
CHAPTER 65**EVIDENCE**

LIST OF AUTHORISED PAGES

1 - 10B	LRO 1/2017
11 - 14	Original
15 - 18	LRO 1/2017
19 - 22	Original
23 - 24	LRO 1/2008
25 - 48	Original
49 - 50F	LRO 1/2017
51 - 52	Original
53 - 56B	LRO 1/2017
57 - 76	Original
77 - 82	LRO 1/2017

ARRANGEMENT OF SECTIONS**PART I****PRELIMINARY**

SECTION

1. Short title.
2. Interpretation.
3. Evidence admissible under other Acts.

PART II**ADMISSIBILITY OF EVIDENCE***Evidence Generally*

4. Facts of which evidence may be given.
5. Evidence against conspirators.
6. Evidence of course of business.
7. Evidence of series of acts to show knowledge or intention.
8. Special rules in case of persons found in possession of stolen goods — evidence of previous conviction.
9. Evidence of possession of other goods stolen within previous year.
10. Evidence of intention, motive, etc.
11. Evidence of historical books, maps, etc.
12. Power of court to disallow evidence unless shown to be admissible.
13. Discretion of court as to manner in which evidence may be shown to be admissible.

Evidence of Admissions

14. Persons whose admissions are admissible in evidence against party.
15. Admissions made during continuance of state of facts.
16. Admission made without prejudice.
17. Admission made under duress.
18. Admission made with reference to rights or liabilities.
19. Proof by formal admission in criminal proceedings.

Evidence of Confessions

20. Admissibility of confessions.
21. Evidence of confession made under examination, on oath or in judicial proceeding admissible.

Evidence of Opinions

22. Opinion of experts admissible on subject requiring expert knowledge.
23. Expert may refer to books or writings.
24. Opinion of person acquainted with handwriting of another.
25. What constitutes acquaintance with handwriting.
26. Admissibility of certain expressions of non expert opinion.
27. Evidence of reputation admissible in questions of general custom or right.
28. Evidence of reputation admissible in questions of pedigree.

Evidence of Character

29. Evidence of character, when admissible in criminal proceedings.
30. Special rules with reference to previous convictions.
31. Evidence of good character, when admissible in civil proceedings.
32. Evidence of bad character, when admissible in civil proceedings.
33. Evidence tending to impeach character of witness.
34. Restriction on evidence at trials for rape, etc.
35. Application of section 34 to preliminary inquiries, court-martial and summary trials.
36. Evidence of character must be general.

PART III**ORAL AND DOCUMENTARY EVIDENCE***Oral Evidence — Generally*

37. Oral evidence must be direct.
38. Hearsay evidence.
39. Exceptions to rule as to hearsay evidence.
40. Evidence given under section 39 may be contradicted, corroborated, impeached or confirmed.

Documentary Evidence — Generally

41. Contents of document, how proved.
42. Meaning of primary evidence.
43. Meaning of secondary evidence.
44. Power of court to order production of documents for purpose of primary evidence.
45. Where secondary evidence may be given by other persons.
46. Other cases in which secondary evidence admissible.
47. Notice to produce must first be given.
48. Primary evidence shall be given.
49. Mode of enforcing rule as to primary evidence.
50. Document required to be attested, how proved.
51. Proof of handwriting of attesting witness, when sufficient.
52. Admission by party to document sufficient evidence as against such party.

-
53. When other evidence admissible.
 54. Proof of documents not required to be attested.
 55. Proof of signature or handwriting of document.
 56. Signature or writing, how proved.
 57. Prints from films of Government documents.

Oral and Documentary Evidence — Civil Proceedings

58. Admissibility of out-of-court statements as evidence of facts stated.
59. Witness's previous statement, if proved, to be evidence of facts stated.
60. Admissibility of certain records as evidence of facts stated.
61. Admissibility of statements produced by computers.
62. Provisions supplementary to sections 58 to 61.
63. Admissibility of evidence as to credibility of maker, etc., of statement admitted under section 58 or section 60.
64. Rules of court.
65. Application of sections 58 to 60 and 62 to 64 to statements of opinion.

Documentary Evidence — Criminal Proceedings

66. Evidence from documentary records.
67. Evidence from computer records.
68. Provisions supplementary to sections 66 and 67.

Exclusion of Oral by Documentary Evidence

69. Oral evidence inadmissible of contents or terms of official proceeding, contract, etc., required to be in writing and reduced to writing.
70. Oral evidence inadmissible to vary terms of contract, etc., reduced to writing.
71. Exclusion of evidence to explain or amend ambiguous document.
72. Exclusion of evidence against application of document to existing facts.
73. Evidence as to document unmeaning in reference to existing facts.
74. Evidence as to application of language which can apply to one only of several persons.
75. Evidence as to application of language to one of two sets of facts.
76. Evidence as to meaning of illegible characters, etc.
77. Evidence may be given of agreement varying terms of document.
78. Construction of wills.

PART IIIA

**USE OF LIVE TELEVISION LINK AND VIDEO RECORDED
EVIDENCE IN CRIMINAL PROCEEDINGS**

- 78A. Application of Part.
- 78B. Evidence by way of live television link.
- 78C. Appearance by way of live television link by the accused.
- 78D. Video recording of testimony from child witness.
- 78E. Use of data from electronic device.
- 78F. Discretion of court to disallow evidence in criminal proceedings.

PART IV
JUDICIAL NOTICE, BURDEN OF PROOF AND
PRESUMPTIONS

Judicial Notice

- 79. Judicial notice.
- 80. Facts of which judicial notice taken.
- 81. Facts admitted need not be proved.

The Burden of Proof

- 82. Burden of proof.
- 83. General rule as to burden of proof at commencement of proceeding.
- 84. Burden of proof of particular fact.
- 85. Burden of proof of fact necessary to enable other facts to be proved.
- 86. Burden of negating exception in criminal statute.
- 87. Burden of proof of continuance of certain relationship.
- 88. Burden of proof of ownership
- 89. Burden of proof between person in relationship of confidence.

General Presumptions

- 90. Presumption of regularity of official and judicial acts.
- 91. Presumption of guilt of person found in possession of property recently stolen.
- 92. Presumption of the continuance of life.
- 93. Presumption of death where person not heard of for seven years.
- 94. Presumption of marriage from cohabitation.
- 95. Presumption of validity of marriage shown have been celebrated
- 96. Presumption of legitimacy of offspring.
- 97. Where presumptions conflicting, question of fact for court.
- 97A. Admission of evidence recorded on CCTV establishes presumption of presence at the crime scene.
- 97B. Presumption of presence when electronic monitoring device is found at the scene of an alleged crime.

Presumptions as to Documents

- 98. Presumption of authenticity of document admissible in evidence on proof that certain prescribed conditions are complied with.
- 99. Presumption of authenticity of judicial record purporting to be signed by judge or magistrate.
- 100. Presumption of genuineness of certain documents.
- 101. Presumption of genuineness of book containing laws or reports of judicial decisions.
- 102. Presumption of authenticity of power of attorney.
- 103. Presumption as to authorship and date of books, maps, etc.
- 104. Presumption of accuracy of telegraphic message.
- 105. Presumption as to validity of document called for and not produced.
- 106. Presumption of genuineness and validity of document 30 years old produced from proper custody.
- 107. Meaning of proper custody.
- 108. Presumption as to date and order of execution of documents.

-
109. Presumption as to execution of deed.
 110. Presumption as to alterations and interlineations of documents.
 111. Position of person producing document appearing to be altered in material particular.

**PART V
PUBLIC DOCUMENTS**

112. Public documents.
113. Meaning of certified copy.
114. Duty of custodian of public documents to furnish certified copy.
115. Special methods of proving certain public documents.
116. Previous convictions, how proved.

**PART VI
JUDGMENTS**

117. Meaning of judgment.
118. Effect of judgment.
119. Effect in evidence of judgment of court in exercise of probate, matrimonial, admiralty or bankruptcy jurisdiction.
120. Judgment conclusive proof of facts therein stated in favour of court delivering it.
121. Judgment conclusive as to issues decided between parties.
122. Proof by party against whom any judgment is offered in evidence.
123. Convictions as evidence in civil proceedings.
124. Findings of adultery and paternity as evidence in civil proceedings.
125. Conclusiveness of convictions for purposes of defamation actions.

