



ANGUILLA

A BILL FOR
EVIDENCE ACT, 2021

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EVIDENCE ACT, 2021

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I Assent

Dileeni Daniel-Selvaratnam
Governor

Date

ANGUILLA

No. /2021

A BILL FOR

EVIDENCE ACT, 2021

[Gazette Dated: , 2021] [Commencement: Assent under section 57 of the Constitution]

An Act to further define the law of Evidence.

ENACTED by the Legislature of Anguilla

PART 1

PRELIMINARY

Interpretation

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

“banker’s book” includes any ledger, day book, cash book, account book, and any other book used in the ordinary business of a bank;

“Court” includes judges and magistrates, and, except arbitrators, all persons legally authorised to take evidence;

“evidence” includes—

- (a) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry; such statements are called oral evidence;
- and

- (b) all documents produced for the inspection of the Court; such documents are called documentary evidence.

Facts

2. (1) The word “fact” includes—
- (a) anything, state of things, or relation of things, capable of being perceived by the senses; or
 - (b) any mental condition of which any person is conscious.
- (2) The phrase “facts in issue” includes any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability asserted or denied in any suit or proceeding necessarily follows.
- (3) A fact is said to be not proved when it is neither proved nor disproved.
- (4) A fact is said to be proved when, after considering the matters before it, the Court or the jury either believes it to exist, or considers its existence so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists.
- (5) A fact is said to be disproved when, after considering the matters before it, the Court or the jury either believes that it does not exist, or considers its non-existence so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it does not exist;
- (6) 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.

“May presume a fact”

3. (1) Whenever it is provided by this Act that the Court may presume a fact, it may either regard the fact as proved unless and until 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 the fact as proved unless and until 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.

Application

4. (1) This Act applies to—
- (a) the Magistrates’s Court where the Magistrate’s Code of Procedure Act is silent;
 - (b) the High Court where the Civil Procedure Rules is silent; and
 - (c) all other judicial proceedings except a courts martial.

(2) This Act does not apply to affidavits presented to any Court or officer, nor to proceedings before an arbitrator.

Relevancy of Facts

Evidence may be given of facts in issue and relevant facts

5. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant, and of no others.¹

Relevancy of facts forming part of same transaction

6. 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.

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

7. Facts which are the occasion, cause or 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.

Motive, preparation and previous or subsequent conduct

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

Facts necessary to explain or introduce relevant facts

9. 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 in so far as they are necessary for that purpose.

¹ Explanation. This section shall not enable any person to give evidence of a fact which he or she is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

² Explanation. (1) The word “conduct” 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.

(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 his or her conduct is relevant.

Things said or done by conspirator in reference to common design

10. Where there is reasonable ground to believe that 2 or more persons have conspired together to commit an offence or an actionable wrong, any thing said, done or written by any one of the persons in reference to their common intention after the time when the 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 for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

When facts not otherwise relevant become relevant

11. 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 non-existence of any fact in issue or relevant fact highly probable or improbable.

In suits for damages, facts tending to enable Court to determine amount relevant

12. 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.

Facts relevant when right or custom is in question

13. 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.

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

14. 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.³

Facts bearing on question whether act was accidental or intentional

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

³ Explanation. 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. 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, his or her previous conviction is also a relevant fact.

Existence of course of business, when relevant

16. 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.

PART 2

ADMISSIONS AND CONFESSIONS

Admission and confession defined

17. (1) 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 under the circumstances hereinafter mentioned.

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

Admission by party to proceeding or his or her agent

18. (1) Statements made by a party to the proceedings, or by an agent to any such party whom the Court regards under 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.

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

19. Statements made by persons whose position or liability it is necessary to prove as against any party to the suit are admissions if the statements would be relevant as against the persons in relation to the position or liability in a suit brought by or against them, and if they are made whilst the person making them occupies the position or is subject to the liability.

Admissions by persons expressly referred to by party to suit

20. 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.

Proof of admissions as against the persons making them, etc.

21. Subject to section 24, 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 such 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.

When oral admissions as to contents of documents are relevant

22. Oral admissions as to the contents of a document are not relevant unless and until 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 hereinafter contained, or unless the genuineness of a document produced is in question.

Admissions in civil cases, when relevant

23. 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 under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.⁴

Confession or admission caused by inducement, threat, or promise, when irrelevant in criminal proceeding

24. A confession or admission made by an accused person is irrelevant in a criminal proceeding if the making of the confession or admission, as the case may be, appears to the Court to have been caused by an inducement, threat, or promise, proceeding from a person in authority, and sufficient in the opinion of the Court to give the accused person grounds for supposing that by making the confession or admission, as the case may be, he or she would gain any advantage or avoid any evil of a temporal nature.

Confessions to police

25. No confession made to a police officer by a person accused of any offence shall be proved as against that person unless—

- (a) it is made to or in the presence of the Commissioner or Deputy Commissioner of Police, a Superintendent of Police or an Inspector of Police; or
- (b) it is made to one police officer in the presence of another, one at least of such officers being not below the rank of sergeant of police:

⁴ Explanation. Nothing in this section shall be taken to exempt any barrister or solicitor from disclosure of any matter which he or she is obliged to disclose and is not protected from disclosure by section 139.

Provided that when any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a member of the police force, so much of the information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Confession or admission made after removal of impression caused by inducement, threat or promise relevant

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

Confession or admission evidence only against the maker

27. Where more persons than one are being tried jointly for the same offence, a confession or admission made by one of such persons in the absence of some other of such persons is admissible in evidence for the purposes of the case against himself or herself only and is not evidence against such other person or persons.

Statements made by an accused at the trial are evidence for all purposes

28. When more persons than one are being tried jointly for the same offence and one of such persons gives evidence at the trial, any statement made by him or her in his or her evidence at the trial becomes evidence for all purposes of the trial.⁵

Admissions not conclusive proof

29. Admissions are not conclusive proof of the matters admitted and may operate as estoppels under the provisions hereinafter contained.

PART 3

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

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

30. 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, under 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, 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;

⁵ Explanation. "Offence", as used in this section, includes the abetment of or attempt to commit the offence.

- (b) when the statement was made by the 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 monies, 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 the statement was made before any controversy as to the right, custom or matter, had arisen;
- (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 or other document which relates to any such transaction as is mentioned in section 13(a); or
- (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.

Relevancy of certain evidence for proving in subsequent proceeding the truth of facts therein stated

31. (1) Evidence given by a witness in any 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, under the circumstances of the case, the Court considers unreasonable:

Provided that the—

- (a) proceeding was between the same parties or their representatives in interest;
- (b) adverse party in the first proceeding had the right and opportunity to cross-examine;

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

(2) 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 under Special Circumstances

Entries in books of account, when relevant

32. 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 statements shall not alone be sufficient evidence to charge any person with liability.

Relevancy of entry in public record made in performance of duty

33. 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 officer 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.

Relevancy of statements in maps, charts and plans

34. 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.

