would be relevant, and not otherwise.

(2) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, the last-mentioned fact must be proved before evidence is given of the fact first mentioned unless the party undertakes to give proof of that fact and the court is satisfied with the undertaking.

(3) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the judge may, in his or her discretion, either permit evidence of the first fact to be given before the second fact is proved or require evidence to be given of the second fact before evidence is given of the first fact.

136. Examination-in-chief; cross-examination; reexamination.

(1) The examination of a witness by the party who calls him or her shall be called his or her examination-in-chief.

(2) The examination of a witness by the adverse party shall be called his or her cross-examination.

(3) The examination of a witness, subsequent to the cross-examination, by the party who called him or her, shall be called his or her reexamination.

137. Order of examinations.

(1) Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling them so desires) reexamined.

(2) The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his or her examination-in-chief.

(3) The reexamination shall be directed to the explanation of matters referred to in cross-examination; and, if the new matter is, by permission of the court, introduced in reexamination, the adverse party may further cross-examine upon that matter.

138. Cross-examination of person called to produce a document.

A person summoned to produce a document does not become a witness by the mere fact that he or she produces it, and cannot be cross-examined unless he or she is called as a witness.

139. Witnesses to character.

Witnesses to character may be cross-examined and reexamined.

140. Leading questions.

Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

141. When leading questions must not be asked.

(1) Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a reexamination, except with the

permission of the court.

(2) The court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

142. When leading questions may be asked.

Leading questions may be asked in cross-examination.

143. Evidence as to matters in writing.

Any witness may be asked, while under examination, whether any contract, grant or other disposition of property, as to which he or she is giving evidence, was not contained in a document; and if he or she says that it was, or if he or she is about to make any statement as to the contents of any document, which, in the opinion of the court, ought to be produced, the adverse party may object to that evidence being given until the document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation.—A witness may give oral evidence of statements made by other persons about the contents of documents if the statements are in themselves relevant facts.

144. Cross-examination as to previous statements in writing.

A witness may be cross-examined as to previous statements made by him or her in writing or reduced into writing, and relevant to matters in question, without the writing being shown to him or her, or being proved; but if it is intended to contradict the witness by the writing, his or her attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him or her.

145. Questions lawful in cross-examination.

When a witness is cross-examined, he or she may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

(a) to test his or her veracity;

(b) to discover who he or she is and what is his or her position in life; or

(c) to shake his or her credit, by injuring his or her character, although the answer to those questions might tend directly or indirectly to incriminate him or her, or might expose or tend directly or indirectly to expose him or her to a penalty or forfeiture.

146. When witness to be compelled to answer.

If any such question relates to a matter relevant to the suit or proceeding, section 131 shall apply to the question.

147. Court to decide when questions shall be asked and when witness compelled to answer.

(1) If any such question relates to a matter not relevant to the suit or proceeding, except insofar as it affects the credit of the witness by injuring his or her character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he or she is not obliged to answer it.

(2) In exercising its discretion, the court shall have regard to the following considerations—

(a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he or she testifies;

(b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he or she testifies;

(c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his or her evidence;

(d) the court may, if it sees fit, draw, from the witness's refusal to answer, the inference that the answer if given would be unfavourable.

148. Questions not to be asked without reasonable grounds.

No such question as is referred to in section 147 ought to be asked, unless the

person asking it has reasonable grounds for thinking that the imputation which it conveys is well-founded.

149. Procedure of court in case of question being asked without reasonable grounds.

If the court is of opinion that any such question was asked without reasonable grounds, it may, if it was asked by any advocate, report the circumstances of the case to the High Court or other authority to which the advocate is subject in the exercise of his or her profession.

150. Indecent and scandalous questions.

The court may forbid any question or inquiries which it regards as indecent or scandalous, although the questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed.

151. Questions intended to insult or annoy.

The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

152. Exclusion of evidence to contradict answers to questions testing veracity.

When a witness has been asked and has answered any question which is relevant to the inquiry only insofar as it tends to shake his or her credit by injuring his or her character, no evidence shall be given to contradict him or her; but if he or she answers falsely, he or she may afterwards be charged with giving false evidence.

Exception 1.—If a witness is asked whether he or she has been previously convicted of any crime, and denies it, evidence may be given of his or her previous conviction.

Exception 2.—If a witness is asked any question tending to impeach his or her impartiality and answers it by denying the facts suggested, he or she may be contradicted.

153. Question by party to his own witness.

The court may, in its discretion, permit the person who calls a witness to put any question to him or her which might be put in cross-examination by the adverse party.