**PART VII
JUDICIAL PROCEDURE**

Oaths and Affirmations

126. All evidence to be given on oath.
127. Court to administer oath.
128. Form of oath to be administered.
129. Solemn affirmation permitted.

Competency of Witnesses

130. Who may testify.
131. Dumb witnesses.

Privileges of Witnesses as to Certain Questions

132. Judges and magistrates.
133. Official communications.

-
134. Information as to commission of offences.
 135. Professional communications.
 136. Confidential communications with legal advisers.
 137. Communications during marriage.
 138. Witness not compelled to answer certain questions.

Number of Witnesses

139. Corroboration of evidence in actions for breach of promise of marriage.
140. Number of witnesses or corroboration in trial for perjury.
141. Savings.

Examination and Cross-Examination of Witnesses

142. Types of examination.
143. Order of examination.
144. Examination and cross-examination.
145. Re-examination.
146. Re-calling of witnesses.
147. Cross-examination as to previous statements in writing.
148. Questioning a witness as to conviction of an offence.
149. Questions lawful in cross-examination.
150. When a witness may be contradicted.
151. Adverse witness.
152. Impeaching credit of witness.
153. Person called to produce document.

Leading Questions

154. Leading questions.
155. When leading questions shall not be asked.
156. When court may permit leading questions to be asked.
157. When leading questions may be asked.
158. When court may prohibit leading questions.

Refreshing Memory

159. When witness may use own writing.
160. When witness may use another's writing.
161. When witness may use copy of document.
162. Experts may refer to treatises.
163. Rights of adverse party.

Production of Documents

164. Document called for and produced on notice.
165. Document called for and refused on notice.
166. Production of document.
167. Court may inspect document.

General Powers of the Court

168. Court's power to put questions.
169. Power of court to compel person present in court to give evidence.
170. Power of court to inspect.

PART VIII
EVIDENCE BY PERSONS CHARGED WITH OFFENCES AND
THEIR HUSBANDS OR WIVES

- 171. Competency of witnesses in criminal cases.
- 172. Cross-examination of a person charged and called as a witness.
- 173. Time for taking accused person's evidence.
- 174. Right of reply.
- 175. Calling of husband or wife in certain cases.
- 176. Calling of husband or wife on trial of civil right.

PART IX
MISCELLANEOUS

- 177. Banker's book.
- 178. Exclusion of unfair evidence.

SCHEDULE (SECTION 78B(7))

Criminal Proceedings (Evidence by way of Live Television Link and Video Recordings) Rules

CHAPTER 65

EVIDENCE

An Act to consolidate with amendments certain written laws relating to the law of evidence and for connected purposes.

*[Assent 4th March, 1996]
[Commencement 1st June, 1996]*

*4 of 1996
14 of 2000
42 of 2000
6 of 2006
36 of 2011
31 of 2013
11 of 2014
46 of 2014
33 of 2015*

**PART I
PRELIMINARY**

1. This Act may be cited as the Evidence Act. Short title.
2. In this Act — Interpretation.
 - “admission” means any statement relative to any fact in issue tending to the prejudice of the person making it with reference to such fact, or to the prejudice of some person who is responsible for his statement;
 - “computer” has the meaning assigned to it by subsection (6) of section 61;
 - “confession” has the meaning assigned to it by subsection (5) of section 20;
 - “court” includes all Justices of the Supreme Court and all magistrates and all persons having by law or by the consent of parties authority to take evidence;
 - “digital image” means the conversion of sound and vision recorded by closed-circuit television in any medium from which a moving two or three dimensional image may by any means be produced; *11 of 2014, s.2*
 - “document” includes, in addition to a document in writing —
 - (a) any map, plan, graph or drawing;
 - (b) any photograph;
 - (c) any disc, tape, sound track 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; and

- (d) any 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;

“fact in issue” means any fact as to which in the course of any proceeding it becomes material for the court to enquire, in order to ascertain the respective rights and liabilities of the parties or for any purpose incidental thereto;

“film” has the meaning assigned to it by subsection (6) of section 57;

36 of 2011, s. 2.

“live television link” means a live television link or other arrangement whereby a witness, while absent from the courtroom or other place where the proceedings are being held, is able to see and hear a person there and to be seen and heard by —

- (a) the accused person;
- (b) the magistrate or judge, and the jury (if there is one);
- (c) legal representatives acting in the proceedings; and
- (d) any interpreter or other person appointed (in pursuance of a direction or otherwise) to assist the witness.

Evidence
admissible under
other Acts.

3. Nothing in this Act shall be deemed to render inadmissible any evidence which is admissible under any other Act.

PART II ADMISSIBILITY OF EVIDENCE

Evidence Generally

Facts of which
evidence may be
given.

4. In any proceeding evidence may be given of facts relevant to any fact in issue, including —

- (a) any fact which is so closely connected with any fact in issue as to form in the opinion of the court part of the same transaction, whether it occurred at the same time and place or at some different time and place;

-
- (b) any fact which is the occasion, cause or effect, immediate or otherwise of any fact in issue;
 - (c) any fact which explains the circumstances under which any fact in issue is said to have happened, or which afforded an opportunity for its occurrence, or which fixes or helps to fix the time or place of its occurrence;
 - (d) any fact which is consistent or inconsistent with any fact in issue or which supports, rebuts, qualifies or explains an inference suggested by any fact in issue;
 - (e) any fact which shows or constitutes a motive or preparation for any fact in issue;

The next page is 10B

This page is intentionally left blank

The next page is 11

- (f) any fact or thing tending to identify any person or thing whose identity is a fact in issue;
- (g) any fact may assist the court or the jury in assessing the damages or penalty in cases in which such assessment is necessary.

5. Where there is evidence from which an inference can be drawn that two or more persons have conspired together to commit an offence or an actionable wrong, evidence may be given against each of the persons of anything said, done or written by any one of them in the execution or furtherance of their common purpose.

Evidence against conspirators.

6. Where there is a question whether a particular act was done, the doing or existence of which is relevant to a fact in issue evidence may be given of the existence of any course of business according to which it naturally might or would have been done.

Evidence of course of business.

7. (1) This section applies in relation to evidence in a criminal proceeding adduced by the prosecutor.

Evidence of series of acts to show knowledge or intention.

(2) Evidence that the accused person did or could have done an act or had or could have had a particular state of mind, being an act or state of mind that is similar to an act or state of mind the doing or existence of which is a fact in issue, is not admissible unless —

- (a) the existence of that fact in issue is substantially in dispute in the proceeding; and
- (b) the evidence has substantial probative value.

(3) In determining whether the evidence has substantial probative value, the matters that the court shall have regard to include —

- (a) the nature and extent of the similarity;
- (b) the extent to which the act or state of mind to which the evidence relates is unusual;
- (c) in the case of evidence of a state of mind, the extent to which the state of mind is unusual or occurs infrequently; and
- (d) in the case of evidence of an act —
 - (i) the likelihood that the accused person would have repeated the act;

- (ii) the number of times on which similar acts have been done; and
- (iii) the period that has elapsed between the time when the act was done and the time when the accused person is alleged to have done the act that the evidence is adduced to prove.

Special rules in case of persons found in possession of stolen goods — evidence of previous conviction.

8. (1) Where any person who has been previously convicted of any offence involving fraud or dishonesty, is found in the possession of stolen goods, evidence of such previous conviction shall be admissible as evidence of his knowledge that such goods have been stolen, and in any proceedings that may be taken against him as receiver of stolen goods, or otherwise, in relation to his having been found in possession of such goods, proof may be given of his previous conviction before evidence is given of his having been found in possession of such stolen goods.

(2) Not less than seven days' notice shall be given to such person that proof is intended to be given of his previous conviction.

Evidence of possession of other goods stolen within previous year.

9. Where proceedings are taken against any person for having in his possession stolen goods, evidence may be given that there were found in the possession of such person other goods stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew that the goods which form the subject of the proceedings against him, had been stolen.

Evidence of intention, motive, etc.

10. Where the court has to enquire as to the existence of any intention, motive, state of feeling or state of mind of any person, evidence may not be given to show that such intention, motive, state of feeling, or state of mind existed generally but only that it existed with reference to the matter in question.

Evidence of historical books, maps, etc.

11. Evidence may be given of historical books and records and contents of maps or charts generally offered for public sale or prepared under the authority of Government with reference to matters of general information therein contained.