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

35. When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it made in a recital contained in any Act of Parliament of the United Kingdom or of Anguilla, or in a notification of the Government appearing in the Gazette, or in any printed paper purporting to be the London Gazette or the Gazette of any Government of an overseas territory, dominion, dependency or possession of the British Crown, or to be the Gazette is a relevant fact.

Relevancy of statements as to any law contained in law books

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

PART 4

HEARSAY AND COMPUTER-GENERATED EVIDENCE

Interpretation

37. For the purpose of sections 38 to 46 inclusive, “document” includes, in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;

- (c) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (d) any film (including micro-film), negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom.

Admissibility of certain evidence formerly admissible at common law

38. In any proceedings, a statement which, before the commencement of this Act, would by virtue of any rule of law, have been admissible in evidence of any fact stated therein, shall continue to be admissible as evidence of that fact by virtue of this section.

Admissibility of written statement in criminal proceedings

39. (1) In any criminal proceedings a written statement by a person shall, if the conditions specified in subsection (2) are satisfied, be admissible in evidence to the same extent and effect as direct oral evidence by that person.

(2) The conditions referred to in subsection (1) are that—

- (a) the statement purports to be signed by the person who made it;
- (b) a copy of the statement and a notice of intention to tender the statement in evidence are served on all other parties to the proceedings by or on behalf of the person seeking to tender the statement in evidence, at least 21 days before the hearing at which the statement is to be so tendered;
- (c) none of the other parties to the proceedings or their attorneys-at-law have, within 10 days from the service of the copy of the statement, served a counter-notice on the party seeking so to tender it, objecting to the statement being tendered in evidence and requiring the attendance of the maker of the statement as a witness at the hearing;
- (d) notice of the intention to tender the statement in evidence is accompanied by a declaration by the person who made it to the effect that it is true to the best of his or her knowledge and belief and that he or she made it knowing that, if it were tendered in evidence, he or she would be liable to prosecution if he or she wilfully stated in it anything which he or she knew to be false or did not believe to be true.

(3) Subsection (2)(b) and (c) shall not apply if the parties to the proceedings agree before or during the hearing that the statement be tendered in evidence.

(4) A statement may be inadmissible in evidence under this section in any criminal proceedings where a party to the proceedings has served a counter-notice objecting to the statement being tendered in evidence and requiring the person who made the statement to attend the hearing as a witness.

(5) Notwithstanding that a written statement made by any person may be admissible by virtue of subsection (2), the Court may on its own motion or on application by any party to the proceedings, require that the maker of the statement attend and give oral evidence at the hearing.

(6) Notwithstanding the failure of any party to the proceedings to serve a counter-notice objecting to the admissibility of the statement, the Court may permit the party to lead evidence contradicting the evidence contained in the written statement.

(7) Where contradicting evidence is given as mentioned in subsection (6), the party who tendered the written statement may lead additional evidence in response to the contradicting evidence.

Admissibility of first hand hearsay statements in criminal proceedings

40. Subject to section 43, a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him or her would be admissible if it is proved to the satisfaction of the Court that such person—

- (a) is dead;
- (b) is unfit, by reason of his or her bodily or mental condition, to attend as a witness;
- (c) is outside of Anguilla and it is not reasonably practicable to secure his or her attendance;
- (d) cannot be found after all reasonable steps have been taken to find him or her; or
- (e) is kept away from the proceedings by threats of bodily harm and no reasonable steps can be taken to protect the person.

Admissibility of first hand hearsay statements in civil proceedings

41. (1) Subject to section 43, in any civil proceedings, a statement made, whether orally or in a document or otherwise, by any person (whether called as a witness in those proceedings or not) shall, subject to this section, be admissible as evidence of any facts stated therein of which direct oral evidence by him or her would be admissible.

(2) Subject to subsection (6), the party intending to tender such statement in evidence shall, at least 21 days before the hearing at which the statement is to be tendered, notify every other party to the proceedings as to the statement to be tendered, and as to the person who made the statement.

(3) Subject to subsection (4), every party so notified shall have the right to require that the person who made the statement be called as a witness.

(4) The party intending to tender the statement in evidence shall not be obliged to call as a witness, the person who made the statement if it is proved to the satisfaction of the Court that such person—

- (a) is dead;
- (b) is unfit, by reason of his or her bodily or mental condition, to attend as a witness;
- (c) is outside of Anguilla and it is not reasonably practicable to secure his or her attendance;
- (d) cannot be found after all reasonable steps have been taken to find him or her; or

(e) is kept away from the proceedings by threats of bodily harm.

(5) Where in any civil proceedings a statement which was made otherwise than in a manner and admissible by virtue of this section, by the person other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made shall be admissible for the purpose of proving it.

(6) The Court may, where it thinks appropriate having regard to the circumstances of any particular case, dispense with the requirements for notification as specified in subsection (2).

(7) Where the party intending to tender a statement of evidence has called, as a witness in the proceedings, the person who made the statement, the statement shall be admissible only with the leave of the Court.

Admissibility of business document in civil or criminal proceedings

42. (1) Subject to section 43, a statement in a document shall be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible if in relation to—

(a) criminal proceedings, the conditions specified in—

(i) subsection (2), and

(ii) subsection (3),

are satisfied;

(b) civil proceedings, the conditions specified in—

(i) subsection (2), and

(ii) subsection (4),

are satisfied.

(2) The conditions referred to in subsection (1)(a) and (b)(i) are that—

(a) the document was created or received by a person in the course of a trade, business, profession or other occupation or as the holder of an office, whether paid or unpaid;

(b) the information contained in the document was supplied (whether directly or indirectly) by a person, whether or not the maker of the statement, who had or may reasonably be supposed to have had, personal knowledge of the matters dealt with in the statement;

(c) each person through whom the information was supplied received it in the course of a trade, business profession or other occupation or as the holder of an office, whether paid or unpaid.

(3) The condition referred to in subsection (1)(a)(ii) is that it be proved to the satisfaction of the Court that the person who supplied the information contained in the statement in the document—

- (a) is dead;
- (b) is unfit, by reason of his or her bodily or mental condition, to attend as a witness;
- (c) is outside of Anguilla and it is not reasonably practicable to secure his or her attendance;
- (d) cannot be found or identified after all reasonable steps have been taken to find or identify him or her; or
- (e) is kept away from the proceedings by threats of bodily harm and no reasonable steps can be taken to protect the person; or
- (f) cannot reasonably be expected, having regard to the time which has elapsed since he or she supplied the information and to all the circumstances, to have any recollection of the matters dealt with in the statement.

(4) In estimating the weight, if any, to be attached to a statement admissible in criminal proceedings as evidence by virtue of this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and, in particular, to the question whether or not the person who supplied the information recorded in the statement did so contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not that person, or any person concerned with making or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.