154. Impeaching credit of witness.

The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the court, by the party who calls him or her—

(a) by the evidence of persons who testify that they, from their knowledge of the witness, believe him or her to be unworthy of credit;

(b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his or her evidence;

(c) by proof of former statements inconsistent with any part of his or her evidence which is liable to be contradicted;

(d) when a man is prosecuted for rape or an attempt to ravish, by evidence that the prosecutrix was of generally immoral character.

Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his or her examination-in-chief, give reasons for his or her belief, but he or she may be asked his or her reasons in cross-examination, and the answers which he or she gives cannot be contradicted, though, if they are false, he or she may afterwards be charged with giving false evidence.

155. Evidence tending to corroborate evidence of relevant fact admissible.

When a witness whom it is intended to corroborate gives evidence of any relevant fact, he or she may be questioned as to any other circumstances which he or she observed at or near to the time or place at which the relevant fact occurred, if the court is of opinion that the circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact which he or she testifies.

156. Former statements of witness may be proved to corroborate later testimony as to same fact.

In order to corroborate the testimony of a witness, any former statement made by the witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

157. What matters may be proved in connection with proved statement relevant under section 30 or 31.

Whenever any statement, relevant under section 30 or 31, is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

158. Refreshing memory; when witness may use copy of document to refresh memory.

(1) A witness may, while under examination, refresh his or her memory by referring to any writing made by himself or herself at the time of the transaction concerning which he or she is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his or her memory.

(2) The witness may also refer to any such writing made by any other person, and read by the witness within the time aforesaid, if when he or she read it he or she knew it to be correct.

(3) Whenever a witness may refresh his or her memory by reference to any document, he or she may, with the permission of the court, refer to a copy of that document if the court is satisfied that there is sufficient reason for the nonproduction of the original.

(4) An expert may refresh his or her memory by reference to professional treatises.

159. Testimony to facts stated in document mentioned in section 158.

A witness may also testify to facts mentioned in any such document as is

mentioned in section 158, although he or she has no specific recollection of the facts themselves, if he or she is sure that the facts were correctly recorded in the document.

160. Right of adverse party as to writing used to refresh memory.

Subject to the Criminal Procedure Code Act or any other law to the contrary, any writing referred to under sections 158 or 159 must be produced and shown to the adverse party if he or she requires it; that party may, if he or she pleases, cross-examine the witness on the writing.

161. Production and translation of documents.

(1) A witness summoned to produce a document shall, if it is in his or her possession or power, bring it to court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court.

(2) The court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility; and if for such a purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and if the interpreter disobeys that direction, he or she shall be held to have committed an offence under section 87 of the Penal Code Act.

162. Giving as evidence document called for and produced on notice.

When a party calls for a document which he or she has given the other party notice to produce, and the document is produced and inspected by the party calling for its production, he or she is bound to give it as evidence if the party producing it requires him or her to do so.

163. Using as evidence document production of which was refused on notice.

When a party refuses to produce a document which he or she has had notice to produce, he or she cannot afterwards use the document as evidence without the consent of the other party or the order of the court.

164. Judge's power to put questions or order production.

The judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he or she pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question; but—

(a) the judgment must be based upon facts declared by this Act to be relevant, and duly proved;

(b) this section shall not authorise any judge to compel any witness to answer any question, or to produce any document which that witness would be entitled to refuse to answer or produce under sections 119 to 130, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the judge ask any question which it would be improper for any other person to ask under section 147 or 148; nor shall he or she dispense with primary evidence of any document, except in the cases hereinbefore excepted.

165. Power of assessors to put questions.

In cases tried with assessors, the assessors may put any questions to the witness, through or by leave of the judge, which the judge himself or herself might put and which he or she considers proper.

166. No new trial for improper admission or rejection of evidence.

The improper admission or rejection of evidence shall not be ground of itself for a new trial, or reversal of any decision in any case, if it shall appear to the court before which the objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.

History: Cap. 43; S.I. 135/1968, s. 2; Decree 25/1971, s. 1; Act 2/1985; Statute 13/1996, s. 49.

Cross References

British Nationality Act, 1948, of the United Kingdom.
Criminal Procedure Code Act, Cap. 116.
Divorce Act, Cap. 249.
Documentary Evidence Acts, 1868 and 1882, of the United Kingdom, 31 and 32 Vict. c. 37, 45 Vict. c. 9.
Magistrates Courts Act, Cap. 16.
Penal Code Act, Cap. 120.
Succession Act, Cap. 162.
Trial on Indictments Act, Cap. 23.