12. (1) When either party proposes to give evidence of any fact, the court may ask the party proposing to give evidence, in what manner the alleged fact, if proved, would be relevant to the fact in issue before the court and the court shall admit the evidence if it thinks that the fact, if proved, would be so relevant, and not otherwise.

Power of court to disallow evidence unless shown to be admissible.

(2) Any fact of which evidence is admissible under the provisions of this Act shall be deemed to be relevant to the fact in issue before the court.

13. If the admissibility in evidence 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.

Discretion of court as to manner in which evidence may be shown to be admissible.

Evidence of Admissions

14. Evidence may be given against any party to a civil proceeding of any admission —

Persons whose admissions are admissible in evidence against party.

- (a) by such party;
- (b) by any person who in the opinion of the court is in the circumstances of the case expressly or impliedly authorised to make such admission on behalf of such party;
- (c) by any person who though not nominally a party to the proceeding, is for the purpose of the proceeding to be regarded as identified in interest with such party;
- (d) by any person jointly interested with such party in the subject matter of the proceeding;
- (e) by any person who with reference to the subject matter of the proceeding is privy in estate, blood, representation or law to such party;
- (f) by any person to whom such party has expressly referred the other party for information with reference to the matter in dispute.

15. (1) No evidence shall be given of any admission made by a party suing or sued as a trustee, executor, guardian, agent or in any other representative capacity unless the said admission was made while such party held such representative capacity.

Admissions made during continuance of state of facts.

(2) No evidence shall be given of any admission made by a person interested in the proceeding, or by a privy to any party thereto unless it was made during the continuance of such interest or privity.

Admission made without prejudice.

16. No evidence shall be given in any civil proceeding of any admission which was made upon an express condition that it should be without prejudice to the rights of the party making it, or in circumstances from which the court can infer that the parties agreed together that evidence should not be given.

Admission made under duress.

17. No evidence shall be given of any admission which was made under duress.

Admission made with reference to rights or liabilities.

18. Where the question at issue is the respective rights and liabilities of a party and some person who is not a party to the suit, evidence may be given against any such party of any admission by such other person with reference to such rights or liabilities:

Provided that such admission was made during the continuance of such rights or liabilities.

Proof by formal admission in criminal proceedings.

19. (1) Subject to the provisions of this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or the accused person, and the admission by any party of any such fact under this section shall as against that party be conclusive evidence in those proceedings of the fact admitted.

- (2) An admission under this section —
- (a) may be made before or at the proceedings;
 - (b) if made otherwise than in court shall be in writing;
 - (c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;

-
- (d) if made on behalf of an accused person who is an individual, shall be made by his counsel and attorney;
 - (e) if made at any stage before the trial by an accused person who is an individual, must be approved by his counsel and attorney (whether at the time it was made or subsequently) before or at the proceedings in question.

(3) An admission under this section for the purpose of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter (including any appeal or retrial).

(4) An admission under this section may with the leave of the court be withdrawn in the proceedings for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.

Evidence of Confessions

20. (1) In any proceedings a confession made by an accused person may be given in evidence against him in so far as it is relevant to any fact in issue in the proceedings and is not excluded by the court in pursuance of this section.

Admissibility of confessions.

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession —

- (a) was or may have been obtained by oppression of the person who made it; or
- (b) is rendered unreliable by reason of anything said or done or omitted to be said or done in the circumstances existing at the time, the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid.

(3) In any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, the court may of its own motion require the prosecution, as a condition of allowing it to do so, to prove that the confession was not obtained as mentioned in subsection (2).

(4) The fact that a confession is wholly or partly excluded in pursuance of this section shall not affect the admissibility in evidence of any facts discovered as a result of the confession and of so much of the confession as relates thereto.

(5) In this Act —

“confession” includes any statement wholly or partly adverse to the person who made it, whether made to a person in authority or not and whether made in words or otherwise;

“oppression” includes torture, inhuman or degrading treatment, and the use of threat of violence (whether or not amounting to torture).

21. (1) Subject to subsection (2) and to any other law to the contrary, it shall be no objection to the admissibility in evidence of a confession that it was made by a person under examination, on oath or in a judicial proceeding.

(2) If in the course of such examination he shall have refused to answer any question and shall have been improperly compelled to do so, evidence shall not be given of the answer to such question.

Evidence of Opinions

22. (1) Where the court has to form an opinion on the identity or genuineness of handwriting, or upon a point of foreign law, or of science, art, trade, manufacture or any other subject requiring special skill or knowledge, evidence may be given of the opinion of persons who in the opinion of the court are experts in such subjects and of any facts which support or are inconsistent with such opinions.

(2) An expert may give evidence by way of live television link in criminal proceedings under this Act, where the court is satisfied that —

(a) the expert witness is on an island or in a place other than the island on which proceedings are being held; or

Evidence of confession made under examination, on oath or in judicial proceeding admissible.

Opinion of experts admissible on subject requiring expert knowledge.
33 of 2015, s.2

33 of 2015, s.2

-
- (b) the expert witness is on the island, within the jurisdiction of The Bahamas, and the Court deems it just and convenient so to do.

23. Evidence may not be given in such cases of the contents of books or writings, but an expert in giving his opinion may refer to books or writings and the court may consider and construe such books and writings in conjunction with his evidence.

Expert may refer to books or writings.

The next page is 16B

This page is intentionally left blank

The next page is 17

24. Where the court has to form an opinion as to the person by whom any document was written or signed, evidence may be given of the opinion of any person acquainted with the handwriting of the person by whom it is alleged to be written or signed.

Opinion of person acquainted with handwriting of another.

25. A person shall be deemed to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his 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.

What constitutes acquaintance with handwriting.

26. (1) Where a person is called as a witness in any civil proceedings, a statement of opinion by him on any relevant matter on which he is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him, is admissible as evidence of what he perceived.

Admissibility of certain expressions of non expert opinion.

(2) In this section “relevant matter” includes an issue in the proceedings in question.

27. Where the court has to form an opinion as to the existence of any general custom or right, evidence may be given of general reputation with reference to such custom or right among persons who would be likely to know of its existence.

Evidence of reputation admissible in questions of general custom or right.

28. When the court has to form an opinion as to the relationship of one person to another, evidence may be given of general reputation with reference to such relationship among persons who would be likely to know of its existence.

Evidence of reputation admissible in questions of pedigree.

Evidence of Character

29. In criminal proceedings evidence may be given of the good character of the accused person, but evidence may not be given of his bad character, unless and with leave of the court witnesses have been called or questions have been asked to show that he bears a good character.

Evidence of character, when admissible in criminal proceedings.

Special rules with reference to previous convictions. *36 of 2011, s. 3.*

- 30.** In the following cases, that is to say —
- (a) where a person is on trial for a felony, who has been previously convicted of any felony;
 - (b) where a person is on trial for stealing, or for any offence declared to be punishable as stealing or for false pretences or for receiving stolen property, or for any other offence involving fraud, who has been previously convicted of any felony, misdemeanour or offence punishable upon summary conviction;
 - (c) where a person is on trial for any offence relating to the coinage who has been previously convicted of any such offence,

if the accused person calls witnesses or asks questions to show that he bears a good character, with leave of the Court evidence may be given of such previous conviction or convictions.

Evidence of good character, when admissible in civil proceedings.

31. In civil proceedings evidence may not be given that a person bears a good character in any respect unless —

- (a) the character of such person in such respect is a fact in issue;
- (b) evidence has already been given to show that such person bears a bad character in such respect.

Evidence of bad character, when admissible in civil proceedings.

32. In civil proceedings evidence may not be given that a person bears a bad character in any respect unless —

- (a) the character of such person in such respect is a fact in issue;
- (b) damages are claimed for any wrong done to or in connection with such person and the evidence is tendered with a view to the reduction of such damages.

Evidence tending to impeach character of witness.

33. Evidence may be given in both civil and criminal proceedings of the bad character of any person called as a witness in order to impeach his credit as a witness.

34. (1) If at a trial any person is for the time being charged with a rape offence to which he pleads not guilty, then, except with the leave of the court, no evidence shall be adduced nor shall any question be asked at the trial, by or on behalf of any accused person about any sexual experience of a complainant with a person other than that accused person.

Restriction on evidence at trials for rape, etc.