(5) Subject to subsections (6) to (9), the condition referred to in subsection (1)(b)(ii) is that the party intending to tender the statement in evidence shall, at least 21 days before the hearing at which the statement is to be so tendered, notify every other party to the proceedings as to the statement and as to the person who made the statement.

(6) Subject to subsection (7), every party so notified shall have the right to require that the person who made the statement be called as a witness.

(7) The party intending to tender the statement in evidence shall not be obliged to call, as a witness, the person who made it if it is proved to the satisfaction of the Court that such person—

- (a) is dead;
- (b) is unfit, by reason of his or her bodily or mental condition, to attend as a witness;
- (c) is outside of Anguilla and it is not reasonably practicable to secure his or her attendance;
- (d) cannot be found or identified after all reasonable steps have been taken to find or identify him or her;
- (e) is kept away from the proceedings by threats of bodily harm.

(8) The Court may, where it thinks appropriate having regard to the circumstances of any particular case, dispense with the requirements for notification as specified in subsection (5).

(9) Where the person who made the statement is called as a witness, the statement shall be admissible only with the leave of the Court.

Admissibility of computer evidence constituting hearsay

43. A statement contained in a document produced by a computer which constitutes hearsay shall not be admissible in any proceedings as evidence of any fact stated therein unless—

- (a) at all material times—
 - (i) the computer was operating properly,
 - (ii) the computer was not subject to any malfunctions,
 - (iii) there were no alterations to its mechanism or processes that might reasonably be expected to have affected the validity or accuracy of the contents of the documents;
- (b) there is no reasonable cause to believe that—
 - (i) the accuracy or validity of the document has been adversely affected by the use of any improper process or procedure or by inadequate safeguards in the use of the computer,
 - (ii) there was any error in the preparation of the data from which the document was produced;
- (c) the computer was properly programmed;
- (d) where 2 or more computers were involved in the production of the document or in the recording of the data from which the document was derived—
 - (i) the conditions specified in paragraphs (a) to (c) are satisfied in relation to each of the computers so used, and
 - (ii) it is established by or on behalf of the person tendering the document in evidence that the use of more than one computer did not introduce any factor that might reasonably be expected to have had any adverse effect on the validity or accuracy of the document.

Admissibility of computer evidence not constituting hearsay

44. Where a statement contained in a document produced by a computer does not constitute hearsay, such a statement shall be admissible if the conditions specified in section 43 are satisfied in relation to that document.

Witness's previous statement to be evidence of facts stated

- 45.** (1) Where in any civil proceedings—
- (a) a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved; or

- (b) a previous statement made by a person called as aforesaid is proved for the purpose of rebutting a suggestion that his or her evidence has been fabricated,

that statement shall, by virtue of this subsection, be admissible in evidence of any fact stated therein of which direct oral evidence by him or her would be admissible.

(2) Nothing in this section shall affect any rule of law relating to the circumstances in which, where a person called as a witness in any civil proceedings is cross-examined on a document used by him or her to refresh his or her memory, that document may be made evidence in those proceedings, and where a document or any part of a document is received in evidence in any such proceedings by virtue of any such rule of law, any statement made in that document or part by the person using the document to refresh his or her memory shall, by virtue of this subsection, be admissible as evidence of any fact stated therein of which direct oral evidence by him or her would be admissible.

Admissibility of evidence as to credibility of maker of statement

46. (1) Where in any proceedings a statement made by a person who is not called as a witness in those proceedings is given in evidence pursuant to section 40, 41, 42 or 43—

- (a) any evidence which, if that person had been so called would have been admissible as relevant to his or her credibility as a witness, shall be admissible in the proceedings for that purpose;
- (b) evidence may, with the leave of the Court, be given for any matter which, if that person had been called as a witness, could have been put to him or her in cross-examination as relevant to his or her credibility as a witness but of which evidence could not have been adduced by the party cross-examining him or her;
- (c) evidence tending to prove that, whether before or after he or she made the statement, that person made, (whether orally or in a document or otherwise) another statement inconsistent therewith, shall be admissible for the purpose of showing that the person has contradicted himself or herself.

(2) References in subsection (1) to a person who made the statement and to his or her making the statement shall be construed respectively as including references to the person who supplied the information from which the document containing the statement was derived and to his or her supplying that information.

Offence

47. If any person in a written statement tendered in evidence in criminal proceedings by virtue of section 39 wilfully makes a statement material in those proceedings which he or she knows to be false or does not believe to be true, he or she shall be liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Power of Court to exclude evidence

48. It is hereby declared that in any proceedings the Court may exclude evidence if, in the opinion of the Court, the prejudicial effect of that evidence outweighs its probative value.

*How Much of a Statement is to be Proved***What evidence to be given when statement forms part of a conversation, document, book, or series of letters or papers**

49. When any statement of which evidence is given forms a 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 under which it was made.

PART 5

JUDGEMENTS OF COURTS OF JUSTICE, WHEN RELEVANT

Previous judgements relevant to bar a second suit or trial

50. The existence of any judgement, 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.

Relevancy of certain judgements in probate, etc., jurisdiction

51. (1) A final judgement, order, or decree, of a competent Court in the exercise of probate, matrimonial, admiralty or bankruptcy 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 judgement, order, or decree, is conclusive proof that—

- (a) legal character which it confers accrued at the time when the judgement, order or decree, came into operation;
- (b) any legal character to which it declares any such person to be entitled accrued to that person at the time when the judgement, order or decree, declares it to have accrued to that person;
- (c) any legal character which it takes away from any such person ceased at the time from which the judgement, order or decree, declared that it had ceased or should cease; and
- (d) anything to which it declares any person to be so entitled was the property of that person at the time from which the judgement order or decree, declares that it had been or should be his or her property.

Relevancy and effect of judgements, orders or decrees, other than those mentioned in section 51

52. Judgements, 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 such judgements, orders or decrees, are not conclusive proof of that which they state.

Judgements, etc., other than those mentioned in sections 50 to 52, when relevant

53. Judgements, orders or decrees, other than those mentioned in sections 50, 51 and 52, are irrelevant unless the existence of the judgement, order or decree, is a fact in issue or is relevant under some other provision of this Act.

Fraud or collusion in obtaining judgement, or incompetency of Court, may be proved

54. Any party to a suit or other proceeding may show that any judgement, order or decree, which is relevant under section 50, 51 or 52 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***Opinions of experts**

55. When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity or genuineness of handwriting, the opinions upon that point of persons specially skilled in the foreign law, science or art, or in questions as to identity or genuineness of handwriting are relevant facts and such persons are called experts.

Facts bearing upon opinions of experts

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

Opinion as to handwriting, when relevant

57. (1) 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 not written or signed by that person is a relevant.

(2) 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.

Opinion as to existence of right or custom, when relevant

58. 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 the custom or right of persons who would be likely to know of its existence if it existed are relevant.⁶

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

59. When the Court has to form an opinion as to the—

- (a) usages and tenets of any body of men;
- (b) constitution and government of any religious or charitable foundation; or

⁶ Explanation. The expression “general custom or right” includes customs or rights common to any considerable class of persons.