(2) The court shall not give leave in pursuance of subsection (1) for any evidence or question except on an application made to it in the absence of the jury by or on behalf of an accused person, and on such an application the court shall give leave if, and only if, it is satisfied that it would be unfair to that accused person to refuse to allow the evidence to be adduced or the question to be asked.

(3) In subsection (1) “complainant” means a person upon whom, in a charge of a rape offence to which the trial in question relates, it is alleged that a rape offence was committed, attempted or proposed.

(4) Nothing in this section shall authorise evidence to be adduced or a question to be asked which cannot be adduced or asked apart from this section.

35. (1) Where a magistrates’ court is conducting a preliminary inquiry into a rape offence, then, except with leave of the court, evidence shall not be adduced and a question shall not be asked at the inquiry which, if the inquiry were a trial at which a person is charged as mentioned in subsection (1) of section 34 and the accused person at the inquiry were charged at the trial with the offences of which he is accused at the inquiry, could not be adduced or asked without leave in pursuance of that section.

Application of section 34 to preliminary inquiries, court-martial and summary trials.

(2) On an application for leave in pursuance of subsection (1) for any evidence or question the court shall —

- (a) refuse leave unless the court is satisfied that leave in respect of the evidence or question would be likely to be given at a relevant trial; and
- (b) give leave if the court is so satisfied.

(3) Where a person charged with a rape offence is tried for that offence, either by court-martial or summarily before a magistrate's court or a juvenile court, section 34 shall have effect in relation to the trial as if the words "in the absence of the jury" in subsection (2) were omitted.

Ch. 99.

(4) In this section and in section 34 "rape offence" means any offence under sections 6 and 10 to 12 of the Sexual Offences Act, any attempt to commit any such offence, and any offence constituted pursuant to section 85 of the Penal Code in relation to, and any attempt to commit, an offence under any of those sections.

Ch. 84.

Evidence of
character must be
general.

36. Subject to section 34, evidence of character shall be confined to general reputation only, and shall not relate to particular acts of good or bad conduct.

PART III ORAL AND DOCUMENTARY EVIDENCE

Oral Evidence — Generally

Oral evidence
must be direct.

37. Oral evidence shall, in all cases whatever, be direct, that is to say —

- (a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw the fact;
- (b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard the fact;
- (c) if it refers to a fact which could be perceived by any other sense or in any other manner, it must be the evidence of a witness who says he perceived that fact by that sense or in any other manner;
- (d) if it refers to an opinion, or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds.

38. When a fact is proved by evidence —

Hearsay evidence.

- (a) that a statement as to the fact was made by any person;
- (b) that a statement as to the fact is contained or recorded in any book, document or other record,

the fact is said to be proved by hearsay evidence.

39. (1) Subject to subsection (2) and to this Act, hearsay evidence shall not be admitted in evidence.

Exceptions to rule as to hearsay evidence.

(2) Hearsay evidence may be admitted —

- (a) where the statement is a necessary part of any fact or transaction which is being investigated by the court;
- (b) where the knowledge, intention, motive, state of feeling, state of mind or state of body of any person is a fact in issue and the statement proves or disproves the said knowledge, intention, motive, state of feeling, state of mind or state of body;
- (c) where the statement is an admission or confession made by or to the prejudice of the party against whom it is sought to be proved but subject to the provisions of sections 14 to 19;
- (d) where the statement was made in the presence and in the hearing of the person against whom the evidence is tendered, and where such person had an opportunity of replying to such statement;
- (e) where the statement is contained in any official record, book or register, kept for the information of the Crown or for public reference and was made as the result of inquiry by a public servant in discharge of a duty enjoined by the law of the country in which such official record, book or register is kept;
- (f) where the statement was made by a person since dead as to the cause of his death or as to any of the circumstances of the transaction resulting in his death in cases in which the person's death is the subject of a criminal charge:

Provided —

- (i) that the person at the time he made the statement was in actual danger of death and in the expectation of death; and
 - (ii) that the statement was of such a nature that it could have been given in evidence in legal proceedings if the person making it had survived;
- (g) where the statement was made by a person, since dead, in the ordinary course of business, in discharge of a duty incumbent upon such person for the purpose of recording or reporting something which it was the duty of the person to perform, at or near the time when the matter stated occurred and of his own knowledge:

Provided that evidence of such statement shall not be admitted in order to prove any fact mentioned therein which it was not the duty of the person making it to embody in such statement;

- (h) (i) where the statement was made by a person since dead, whether by himself or by some person shown to be duly authorised in that behalf, and was made against his pecuniary or proprietary interest at the time he made it, and related to the circumstances of which he had special knowledge:

Provided that the person making it had no interest to misrepresent the matter stated,

- (ii) a statement charging a person with a liability in one part of it is a statement against his pecuniary or proprietary interest even though in another part, it may discharge him from such liability;
- (i) where the statement was made by a person, since dead, and gives the opinion of 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 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;

-
- (j) where the statement is tendered in proceedings in which the existence of any relationship of blood or marriage is a fact in issue and where the statement related to the existence of the relationship and is made by a person since dead and shown to the satisfaction of the court to be himself related by blood or marriage to the parties thereto:

Provided that the statement was made before the question in dispute had arisen;

- (k) where the statement was made by a deceased testator, whether before or after the making of his will, as to his testamentary intentions or as to the contents of his will —

(i) when the will has been lost and there is a question as to what were its contents;

(ii) when the question is whether an existing will is genuine or was improperly obtained;

(iii) when the question is whether any and which of more existing documents than one constitute the will;

- (l) where the statement consists of evidence given by a witness in any previous civil proceeding, or in a previous stage of the same civil proceedings when the witness is dead, has become insane, is so ill that he will probably never be able to travel, or is out of the jurisdiction of the court:

Provided —

(i) that the person against whom the evidence is tendered had the right and the opportunity to cross-examine the person giving the evidence;

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

(iii) that the questions at issue are substantially the same;

- (m) where in a criminal trial the statement consists of a deposition that would be admissible in accordance with section 168 of the Criminal Procedure Code Act. *6 of 2006, s. 30.* Ch. 91.

Evidence given under section 39 may be contradicted, corroborated, impeached or confirmed.

40. Whenever any statement admissible under section 39 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.

Documentary Evidence — Generally

Contents of document, how proved.

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

Meaning of primary evidence.

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

- (a) where a document is executed in several parts, each part is primary evidence of the document;
- (b) 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;
- (c) where a number of documents are all made by printing, lithography, photography or other uniform process, 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.

Meaning of secondary evidence.

43. Secondary evidence includes —

- (a) certified copies given under the provisions hereinafter contained;
- (b) copies made from the original by mechanical processes which ensure 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;
- (e) oral accounts of the contents of a document given by some person who has himself seen it.

44. The court may order any person summoned before it in the course of any proceeding to produce for the purpose of primary evidence any document in his possession or power, except in the following cases —

- (a) where the document is a document of title and the title of the person may be affected by the production of it;
- (b) where the production of the document may tend to expose the person producing it or the husband or wife of such person to a criminal charge or to any penalty or forfeiture;
- (c) where he holds the documents as mortgagee or pledgee;
- (d) where he holds a lien on the document as against the person claiming its production;
- (e) where he holds the document under the authority of some person entitled to refuse its production, and such person has refused to allow it to be produced;
- (f) where the document is a communication made by a wife to her husband, or by a husband to his wife during the continuance of their marriage.

Power of court to order production of documents for purpose of primary evidence.

45. Where a person has been subpoenaed to produce a document, or being called as a witness has been asked to produce a document and has objected to do so on one of the grounds in section 44 and his objection has been upheld by the court, secondary evidence may be given of its existence, conditions or contents by another person except in cases falling under paragraph (f), but the person whose objection has been so upheld by the court shall not be asked any questions as to the contents of the document.

Where secondary evidence may be given by other persons.

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

- (a) where the original is shown or appears to be in the possession or power of the person against whom the document is sought to be proved, and when after the notice mentioned in section 47 he does not produce it;

Other cases in which secondary evidence admissible.

-
- (b) when the existence, condition or contents of the original have been proved to be admitted by the person against whom it is sought to be proved or by his representative in interest;
 - (c) when there is satisfactory evidence that the original has been lost or destroyed or when after proper search there is reasonable ground for believing that the original has been lost or destroyed;
 - (d) when the original is of such a nature as not to be easily movable, or is in a country or place from which its removal is not by law permissible;
 - (e) when the original is a public document within the meaning of section 112;
 - (f) when the original is a document of which a certified copy is permitted by this or by any other Act to be given in evidence;
 - (g) when the original consists of numerous accounts or other documents which cannot conveniently be examined in court and the fact to be proved is the general result of the whole collection.