- (c) meaning of words or terms used in particular districts or by particular classes of people;

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

Opinion on relationship, when relevant

60. 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; provided that the opinion shall not be sufficient to prove a marriage in prosecutions under the Criminal Code.

Grounds of opinion, when relevant

61. Whenever the opinion of any living person is relevant, the grounds on which the opinion is based are also relevant.

Character, when Relevant

In civil cases, character to prove conduct imputed irrelevant

62. 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 in so far as such character appears from facts, otherwise relevant.

In criminal cases, previous good character relevant

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

Previous bad character not relevant, except in reply

64. In criminal proceedings, the fact that the person accused has a bad character is irrelevant unless evidence has been given that he or she has a good character, in which case it becomes relevant.⁷

Character as affecting damages

65. 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.⁸

PART 6

FACTS WHICH NEED NOT BE PROVED

Facts judicially noticeable need not be proved

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

⁷ Explanation. This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation. A previous conviction is relevant as evidence of bad character.

⁸ Explanation. In sections 62, 63, 64 and 65, the word “character” includes both reputation and disposition; but, except as provided in section 64, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

Facts of which Court must take judicial notice

67. (1) The Court shall take judicial notice of the following facts—
- (a) all laws, or rules having the force of law, now or heretofore in force, or hereafter to be in force, in any part of Anguilla;
 - (b) all public Acts passed or hereafter to be passed by Parliament and all local and personal Acts directed by Parliament to be judicially noticed;
 - (c) the course of proceedings of Parliament;⁹
 - (d) the accession and the sign manual of the Sovereign for the time being of the United Kingdom of Great Britain and Northern Ireland;
 - (e) all seals of which English Courts take judicial notice, the seals of all the Courts of Anguilla, the seals of Courts of Admiralty and Maritime Jurisdiction and of Notaries Public, and all seals which any person is authorised to use by an enactment for the time being in Anguilla;
 - (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 Anguilla if the fact of their appointment to the office is notified in the Gazette;
 - (g) the existence, title, and national flag of every state or sovereign recognised by the British Crown;
 - (h) the ordinary course of nature, natural and artificial divisions of time, the possibilities of voice reproduction possessed by telephones, the geographical divisions of the world, the meaning of English words and public festivals, fasts, and holidays notified in the Gazette;
 - (i) territories under the dominion of the British Crown;
 - (j) the commencement, continuance, and termination of hostilities between the British Crown 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 barristers and solicitors and other persons authorised by law to appear or act before it;
 - (l) the rule of the road on land or at sea; and
 - (m) all other matters which it is directed by any statute to notice.

⁹ Explanation. The word “Parliament” in paragraphs (b) and (c) means the Parliament of Anguilla and may also include the Parliament of the: United Kingdom of Great Britain, Ireland and Scotland and Ireland prior to the 1st January, 1801;

(2) In all these cases, and also on all 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 unless and until the person produces any such book or document as it may consider necessary to enable it to do so.

Facts admitted need not be proved

68. No fact need be proved in any civil proceeding which the parties thereto 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 provided that the Court may in its discretion require the facts admitted to be proved otherwise than by the admissions.

Oral Evidence

Proof of facts by oral evidence

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

Oral evidence must be direct

70. Oral evidence must, in all cases whatever, be direct if it refers to—

- (a) a fact which could be seen, it must be the evidence of a witness who says he or she saw that fact;
- (b) a fact which could be heard, it must be the evidence of a witness who says he or she heard that fact;
- (c) 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 that fact by that sense or in that manner;
- (d) 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,

provided that—

- (a) the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which the opinions are held, may be proved by the production of the treatise 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
- (b) 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 the material thing for its inspection.

Documentary Evidence

Proof of contents of documents

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

Primary evidence

72. Primary evidence means the document itself produced for the inspection of the Court.¹⁰

Secondary evidence

73. Secondary evidence includes—

- (a) certified copies given under the provisions hereinafter contained;
- (b) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (c) copies made from or compared with the original;
- (d) counterparts of documents as against the parties who did not execute them; and
- (e) oral accounts of the contents of a document given by some person who has himself or herself seen it.

Proof of documents by primary evidence

74. Documents must ordinarily be proved by primary evidence, except in the cases hereinafter mentioned provided that, notwithstanding sections 75 and 76 and the express provisions of any other written law, if a statement in a document is admissible as evidence it may be proved either by the production of the document itself or (whether or not the document is still in existence) by the production of a copy of the document, or the material part of it, authenticated in such manner as the Court may approve, and it is immaterial how many removes there are between any such copy and the original document.

Cases in which secondary evidence relating to documents may be given

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

- (a) when the original is shown or appears to be in the possession or power of—
 - (i) person against whom the document is sought to be proved,
 - (ii) any person out of reach of, or not subject to, the process of the Court, or
 - (iii) any person legally bound to produce it;

and when after the notice mentioned in section 76, the person does not produce it when the;

¹⁰ Explanation. 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.

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.

- (b) 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) original has been destroyed, or lost, 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) original is of such a nature as not to be easily movable;
- (e) original is a public document within the meaning of section 86;
- (f) original is a document of which a certified copy is permitted by this Act or by any other statute in force for the time being in Anguilla to be given in evidence;
- (g) originals consist of numerous accounts or other documents which cannot be conveniently examined in Court and the fact to be proved is the general result of the whole collection;
- (h) entry in any banker's book, when it has been proved, whether orally or by affidavit that the—
 - (i) book in which the entry was made was at the time of making the entry one of the ordinary books of the bank,
 - (ii) book is in the custody or control of the bank,
 - (iii) entry was made in the usual and ordinary course of business, and
 - (iv) copy of the entry tendered in evidence has been examined with the original entry and found correct.

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

(3) In paragraph (b), the written admission is admissible.

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

(5) In paragraph (g), 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.

Rules as to notice to produce

76. (1) Secondary evidence of the contents of the documents referred to in section 75(1)(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 solicitor, such notice to produce it as is prescribed by law, and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

(2) 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; and
- (f) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

Proof of signature or handwriting of person alleged to have signed or written document

77. If a document is alleged to have been 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.

Proof of execution of document required by law to be attested

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

Proof where no attesting witness found

79. If no such attesting witness can be found or if the document purports to have been executed in the United Kingdom, 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.

Admission of execution by party to attested document

80. 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 be a document required by law to be attested.

Proof when attesting witness denies the execution

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

Proof of document not required by law to be attested

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

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

83. (1) In order to ascertain whether a signature, writing, or seal is that of a 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 by a witness, or by the Court, or by the jury, 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.

Manner of execution and proof of certain documents

84. (1) All deeds, wills and other writings and all declarations and affidavits purporting—

- (a) to be executed, acknowledged, proved, declared or deposed to in any part of the Commonwealth other than Anguilla and where declared or deposed to, then verified on oath or declaration before—
 - (i) a British High Commission or a diplomatic or consular representative for Anguilla,
 - (ii) a judge of any superior court,
 - (iii) a Justice of the Peace or Commissioner for Oaths empowered to administer such oath or declaration,
 - (iv) a mayor of any city or corporation,
 - (v) a Notary Public;
- (b) to be proved in any foreign country or state and verified on oath or declaration before—
 - (i) a British High Commission or diplomatic or consular representative for Anguilla,
 - (ii) a judge of any superior court, certified as such by a diplomatic or consular representative for Anguilla, or
 - (iii) a Notary Public, certified as such by a diplomatic or consular representative for Anguilla;
- (c) to be executed, acknowledged, declared or deposed to in any foreign country or state and where declared or deposed to, then verified on oath or declaration before—
 - (i) a diplomatic or consular representative for Anguilla,
 - (ii) a judge of any superior court, or
 - (iii) a Notary Public,

shall be deemed to have been sufficiently executed, acknowledged, proved, declared or deposed to and shall be received as evidence in any court, and judicial notice shall be taken of such deeds, wills and other writings, declarations and affidavits and of any seal or signature, as the case may be, of any person mentioned in this subsection attached, appended or subscribed thereto.

(2) All deeds, wills and other writings and all declarations and affidavits executed, acknowledged, proved, declared, deposed to, verified on oath or certified before a British High Commission or diplomatic or consular representative for Anguilla, other than any such representative who is in the public service, shall be deemed to have been properly executed, acknowledged, proved, declared, deposed to, verified on oath or certified.

(3) All deeds, wills and other writings and all declarations and affidavits executed, acknowledged, proved, declared, deposed to in any of the ways provided for in this section on or after the 7 February, 1974, and before the coming into force of this Act shall be deemed to have been sufficiently executed, acknowledged, proved, declared or deposed to and shall be received as evidence in any court and judicial notice shall be taken of such deeds, wills and other writings, declarations and other affidavits and of any seal or signature, as the case may be, of any person mentioned in that section attached, appended or subscribed thereto.

Section 84 not to limit admissibility of deeds

85. Nothing in section 84 shall be deemed or taken to render inadmissible as evidence in any court any deed, writing, act or thing which before the passing of this Act, would have been admissible or of which judicial notice would by law have been taken.

PART 7

PUBLIC DOCUMENTS

Public documents

86. The following documents are public documents—

- (a) documents forming the acts or records of the acts—
 - (i) of the sovereign authority,
 - (ii) of public and official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial, and executive, whether of Anguilla or of any other part of the Commonwealth or of a foreign country;
- (b) public records kept in Anguilla of private documents other than wills.

Private documents

87. All other documents are private documents.

Certified copies of public documents

88. 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 therefor, together with a certificate written at the foot of the copy that it is a true copy of the document or part thereof as the case may be; and the certificate shall be dated and subscribed by the officer with

his or her name and his or her 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.¹¹

Proof of documents by production of certified copies

89. 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.

Proof of other official documents

90. The following public documents may be proved as follows—

- (a) Acts, Orders, or notifications of the Government in any of its Ministries or Departments by—
 - (i) the records of the Ministries or Departments certified by the heads of those Ministries or Departments respectively, or by the Deputy Governor,
 - (ii) by any document purporting to be printed by order of the Government;
- (b) the proceedings of the House of Assembly – by the minutes of that body or by published Acts or abstracts, or by copies purporting to be printed by order of the Government;
- (c) Proclamations, Orders, or regulations issued by or on behalf of Her Majesty or by the Privy Council or by any Ministry or Department of Her Majesty’s Government of the United Kingdom – by copies or extracts contained, as the case may be, in the London Gazette or in the Gazette, or purporting to be printed by the Queen’s Printer, or published by or on behalf of Her Majesty’s Stationery Office;
- (d) the acts of the Executive or the proceedings of the Legislature of a 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 public statute of Anguilla;
- (e) the proceedings of a public body – by a copy of the proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of that body; and
- (f) public documents of any other class in a foreign country – by the original or by a copy certified by the legal keeper thereof with a certificate under the seal of a Notary Public, or of a British Consul, or Diplomatic Agent, 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.

¹¹ Explanation. Any officer who by the ordinary course of official duty is authorised to deliver such copies shall be deemed to have the custody of the documents within the meaning of this section.

Proof of statutes, etc., of Anguilla and of other countries of the Commonwealth

91. (1) Copies of statutes passed by the Legislature of any country of the Commonwealth, and of Orders, regulations and other instruments issued or made under the authority of any such statute, if purporting to be printed by the Government Printer, shall be received in evidence by all Courts of Justice in Anguilla without any proof being given that the copies were so printed.

(2) In this section, “Government Printer” means, as respects any country of the Commonwealth (other than Anguilla), the printer purporting to be the printer authorized to print the statutes of the Legislature of that country, or otherwise to be the Government Printer of that country.

(3) The Minister responsible for legal affairs may by Order extend this section to—

- (a) any British Possession; or
- (b) any British Overseas Territory.

*Presumptions as to Documents***Presumption as to genuineness of certified copies**

92. (1) The Court shall presume to be genuine 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 public officer:

Provided that 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 the paper.

Presumption as to documents produced as record of evidence

93. Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding, or before any officer authorised by law to take such evidence, or to be a statement or confession by any prisoner or accused person taken in accordance with law, and purporting to be signed by any judge or magistrate, or by any such officer as aforesaid, the Court shall presume that the document is genuine; that any statements as to the circumstances under which it was taken purporting to be made by the person signing it are true; and that the evidence, statement or confession was duly taken.

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

94. The Court shall presume the genuineness of every document purporting to be the London Gazette, or the Gazette, or the Government Gazette of any overseas territory, dominion, dependency or possession of the British Crown, or to be the Gazette issued by the local government of any part of such overseas territory, dominion, dependency or possession, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by the Queen’s Printer or published by or on behalf of Her Majesty’s Stationery Office, 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.

Presumption as to document admissible in England without proof of seal or signature

95. When any document is produced before any Court, purporting to be a document which by the law in force for the time being in England or Northern Ireland would be admissible in proof of any particular in any Court of Justice in England or Northern 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; and the document shall be admissible for the same purpose for which it would be admissible in England or Northern Ireland.

Presumption as to maps or plans made by authority of Government

96. The Court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any cause or other proceeding, civil or criminal, must be proved to be accurate.

Presumption as to collections of laws and reports of decisions

97. 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.

Presumption as to powers of attorney

98. 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, British Consul or representative of Her Majesty, was so executed and authenticated.

Presumption as to certified copies of foreign judicial records

99. The Court may presume that any document purporting to be a certified copy of any judicial record of any country is genuine and accurate if the document purports to be certified in any manner which is certified by any representative of Her Majesty in or for that country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to books, maps and charts

100. 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.