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

(3) In cases falling under paragraph (e) or (f) of subsection (1) a certified copy of the document but no other kind of secondary evidence is admissible.

(4) In cases falling under paragraph (g) of subsection (1) evidence may be given as to the general result of the documents by any person who has examined them and who is skilled in the examination of such documents.

47. (1) Secondary evidence of the contents of the documents referred to in paragraph (a) of subsection (1) of section 46 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 his attorney, such notice to produce it as the court considers reasonable in the circumstances of the case.

(2) Notwithstanding subsection (1), notice shall not be required in order to render secondary evidence admissible in any of the following cases —

Notice to
produce must
first be given.

-
- (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 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 agent has the original in court; or
 - (e) when the adverse party or his agent has admitted the loss of the document.

48. Subject to this Act, the existence, condition, or contents of a document shall be proved by primary evidence. Primary evidence shall be given.

49. Any witness may be asked whilst under examination whether any contract, grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he 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 entitled the party who called the witness to give secondary evidence of it. Mode of enforcing rule as to primary evidence.

50. If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the jurisdiction of the court and capable of giving evidence, but the calling of an attesting witness shall not be excused on the ground that the document has been lost or destroyed. Document required to be attested, how proved.

51. If no such attesting witness can be found or if the document purports to have been executed in a Commonwealth country, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person. Proof of handwriting of attesting witness, when sufficient.

Admission by party to document sufficient evidence as against such party.

When other evidence admissible.

Proof of documents not required to be attested.

Proof of signature or handwriting of document.

Signature or writing, how proved.

Prints from films of Government documents.

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

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

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

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

56. (1) In order to ascertain whether any signature or writing is that of the person by whom it purports to have been written any signature or writing, admitted or proved to the satisfaction of the court to have been written by that person, may be compared by a witness, or by the court, or the jury, with the one which is to be proved, although that signature or writing 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.

57. (1) A print whether enlarged or not purporting to be made from a film of a document in the possession of the Government or an authorised person shall notwithstanding anything to the contrary in this Act or any other law, be admitted in evidence in any proceedings before a court or tribunal as evidence of the contents of that document upon proof that —

- (a) while the document was in the custody or control of the Government or authorised person the film was taken in order to keep a permanent record thereof; and

-
- (b) the document photographed —
 - (i) was subsequently destroyed, whether deliberately or otherwise, or
 - (ii) was so damaged as to be wholly or partially indecipherable;
 - (c) was lost; or
 - (d) has passed out of the custody or control of the Government or authorised person.
 - (2) Proof —
 - (a) that a print was made from a film of a document in the possession of the Government or an authorised person; and
 - (b) of compliance with the conditions in subsection (1),

may be given in respect of any document or group of documents by a public officer having responsibility for the film of the document, or an employee of the authorised person having similar responsibility, as the case may be, orally or by a certificate purporting to be signed by such public officer, employee or person.

(3) A certificate under subsection (2) shall be admitted in evidence in any proceedings before a court or tribunal on its production without further proof.

(4) On the production of a certificate under subsection (3) the court or tribunal before which it is produced, shall, until the contrary is proved, presume —

- (a) that the facts stated in the certificate relating to the print and the compliance with the conditions in subsection (1) are true; and
- (b) that the certificate purporting to be signed by such a public officer, an employee of an authorised person or an authorised person as required by subsection (2) has been signed by him.

(5) The Attorney-General may by order declare any person or class of persons to be authorised persons for the purposes of this section.

- (6) For the purpose of this section —
 - (a) “film” includes a photographic plate, micro-film and machine-copy;

-
- (b) “machine-copy” means a copy made of a document by any machine whereby an image of the contents of the documents is reproduced from surface contact with the documents or by use of photosensitive material other than transparent photographic film;
 - (c) “photograph” or any of its cognate expressions includes a reference to “machine copy”;
 - (d) a reference to anything in the possession of the Government is a reference to such in the possession of any agency, department of Government or of any public officer in the course of the carrying out by him of his duties in such agency or department.

Oral and Documentary Evidence — Civil Proceedings

Admissibility of out-of-court statements as evidence of facts stated.

58. (1) Subject to this section and to rules of court, in any civil proceedings hearsay evidence not falling within section 39, shall be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, whether the person alleged to have made the statement is called as a witness or not.

(2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person by whom the statement was made, the statement —

- (a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and
- (b) without prejudice to paragraph (a), shall not be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person by whom it was made, except —
 - (i) where before that person is called the court allows evidence of the making of the statement to be given on behalf of that party by some other person, or

- (ii) in so far as the court allows the person by whom the statement was made to narrate it in the course of his examination-in-chief on the ground that to prevent him from doing so would adversely affect the intelligibility of his evidence.

(3) Where in any civil proceedings a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence 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:

Provided that if the statement in question was made by a person while giving oral evidence in some other legal proceedings (whether civil or criminal), it may be proved in any manner authorised by the court.

(4) If and so far as rules of court so provide, subsection (2) shall not apply to statements (whether of fact or opinion) contained in expert reports.

59. (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 by virtue of section 147 or 152; or
- (b) a previous statement made by a person called as aforesaid is proved for the purpose of rebutting a suggestion that his evidence has been fabricated,

Witness's previous statement, if proved, to be evidence of facts stated.

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

(2) Nothing in this Act shall affect any of the rules 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 to refresh his 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 memory shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

Admissibility of certain records as evidence of facts stated.

60. (1) Without prejudice to section 61, in any civil proceedings a statement contained in a document shall, subject to this section and to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if the document is, or forms part of, a record compiled by a person acting under a duty from information which was supplied by a person (whether acting under a duty or not) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information and which, if not supplied by that person to the compiler of the record directly, was supplied by him to the compiler of the record indirectly through one or more intermediaries each acting under a duty; and applies also where the person compiling the record is himself the person by whom the information is supplied.

(2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person who originally supplied the information from which the record containing the statement was compiled, the statement —

- (a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and
- (b) without prejudice to paragraph (a) shall not without the leave of the court be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person who originally supplied the said information.

(3) Any reference in this section to a person acting under a duty includes a reference to a person acting in the course of any trade, business, profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

Admissibility of statements produced by computers.

61. (1) In any civil proceedings a statement contained in a document produced by a computer shall, subject to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) are satisfied in relation to the statement and computer in question.

-
- (2) The said conditions are —
- (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any body, whether corporate or not, or by any individual;
 - (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
 - (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
 - (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.
- (3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of subsection (2) was regularly performed by computers, whether —
- (a) by a combination of computers operating over that period;
 - (b) by different computers operating in succession over that period;
 - (c) by different combinations of computers operating in succession over that period; or
 - (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this Act as constituting a single computer; and references in this Act to a computer shall be construed accordingly.

(4) In any civil proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say —

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- (c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate,

and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this Act —

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

(6) Subject to subsection (3), “computer” means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

62. (1) Where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of section 58, 60 or 61 it may, subject to any rules of court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the court may approve.

Provisions
supplementary to
sections 58 to 61.

(2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 58, 60 or 61, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including, in the case of a statement contained in a document, the form and contents of that document.

(3) In estimating the weight if any, to be attached to a statement admissible in evidence by virtue of section 58, 59, 60 or 61 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 —

(a) in the case of a statement falling within subsection (1) of section 58 or subsection (1) or (2) of section 59, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the fact stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts;

-
- (b) in the case of a statement falling within subsection (1) of section 60, to the question whether or not the person who originally supplied the information from which the record containing the statement was compiled did so contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not that person, or any person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts; and
- (c) in the case of a statement falling within subsection (1) of section 61, to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.
- (4) For the purpose of any written law or rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated —
- (a) a statement which is admissible in evidence by virtue of section 58 or 59 shall not be capable of corroborating evidence given by the maker of the statement; and
- (b) a statement which is admissible in evidence by virtue of section 59 shall not be capable of corroborating evidence given by the person who originally supplied the information from which the record containing the statement was compiled.

(5) If any person in a certificate tendered in evidence in civil proceedings by virtue of subsection (4) of section 61 wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he is guilty of an offence and shall be liable on summary conviction to a fine of five thousands dollars or to imprisonment for two years, or to both.

63. (1) Subject to rules of court, where in any civil proceedings a statement made by a person who is not called as a witness in those proceedings is given in evidence by virtue of section 58 —

Admissibility of evidence as to credibility of maker, etc., of statement admitted under section 58 or section 60.

- (a) any evidence which, if that person had been so called, would be admissible for the purpose of destroying or supporting his credibility as a witness shall be admissible for that purpose in those proceedings; and
- (b) evidence tending to prove that, whether before or after he made that 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 that person has contradicted himself:

Provided that nothing in this subsection shall enable evidence to be given of any matter of which, if the person in question had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

(2) Subsection (1) shall apply in relation to a statement given in evidence by virtue of section 60 as it applies in relation to a statement given in evidence by virtue of section 58, except that references to the person who made the statement and to his making the statement shall be construed respectively as references to the person who originally supplied the information from which the record containing the statement was compiled and to his supplying that information.

(3) Subsection (1) of section 59 shall apply to any statement proved by virtue of paragraph (b) of subsection (1) as it applies to a previous inconsistent or contradictory statement made by a person called as a witness which is proved as mentioned in paragraph (a) of subsection (1) of section 59.

Rules of court.

64. (1) Provision shall be made by rules of court as to the procedure which, subject to any exceptions provided for in the rules, must be followed and the other conditions which, subject as aforesaid, must be fulfilled before a statement can be given in evidence in civil proceedings by virtue of section 58, 60 or 61.

(2) Rules of court made in pursuance of subsection (1) shall in particular, subject to such exceptions (if any) as may be provided for in the rules —

(a) require a party to any civil proceedings who desires to give in evidence any such statement as is mentioned in that subsection to give to every other party to the proceedings such notice of his desire to do so and such particulars of or relating to the statement as may be specified in the rules, including particulars of such one or more of the persons connected with the making or recording of the statement or, in the case of a statement falling within subsection (1) of section 61, such one or more of the persons concerned as mentioned in subsection (3)(c) of section 62 as the rules may in any case require; and

(b) enable any party who receives such notice as aforesaid by counter-notice to require any person of whom particulars were given with the notice to be called as a witness in the proceedings unless that person is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he was connected or concerned as aforesaid and to all the circumstances) to have any recollection of matters relevant to the accuracy or otherwise of the statement.

(3) Rules of court made in pursuance of subsection (1) —

(a) may confer on the court in any civil proceedings a discretion to allow a statement falling within subsection (1) of section 58, subsection (1) of section 60 or subsection (1) of section 61 to be given in evidence notwithstanding that any

requirement of the rules affecting the admissibility of that statement has not been complied with, but except in pursuance of paragraph (b) shall not confer on the court a discretion to exclude such a statement where the requirements of the rules affecting its admissibility have been complied with;

- (b) may confer on the court power, where a party to any civil proceedings has given notice that he desires to give in evidence —
 - (i) a statement falling within subsection (1) of section 58 which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal), or
 - (ii) a statement falling within subsection (1) of section 60 which is contained in a record of any direct oral evidence given in some other legal proceedings (whether civil or criminal),to give directions on the application of any party to the proceedings as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved; and
- (c) may make different provision for different circumstances, and in particular may make different provision with respect to statements falling within subsection (1) of section 58, subsection (1) of section 60 and subsection (1) of section 61 respectively,

and any discretion conferred on the court by rules of court made as aforesaid may be either a general discretion or a discretion exercisable only in such circumstances as may be specified in the rules.

(4) Rules of court may make provision for preventing a party to any civil proceedings (subject to any exceptions provided for in the rules) from adducing in relation to a person who is not called as a witness in those proceedings any evidence which could otherwise be adduced by him by

virtue of section 63 unless that party has in pursuance of the rules given in respect of that person such a counter-notice as is mentioned in subsection (2)(b).

(5) In deciding for the purposes of any rules of court made in pursuance of this section whether or not a person is fit to attend as a witness, a court may act on a certificate purporting to be a certificate of a fully registered medical practitioner.

(6) In so far as they relate to statements (whether of fact or opinion) contained in expert reports, rules of court made in pursuance of subsection (1) shall not be subject to the requirements of subsection (2).

(7) Notwithstanding any written law or rule of law by virtue of which documents prepared for the purpose of pending or contemplated civil proceedings or in connection with the obtaining or giving of legal advice are in certain circumstances privileged from disclosure, provision may be made by rules of court —

(a) for enabling the court in any civil proceedings to direct, with respect to medical matters or matters of any other class which may be specified in the direction, that the parties or some of them shall each by such date as may be so specified (or such later date as may be permitted or agreed in accordance with the rules) disclose to the other or others in the form of one or more expert reports the expert evidence on matters of that class which he proposes to adduce as part of his case at the trial; and

(b) for prohibiting a party who fails to comply with a direction given in any such proceedings under rules of court made by virtue of paragraph (a) from adducing in evidence by virtue of section 58, except with the leave of the court, any statement (whether of fact or opinion) contained in any expert report whatsoever in so far as that statement deals with matters of any class specified in the direction.

(8) Provision may be made by rules of court as to the conditions subject to which oral expert evidence may be given in civil proceedings.

(9) Without prejudice to the generality of subsection (8), rules of court made in pursuance of that subsection may make provision for prohibiting a party who fails to comply with a direction given as mentioned in subsection (7)(b) from adducing, except with the leave of the court, any oral expert evidence whatsoever with respect to matters of any class specified in the direction.

(10) Any rules of court made in pursuance of subsections (6) to (9) may make different provision for different classes of cases, for expert reports dealing with matters of different classes, and for other different circumstances.

(11) References in subsections (6) to (10) to an expert report are references to a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence.

65. (1) Subject to the provisions of this section, sections 58 to 60 and 62 to 64 shall apply in relation to statements of opinion as they apply in relation to statements of fact, subject to the necessary modifications and in particular the that any reference to a fact stated in a statement shall be construed as a reference to a matter dealt with therein.

Application of sections 58 to 60 and 62 to 64 to statements of opinion.

(2) Section 60 as applied to subsection (1), shall not render admissible in any civil proceedings a statement of opinion contained in a record unless that statement would be admissible in those proceedings if made in the course of giving oral evidence by the person who originally supplied the information from which the record was compiled; but where a statement of opinion contained in a record deals with a matter on which the person who originally supplied the information from which the record was compiled is (or would if living be) qualified to give oral evidence, section 60, as applied by subsection (1) shall have effect in relation to that statement as if so much of subsection (1) of section 60 as requires personal knowledge on the part of that person were omitted.

Documentary Evidence — Criminal Proceedings

Evidence from documentary records.

66. (1) Subject to section 67 a statement in a document shall be admissible in any criminal proceedings as evidence of any fact stated therein of which direct oral evidence would be admissible if —

- (a) the document is or forms part of a record compiled by a person acting under a duty from information supplied by a person (whether acting under a duty or not) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information; and
- (b) any condition relating to the person who supplied the information which is specified in subsection (2) is satisfied.

(2) The conditions mentioned in paragraph (b) of subsection (1) are —

- (a) that the person who supplied the information —
 - (i) is dead or by reason of his bodily or mental condition unfit to attend as a witness,
 - (ii) is outside The Bahamas and it is not reasonably practicable to secure his attendance, or
 - (iii) cannot reasonably be expected (having regard to the time which has elapsed since he supplied or acquired the information and to all the circumstances) to have any recollection of the matters dealt with in that information;
- (b) that all reasonable steps have been taken to identify the person who supplied the information but that he cannot be identified; and
- (c) that, the identity of the person who supplied the information being known, all reasonable steps have been taken to find him, but that he cannot be found.

(3) Subsection (1) shall apply whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied was acting under a duty; and applies also where the person compiling the record is himself the person by whom the information is supplied.

(4) Where —

(a) a document setting out the evidence which a person could be expected to give as a witness has been prepared for the purpose of any pending or contemplated criminal proceedings; and

(b) the document falls within subsection (1),

a statement contained in it shall not be given in evidence by virtue of this section without the leave of the court, and the court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interests of justice having regard —

(i) to the circumstances in which leave is sought and in particular to the contents of the statement, and

(ii) to any likelihood that the accused will be prejudiced by its admission in the absence of the person who supplied the information on which it is based.