Presumption as to telegraphic messages

101. 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 the message was delivered for transmission.

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

102. The Court shall presume that every document called for and not produced after notice to produce, given under section 76, was attested, stamped and executed in the manner required by law.

Presumption as to documents 30 years old

103. Where any document purporting or proved to be 30 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 the 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.¹²

PART 8

EXCLUSION OF ORAL AGREEMENT BY DOCUMENTARY EVIDENCE

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

104. (1) When the terms of a contract, or of a grant, or of any other disposition of property have been reduced by, or by consent of, the parties 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 shall be given in proof of the terms of the 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.

(2) 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.

(3) Wills admitted to probate in Anguilla may be proved by the probate.

Exclusion of evidence of oral agreement

105. (1) 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 the last section, 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.

(2) 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

¹²Explanation. 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 also applies to section 94.

due execution, want of capacity in any contracting party, the fact that it is wrongly dated, want or failure of consideration, or mistake in fact or law, and the like.

(3) 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 proviso applies, the Court shall have regard to the degree of formality of the document.

(4) 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.

(5) 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 the 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.

(6) Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved; provided that the annexing of such incident would not be repugnant to or inconsistent with the express terms of the contract.

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

Exclusion of evidence to explain or amend ambiguous document

106. 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:

Provided that nothing herein contained shall be deemed to take away the power of the Court to order documents to be rectified, or other like equitable relief or remedies.

Exclusion of evidence against application of document to existing facts

107. 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.

Evidence as to document unmeaning in reference to existing facts

108. 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.

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

109. When the facts are such that the language used might have been meant to apply to anyone, 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.

Evidence as to application of language to one of 2 sets of facts to neither of which the whole correctly applies

110. 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 2 it was meant to apply.

Evidence as to meaning of illegible characters, etc.

111. 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.

Who may give evidence of agreement varying terms of document

112. 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.

Construction of wills to be governed by English law

113. Nothing in this Act shall affect the construction of wills, but they shall be construed according to the rules of construction which would be applicable thereto if they were being construed in a Court of Justice in England.

PART 9

BURDEN OF PROOF

Burden of proof

114. (1) Whoever desires any Court to give judgement 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.

On whom burden of proof lies

115. 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.

Burden of proof as to particular fact

116. 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.

Burden of proving fact to be proved to make evidence admissible

117. 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 the evidence.

Burden of proving that case of accused comes within exception

118. (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 such person is upon him or her:

Provided that such burden shall be deemed to be discharged if the jury is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances exist:

Provided further that the person accused shall be entitled to be acquitted if the jury is satisfied that the evidence given by either the prosecution or the accused person creates a reasonable doubt as to the guilt of the accused person.

(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.

Burden of proving fact especially within knowledge in civil proceedings

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

Burden of proving death of individual known to have been alive within 30 years

120. Subject to section 121, when the question is whether an individual is alive or dead and it is shown that he or she was alive within 30 years, the burden of proving that he or she is dead is on the person who affirms it.

Burden of proving that individual is alive who has not been heard of for 7 years

121. When the question is whether an individual is alive or dead and it is proved that he or she has not been heard of for 7 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.

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

122. 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.

Burden of proof as to ownership

123. 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.

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

124. 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.

Birth during marriage conclusive proof of legitimacy

125. The fact that any person was born during the continuance of a valid marriage between his or her mother and any man, or within 280 days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he or she 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 or she could have been begotten.

Presumption that boy under 14 cannot commit rape

126. The fact that a boy is under the age of 14 shall be conclusive proof that he is incapable of committing rape.

Court may presume existence of certain facts

127. 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***Estoppel**

128. 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 such belief, otherwise than but for that belief he or she would have acted, neither he or she nor his or her representative in interest shall be allowed in any suit or proceeding between himself or herself and such person or his or her representative in interest to deny the truth of that thing.

Estoppel of tenant, and of licensee of person in possession

129. No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of the 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 thereof shall be permitted to deny that that person had a title to that possession at the time when the licence was given.

Estoppel of acceptor of bill of exchange, bailee or licensee

130. (1) 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.

(2) No bailee, agent, or licensee, shall be permitted to deny that the bailor, principal, or licensor, by whom any goods were entrusted to any of them respectively, was entitled to those goods at the time when they were so entrusted:

Provided that any such bailee, agent, or licensee, may show that he or she was compelled to deliver up any such goods to some person who had a right to them as against his or her bailor, principal, or licensor, or that his or her bailor, principal, or licensor, wrongfully and without notice to the bailee, agent or licensee, obtained the goods from a third person, who has claimed them from the bailee, agent or licensee¹³.

¹³ Explanation. The acceptor of a bill of exchange may deny that the bill was drawn by the person by whom it purports to have been drawn.

PART 10
WITNESSES

Who may testify

131. 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 kind¹⁴.

Dumb witnesses

132. 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 for example, 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.

Competency as witnesses of parties to civil suit and their wives or husbands

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

(2) In all criminal proceedings every person charged, and the husband or wife of such person, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:

Provided as follows—

- (a) a person so charged shall not be called as a witness in pursuance of this section save upon his or her own application;
- (b) a person charged and being a witness in pursuance of this section may be asked any question in cross-examination notwithstanding that it would tend to incriminate him or her as to the offence charged;
- (c) a person charged and called as a witness in pursuance of this section shall not be asked, and if asked shall not be required to answer, any question tending to show that he or she has committed or been convicted of or been charged with any offence other than that wherewith he or she is then charged, or is of bad character, unless—
 - (i) the proof that he or she has committed or been convicted of such other offence is admissible evidence to show that he or she is guilty of the offence wherewith he or she is then charged,
 - (ii) he or she has personally or by his or her advocate asked questions of the witnesses for the prosecution with a view to establishing his or her own good character, or the nature or conduct of the defence is such as to involve

¹⁴ Explanation. A person suffering from mental disorder is not incompetent to testify unless he or she is prevented by his or her mental disorder from understanding the questions put to him or her and giving rational answers to them.

imputations on the character of the prosecutor or the witnesses for the prosecution, or

- (iii) he or she has given evidence against any other person charged with the same offence.

(3) In all criminal proceedings the husband or wife of any person charged shall be a competent witness for the prosecution at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person.

(4) The failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged to give evidence, shall not be the subject of any comment by the prosecution.

Judges and magistrates

134. No judge, and except upon the special order of the High Court, no magistrate, shall be compelled to answer any questions as to his or her own conduct in Court as 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 whilst he or she was so acting.

Communications during marriage

135. No person who is or has been married shall be compelled to disclose any communication made to him or her during marriage by any person to whom he or she is or has been married; nor shall he or she be permitted to disclose any such communication unless the person who made it or his or her representative in interest consents, except in suits between married persons or proceedings in which married person is prosecuted for any crime committed against another.