(5) Where in any criminal proceedings a statement based on information supplied by any person is given in evidence by virtue of this section —

(a) any evidence which, if that person had been called as a witness, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;

(b) evidence may, with the leave of the court, be given of any matter which, if that person had been called as a witness, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and

(c) evidence tending to prove that that person has, whether before or after supplying the information, made a statement (whether oral or otherwise) which is inconsistent with that information shall be admissible for the purpose of showing that he has contradicted himself.

(6) A statement which is admissible by virtue of this section shall not be capable of corroborating evidence given by the person who supplied the information on which the statement is based.

(7) In deciding for the purposes of subsection (2)(a)(i) whether a person is unfit to attend as a witness the court may act on a certificate purporting to be signed by a registered medical practitioner.

(8) Any reference in this section to a person acting under a duty includes a reference to a person acting in the course of any trade, business, profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

(9) In estimating the weight, if any, to be attached to a statement admissible in 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 —

(a) to the question whether or not the person who supplied the information from which the record containing the statement was compiled did so contemporaneously with the occurrence or existence of the facts dealt with in that information; and

(b) to the question whether or not that person, or any other person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.

(10) Nothing in this section shall prejudice the admissibility of any evidence that would be admissible apart from this section.

67. (1) In any criminal proceedings, a statement contained in a document produced by a computer shall not be admissible as evidence of any fact stated therein unless it is shown —

Evidence from computer records.

- (a) that there are no reasonable grounds for believing that the statement is inaccurate because of improper use of the computer;
- (b) that at all material times the computer was operating properly, or if not, that any respect in which it was not operating properly or was out of operation was not such as to affect the production of the document or the accuracy of its contents; and
- (c) that any relevant conditions specified in rules of court under subsection (2) are satisfied.

(2) Provision may be made by rules of court requiring that in any criminal proceedings where it is desired to give a statement in evidence by virtue of this section such information concerning the statement as may be required by the rules shall be provided in such form and at such time as may be so required.

(3) In any criminal proceedings where it is desired to give a statement in evidence in accordance with this section, a certificate —

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
- (c) dealing with any of the matters mentioned in subsection (1); and
- (d) purporting to be signed by a occupying a responsible position in to the operation of the computer,

shall be evidence of anything stated in it; and the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the it.

(4) Notwithstanding subsection (3), a court may require oral evidence to be given of anything of which evidence could be given by a certificate under that subsection.

(5) Any person who in a certificate tendered under subsection (3) in a magistrates' court, Supreme Court or the Court of Appeal makes a statement which he knows to be false or does not believe to be true is guilty of an offence and shall be liable on summary conviction to a fine of one thousand dollars or to imprisonment of six months or to both.

(6) In estimating the weight, if any, to be attached to a statement 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 —

- (a) to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied to it, contemporaneously with the occurrence or existence of the facts dealt with in that information; and
- (b) to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

(7) For the purposes of subsection (6) information shall be taken to be supplied to a computer whether it is supplied directly or (with or without human intervention) by means of any appropriate equipment.

68. (1) Where in any criminal proceedings a statement contained in a document is admissible in evidence by virtue of section 66 or in accordance with section 67 it may be proved —

- (a) by the production of that document; or
- (b) (whether or not that document is still in existence) by the production of a copy of that document, or of the material part of it,

authenticated in such a manner as the court may approve.

(2) For the purpose of deciding whether or not a statement is so admissible the court may draw any reasonable inference —

Provisions
supplementary to
sections 66 and
67.

-
- (a) from the circumstances in which the statement was made or otherwise came into being; or
 - (b) from any other circumstances, including the form and contents of the document in which the statement is contained.
- (3) Provisions may be made by rules of court for supplementing the provisions of sections 66 and 67.

Exclusion of Oral Evidence by Documentary Evidence

69. (1) Subject to subsection (2), where —

- (a) any judgment of any court or any other judicial or official proceeding;
- (b) any contract or grant or any other disposition of property;
- (c) any other transaction which is by law required to be in the form of a document,

Oral evidence inadmissible of contents or terms of official proceeding, contract, etc., required to be in writing and reduced to writing.

has been reduced to the form of a document, or series of documents, no evidence shall be given of the contents of the terms thereof except the document itself, or secondary evidence of its contents in cases in which such secondary evidence is admissible under subsections (2) and (3).

(2) Oral evidence shall not be excluded —

- (a) of any transaction, because a documentary memorandum of it was made, if such memorandum was not intended to have legal effect as a contract or other disposition of property;
- (b) of the existence of any legal relationship by the fact that it has been created by a document when the question for the consideration of the court is the existence of the relationship itself and not the terms on which it was established or is carried on;
- (c) of the fact that a person holds a public office by the fact that he was appointed thereto in writing or under seal, if it is proved that he has acted in such office.

(3) Wills admitted to probate may be proved by the production of the probate.

Oral evidence inadmissible to vary terms of contract, etc., reduced to writing.

70. (1) Subject to subsection (2) where any contract, grant or other disposition of property, or any transaction which is by law required to be in the form of a document has been reduced to the form of a document, no evidence of any oral agreement or statement shall be admitted as between the parties thereto, or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms.

(2) Evidence may be given of —

- (a) any fraud, duress, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, error in date, mistake in fact or law or any other fact which would invalidate the document or entitle any person to any order or relief relating thereto;
- (b) any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, if from the circumstances of the case the court infers that the parties did not intend the document to be a complete and final statement of the whole of the transaction between them;
- (c) any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property;
- (d) any distinct subsequent agreement to rescind or modify any such contract, grant or disposition of property:
Provided that such agreement is not itself required by law to be in the form of a document;
- (e) any usage or custom by which any incident not expressly mentioned in any contract is annexed to contracts of that description, unless the annexing of such incident to such contract would be repugnant to or inconsistent with the express terms of the contract;
- (f) any fact which shows in what manner the language of a document is related to existing facts.

71. (1) Evidence may not be given to show what words were intended to be inserted in any blank spaces left in a document.

Exclusion of evidence to explain or amend ambiguous document.

(2) Evidence may not be given to explain expressions which are so vague that no meaning can reasonably be given to them having due regard to the content of the document as a whole.

(3) 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.

72. 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.

Exclusion of evidence against application of document to existing facts.

73. When language used in a document is plain in itself but has no meaning in reference to existing facts, evidence may be given to show that it was used in a particular sense.

Evidence as to document unmeaning in reference to existing facts.

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

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

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

Evidence as to application of language to one of two sets of facts.

76. 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 particular sense.

Evidence as to meaning of illegible characters, etc.

77. Evidence may be given on behalf of persons who are not parties to a document, or their representatives in interest, of any facts tending to show a contemporaneous agreement varying the terms of the document.

Evidence may be given of agreement varying terms of document.

Construction of wills.

78. Nothing in this Part shall affect the construction of wills.

36 of 2011, s. 4.

PART IIIA

USE OF LIVE TELEVISION LINK AND VIDEO RECORDED EVIDENCE IN CRIMINAL PROCEEDINGS

Application of Part.

36 of 2011, s. 4.

78A. This Part applies to —

- (a) remand hearings;
- (b) proceedings in any court trying a juvenile for an offence;
- (c) summary trials of offences listed in the *Third Schedule* to the Criminal Procedure Code;
- (d) trials on information; and
- (e) appeals to the Court of Appeal.

Ch. 91.

Evidence by way of live television link.

78B. (1) A person, other than the accused person, may give evidence by way of a live television link in proceedings to which this Part applies, where the evidence is essential to the case of the applicant and —

- (a) the witness is within or outside of The Bahamas;
- (b) the quality of evidence to be given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with testifying in the proceedings;
- (c) the witness is a child, elderly, ill or otherwise considered a vulnerable person; or
- (d) the witness is to be cross examined following the admission of a video recording of testimony from him under section 78D.

36 of 2011, s. 4.

46 of 2014, s. 4.

(2) Any evidence given pursuant to subsection (1) may not be given without the permission of the court or upon the court's own motion and in either case the court being satisfied that it is in the interest of justice that the evidence be given by a live television link.

(3) A statement made on oath by a witness outside of The Bahamas and given in evidence by way of a live television link, by virtue of this section, shall be treated for the purpose of the prosecution of perjury as having been made in the proceedings in which it is given in evidence.