Evidence as to affairs of Government

136. No one shall be permitted to produce any unpublished official records relating to any affairs of Government, or to give any evidence derived therefrom, except with the permission of the permanent secretary, who shall give or withhold the permission as he or she thinks fit, subject however to the control of the Governor.

Official communications

137. No public officer shall be compelled to disclose communications made to him or her in official confidence, when he or she considers that the interest of the Government or the public's interest would suffer by the disclosure.

Information as to commission of offences

138. No magistrate or police officer shall be compelled to say whence he or she got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he or she got any information as to the commission of any offence against the public revenue or the excise laws.

Professional communications

139. (1) No barrister or solicitor 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 employment as such barrister or solicitor, 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 such employment:

Provided that nothing in this section shall protect from disclosure any—

- (a) such communication made in furtherance of any illegal purpose;
- (b) fact observed by any barrister or solicitor 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.

(2) It is immaterial whether the attention of the barrister or solicitor was or was not directed to the fact by or on behalf of his or her client.¹⁵

Section 139 to apply to interpreters, etc.

140. The provisions of section 139 shall apply to interpreters and the clerks or servants of barristers and solicitors.

Privilege not waived by volunteering evidence

141. If any party to any civil proceeding, or any party charged with an offence, gives evidence therein or thereon, 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 139, and if any such party or person calls any such barrister or solicitor as a witness, he or she shall be deemed to have consented to such disclosure only if he or she questions the barrister or solicitor on matters which, but for the question, he or she would not be at liberty to disclose.

Confidential communications with legal advisers

142. 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 others.

Production of title deeds of witness not a party

143. (1) No witness who is not a party to the 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 criminate him or her, unless he or she has agreed in writing to produce them with the person seeking the production of the deeds or some person through whom he or she claims.

(2) No witness who is a party to the suit shall be bound to produce any document in his or her possession or power, which is not relevant or material to the case of the party requiring its production.

¹⁵ Explanation. The obligation stated in this section continues after the employment has ceased.

(3) No bank shall be compelled to produce the books of the bank in any legal proceeding to which the bank is not a party in any case where the contents of the books can be proved under section 75, unless by order of a judge made for special cause.

(4) On the application of any party to a suit, a judge may order that the party be at liberty to inspect and take copies of any entries in a banker's book, for any of the purposes of the suit. Such order may be made either with or without summoning the bank or any other party, and must be served on the bank 3 days before it is to be obeyed, unless the judge otherwise directs.

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

144. 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, except for the purpose of identification, unless the last-mentioned person consents to their production; nor shall anyone who is entitled to refuse to produce a document be compelled to give oral evidence of its contents.

Witness not excused from answering on ground that answer will criminate

145. (1) Unless the Court otherwise determines, and subject to the provisions of section 133, 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 criminate or may tend directly or indirectly to criminate 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 will establish or tend to establish that he or she owes a debt or is otherwise subject to a civil suit at the instance of the Crown or of any other person.

(2) No answer which a witness shall be compelled by the Court to give shall subject him or her to any arrest or prosecution, or be proved against him or her in any criminal proceeding, except a prosecution for giving false evidence by the answer.

(3) Before compelling a witness to answer a question, the answer to which will criminate or may tend directly or indirectly to criminate him or her, the Court shall explain to him or her the purport of subsection (2).

Accomplice

146. An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon uncorroborated testimony of an accomplice.

Number of witnesses

147. No particular number of witnesses shall in any case be required for the proof of any fact.

Evidence in cases of treason

148. In any trial for high treason, misprision of treason, or treason felony, the rules of the law of evidence, and the practice in relation to evidence on the trial of such offences respectively for the time being in force in England, shall, so far as the same are applicable to the circumstances of Anguilla, be in force in Anguilla.

Order of production and examination of witnesses

149. 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.

Court to decide as to admissibility of evidence

150. (1) When either party proposes to give evidence of any fact, the Court may ask the party proposing to give the evidence, in what manner the alleged fact, if proved, would be relevant; and the Court shall admit the evidence if it 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 the 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 Court may, in its 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.

Examination-in-chief

151. (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) Where a witness has been cross-examined and is then examined by the party who called him or her, such examination shall be called his or her re-examination.

Order of examinations

152. (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) re-examined.

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

(4) The Court may in all cases permit a witness to be recalled, either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination respectively.

Cross-examination of person called to produce a document

153. 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 and until he or she is called as a witness.

Witnesses to character

154. Witnesses to character may be cross-examined and re-examined.

Leading questions

155. Any question suggesting the answer which the person putting it wishes or expects to receive, or suggesting disputed facts as to which the witness is to testify, is called a leading question.

When they must not be asked

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

When they may be asked

157. (1) Leading questions may be asked in cross-examination, subject to the following qualifications—

- (a) the question must not put into the mouth of the witness the very words which he or she is to echo back again; and
- (b) the question must not assume that facts have been proved which have not been proved, or that particular answers have been given contrary to the fact.

(2) The Court, in its discretion, may prohibit leading questions from being put to a witness who shows a strong interest or bias in favour of the cross-examining party.

Evidence as to matters in writing

158. (1) Any witness may be asked whilst 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 such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

(2) A witness may give oral evidence of statements made by other persons about the contents of documents if such statements are in themselves relevant facts.

Cross-examination as to previous statements in writing

159. (1) 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 in the suit or proceeding in which he or she is cross-examined, without the writing being shown to him or her or being proved; but if it is intended to contradict him or her 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.

(2) If a witness upon cross-examination as to a previous oral statement made by him or her relevant to matters in question in the suit or proceeding in which he or she is cross-examined, and inconsistent with his or her present testimony, does not distinctly admit that he or she made the statement, proof may be given that he or she did in fact make it, but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he or she must be asked whether or not he or she made the statement.

Questions lawful in cross-examination

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

- (a) test his or her accuracy, veracity or credibility;
- (b) discover who he or she is, and what is his or her position in life; or
- (c) shake his or her credit by injuring his or her character.

When witness to be compelled to answer

161. If any such question relates to a matter relevant to the suit or proceeding, the provisions of section 145 shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer

162. (1) If any such question relates to a matter not relevant to the suit or proceeding except in so far 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 does not think fit to compel him or her to answer the question, inform 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.

Question not to be asked without reasonable grounds

163. No such question as is referred to in section 162 ought to be asked unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

Indecent and scandalous questions

164. The Court may forbid any questions 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.

Questions intended to insult or annoy

165. 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.

Exclusion of evidence to contradict answers to questions testing veracity

166. (1) When a witness has been asked and has answered any question which is relevant to the inquiry only in so far 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.

(2) 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.

(3) 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.

Question by party to his or her own witness

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

Impeaching credit of witness

168. 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, it may be shown that the prosecutor was of generally immoral character.¹⁶

¹⁶ 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

Questions tending to corroborate evidence of relevant fact admissible

169. 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 facts occurred, if the Court is of opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact to which he or she testifies.

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

170. In order to corroborate the testimony of a witness, any former statement made by the witness, whether written or verbal, on oath, or in ordinary conversation 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.

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

171. 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.

Refreshing memory

172. (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 the 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 the document: provided the Court be satisfied that there is sufficient reason for the non-production of the original.

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

Testimony to facts stated in document mentioned in section 172

173. A witness may also testify to facts mentioned in any such document as is mentioned in section 172, 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.

Right of adverse party as to writing used to refresh memory

174. Any writing referred to under the provisions of the two last preceding sections, must be produced and shown to the adverse party if he or she requires it; and he or she may, if he or she pleases, cross-examine the witness thereupon.

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.

Production of documents

175. (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 affairs of Government or take other evidence to enable it to determine on its admissibility.

(3) 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 any disobedience to such direction shall be a misdemeanour.

Giving as evidence document called for and produced on notice

176. 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 and if it is relevant.

Using as evidence document production of which was refused on notice

177. 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.

Power of Court to put questions or order production of documents, etc.

178. The Court may, in order to discover or to obtain proper proof of relevant facts, ask any question it 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:

provided that the judgement must be based upon facts declared by this Act to be relevant and duly proved:

provided also that this section shall not authorise the Court to compel any witness to answer any question or to produce any document which the witness would be entitled to refuse to answer or produce under sections 134 to 144, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Court ask any question which it would be improper for any other person to ask under section 162 or 163; nor shall it dispense with the primary evidence of any document, except in the cases hereinbefore accepted.

Power of jury or assessors to put questions

179. In cases tried by jury, or with assessors, the jury or assessors may put any questions to the witnesses through or by leave of the Court which the Court itself might put and considers proper.

Power of Court to compel person present in Court to give evidence

180. Save as is provided in Part 11, any person present in Court, whether a party to the proceedings or not, may be called upon and compelled by the Court to give evidence and produce any document then and there in his or her actual possession, or in his or her power, in the same

manner and subject to the same rules as if he or she had been summoned to appear and give evidence, or to produce the document, and may be punished in like manner for any refusal to obey the order of the Court.

English law of evidence to be observed

181. Unless this Act otherwise provides, any question which shall arise in any action, suit, information, or other proceeding whatsoever in or before any Court of Justice, or before any person having by law authority to hear, receive and examine evidence touching the admissibility or the sufficiency of any evidence, or the swearing of a witness or the form of oath or of affirmation to be used by any witness, or the admissibility of any question put to any witness or the admissibility or sufficiency of any document, writing, matter, or thing tendered in evidence, shall be decided according to the law of England for the time being in force.

PART 12

EVIDENCE BY ELECTRONIC COMMUNICATION ETC.

Electronic communication

182. (1) The Court must make appropriate use of electronic communication or other technological advances to ensure that matters are dealt with fairly and expeditiously including email, fax, electronic meetings, teleconferences and live links and in this regard, the Court must, wherever possible, deal with matters without requiring the physical attendance of parties at a hearing.

(2) Where a written document, record or information is required to be submitted to the Court that requirement may be met by submissions made in electronic form.

(3) The Court may, for the purposes of any proceedings, direct or allow a person to make a written or oral submission or a submission by way of live link or other appropriate technological means.

Live links in criminal proceedings

183. (1) Notwithstanding subsection (3), a witness (other than the accused) may, if the court so directs, give evidence through a live link in criminal proceedings.

(2) A direction may be given under this section—

- (a) on an application by a party to the proceedings; or
- (b) of the court's own motion.

(3) A direction shall not be given under this section unless the court is satisfied that it is in the interests of the efficient or effective administration of justice for the person concerned to give evidence in the proceedings through a live link.

(4) When deciding whether to give a direction under this section the court must consider all the circumstances of the case including the following—

- (a) the availability of the witness;
- (b) the need for the witness to attend in person;

- (c) the importance of the witness's evidence to the proceedings;
- (d) the views of the witness;
- (e) the suitability of the facilities at the place where the witness would give evidence through a live link;
- (f) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence; and
- (g) the prevailing public health situation and the need to expeditiously and fairly facilitate court matters and administer justice.

(5) The court must state in open court its reasons for refusing an application for a direction under this section and, if it is a magistrate's court, must cause such reasons to be recorded by the court.

(6) Where a direction provides for the witness to give evidence by means of a live link, the court may permit the witness to give evidence in a manner otherwise than through a live television link where the interest of justice requires this to be done.

Effect of, and rescission of, a live link direction

184. (1) Where it appears to the court to be in the interests of justice to do so, the Court may rescind a direction under section 183—

- (a) on an application by a party to the proceedings; or
- (b) of the court's own motion.

(2) No application may be made under subsection (1)(a) unless there has been a material change of circumstances since the direction was given.

(3) Where subsection (1) is applied, the person concerned shall cease to be able to give evidence in the proceedings through a live link, but this does not prevent the court from giving a further direction under section 183 or from using another form of electronic communication in relation to that person.

(4) The court must state in open court its reasons for—

- (a) rescinding a direction given under section 183; or
- (b) refusing an application to rescind such a direction;

and, if it is a magistrate's court, must cause its reasons to be recorded by the court.

Magistrate's courts permitted to sit at other locations for live links

185. The magistrate's court may sit for the whole or any part of the proceedings at any place at which suitable facilities are available for receiving evidence by live link and which has been appointed pursuant to section 9 of the Magistrate's Code of Procedure Act.

Warning to jury

186. The judge may give the jury (if there is one) such direction as the judge thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the proceedings are held.

Rules of Court

187. (1) Rules of court may make such provision as appears to the authority making them to be necessary or expedient for the purposes of sections 183 to 186 inclusive.

(2) Rules of court may in particular make provision as to the—

- (a) procedure to be followed in connection with applications under section 183 or 184; and
- (b) arrangements or safeguards to be put in place in connection with the operation of live links.

(3) The provision which may be made by virtue of subsection (2)(a) includes provision for—

- (a) uncontested applications to be determined by the court without a hearing;
- (b) preventing the renewal of an unsuccessful application under section 183 unless there has been a material change of circumstances,
- (c) the manner in which confidential or sensitive information is to be treated in connection with an application under section 183 or 184 and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

(4) Nothing in this section is to be taken as affecting the generality of any enactment conferring power to make rules of court.

(5) Nothing in this Part is to be regarded as affecting any power of a court to—

- (a) make an order, give directions or give leave of any description in relation to any witness (including the accused); or
- (b) exclude evidence at its direction (whether by preventing questions being put or otherwise).

PART 13

IMPROPER ADMISSION AND REJECTION OF EVIDENCE, ETC.

No new trial for improper admission or rejection of evidence

188. 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 appears 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.

Repeal

189. The Evidence Act is repealed.

Citation

190. This Act may be cited as the Evidence Act, 2021.

Barbara Webster-Bourne
Speaker

Passed in the House of Assembly this day of , 2021.

Lenox J. Proctor
Clerk of the House of Assembly

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OBJECTS AND REASONS

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