(4) Subject to subsection (5), where the court gives permission for a person to give evidence by way of a live television link, such person may not then give evidence other than by way of a live television link without the permission of the court.

(5) A court may give permission where it appears that it is in the interest of justice for evidence to be given otherwise than by the said live television link.

(6) Permission may be given pursuant to subsection (5) on an application by a party to the case or by way of the court's own motion, so, however, that an application shall not be made by a party to the case unless there has been a material change in circumstances since permission was granted by virtue of subsection (1).

(7) The provisions of the *Schedule* shall apply for the better giving effect to this Part and the Rules Committee established under section 75 of the Supreme Court Act is vested with powers to make rules amending the *Schedule*.

Schedule.

Ch. 53.

Schedule.

78C. (1) Except with his own consent, the trial of any person shall not take place by way of live television link unless he so conducts himself in the court so as to render the continuation of the proceedings in his presence impossible.

Appearance by way of live television link by the accused.
36 of 2011, s. 4.

(2) Notwithstanding any rule of practice or any other law, the court may, at any time during any proceedings relating to an offence other than at a time when the evidence of a witness is being taken, direct that the accused appear by live television link or by any other means that will allow the court and the accused to engage in simultaneous visual and oral communication.

31 of 2013, s. 2.

(3) A court shall not give a direction under this section unless the court is satisfied that it is in the interest of the efficient or effective administration of justice for the accused person to appear in the proceedings through a live television link or by other means that will facilitate simultaneous visual and oral communication.

(4) In deciding whether to give a direction under this section, the court must consider all the circumstances of the case and such circumstances shall include the suitability of the facilities to be used for a live television link.

(5) Remand hearings may take place by way of live television link provided that, a Magistrate may in any case require the accused to appear in person.

(6) A statement made on oath and given in evidence through a live television link by virtue of this section shall be treated for the purposes of the prosecution of perjury as having been made in the proceedings in which it is given in evidence.

Video recording
of testimony
from child
witness.

36 of 2011, s. 4.

78D. (1) In any proceedings to which this Part applies, a video recording of an interview which —

- (a) is conducted between an adult and a child who is not the accused or one of the accused; and
- (b) relates to any matter in issue in the proceedings, may, with the permission of the court, be given in evidence insofar as it is not excluded by the court under subsection (2).

(2) Where a video recording is tendered in evidence under this section, the court shall (subject to the exercise of any power of the court to exclude evidence which is otherwise admissible) give permission under subsection (1) unless —

- (a) it appears that the child witness will not be available for cross examination;
- (b) any rules of court requiring the disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or
- (c) the court is of the opinion, having regard to all of the circumstances of the case, that in the interest of justice the recording ought not to be admitted,

and where the court gives such permission it may, if it is of the opinion that in the interest of justice any part of the recording ought not to be admitted, direct that such part be excluded.

(3) In considering whether any part of the recording ought to be excluded under subsection (2), the court shall consider whether any prejudice to the accused, or one of the accused, that may result from the admission of that part is outweighed by the probative value of showing the whole, or substantially the whole, of the recorded interview.

(4) Where a video recording is given in evidence under this section, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony and accordingly —

- (a) any statement shall be admissible evidence of any fact of which such testimony from him would be admissible;
- (b) no such statement under this section shall be capable of corroborating any other evidence given by him,

and in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the statement's accuracy or otherwise.

(5) Where the court gives permission under subsection (1), the child witness shall not give relevant evidence within the meaning of subsection (7), otherwise than by means of the video recording unless it appears to the court to be in the interest of justice to give such evidence otherwise than by means of a video recording.

(6) Permission may be given under subsection (5) on an application by a party to the proceedings or by way of the court's own motion.

(7) For the purpose of subsection (5), evidence shall be relevant evidence where —

- (a) it is evidence in chief on behalf of the party who tendered the video recording; and
- (b) it relates to a matter that, in the opinion of the court, is dealt with in the recording and which the court has not directed to be excluded under subsection (2).

(8) In this section —

“child” means a person below the age of eighteen years;

“statement” includes any representation of fact, whether made in words or otherwise; and

“video recording” means any recording on any medium from which a moving image may, by any means, be produced and includes the accompanying sound track.

Use of data from
electronic device.
46 of 2014, s. 3.

78E. (1) Evidence based upon electronic data or display transmitted from or generated or recorded or shown by an electronic monitoring device worn by a person pursuant to an order of a court purporting to indicate where that person was at a specific time shall be admissible as prima facie evidence of that fact if —

- (a) the device is of the type or model prescribed by the Minister;
- (b) a certificate as to the circumstances and manner the data was produced or generated, signed by a person who is a member of the Electronic Monitoring Unit, and speaks as to the accuracy of the device is presented by the person tendering the evidence.

(2) Nothing in subsection (1) makes the evidence mentioned in that subsection admissible at a hearing unless notice of the intention to introduce such evidence together with a copy of the relevant certificate has, not less than 5 days before the tendering of that evidence, been served on the wearer of the device.

(3) The Minister may by Notice in the *Gazette* prescribe a type or mode of device for the use in electronic monitoring.

(4) In this section —

- (a) the words “device”, “Minister” and “unit” have the respective meaning assigned to them by the Rules;
- (b) “Rules” means the Penal Code (Electronic Monitoring) Rules.

Ch. 84.

Discretion of
court to disallow
evidence in
criminal
proceedings.
36 of 2011, s. 4.
46 of 2014, s. 3.

78F. Nothing in this Act derogates from the power of a court in any criminal proceedings to disallow evidence otherwise admissible which, in the opinion of the court, would, if allowed, operate unfairly against an accused person.

PART IV JUDICIAL NOTICE, BURDEN OF PROOF AND PRESUMPTIONS

Judicial Notice

Judicial notice.

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

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

Facts of which
judicial notice
taken.

- (a) all Acts or rules having the force of law, now or formerly in force or hereafter to be in force, in any part of The Bahamas;
- (b) the course of proceeding and the privilege of Parliament;
- (c) the accession and the sign manual of the Sovereign for the time being of The Bahamas;
- (d) the Great Seal, the Public Seal, the Seal of the Supreme Court, the Seal of the Superior Courts of Commonwealth countries, the seals of all notaries public in any part of the Commonwealth, and all seals which any person is authorised to use by any Act or other law in force for the time being;
- (f) the commencement, continuance and termination of hostilities between The Bahamas and any other state or body of persons;
- (g) the names of the members and officers of court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all counsel and attorneys and other persons authorised by law to appear or act before it;
- (h) the rule of the road on land or at sea;
- (i) the ordinary course of nature, natural and artificial divisions of time, the geographical divisions of the world and the meaning of English words;

The next page is 50F

This page is intentionally left blank

The next page is 51

- (j) all notorious facts;
- (k) all other matters which it is directed by any Act to notice.

(2) In all the cases mentioned in subsection (1) and 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.

81. (1) Subject to subsection (2), 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 or pleading in force at the time, they are deemed to have admitted by their pleadings.

Facts admitted need not be proved.

(2) The court may in its discretion require the facts admitted to be proved otherwise than by the admissions.

The Burden of Proof

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

Burden of proof.

(2) When a person is bound to prove the existence of any fact the burden of proof shall lie on that person.

83. The burden of proof in any proceeding at the commencement thereof lies on that person who would fail if no evidence at all were given on either side, regard being had to the pleadings and other documents filed therein; but at any time in the course of any proceeding the burden of proof may be shifted to the person who would fail, if no further evidence were given on either side.

General rule as to burden of proof at commencement of proceeding.

84. 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 the fact shall lie on any particular person.

Burden of proof of particular fact.

Burden of proof of fact necessary to enable other facts to be proved.

85. 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 negating exception in criminal statute.

86. The burden of negating any exception or exemption contained in any criminal statute or any statute creating any offence or imposing any penalty shall be upon the party prosecuting or suing for the penalty, unless the exception or exemption relates to a matter which is peculiarly within the knowledge of the person charged, in which case the burden of proving that he is entitled to the benefit of such exception or exemption shall be upon that person.

Burden of proof of continuance of certain relationship.

87. 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 of ownership.

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

Burden of proof between persons in relationship of confidence.

89. Where persons stand in such a relation to each other that one of them necessarily reposes confidence in the other, or is placed by circumstances under his authority, control or influence, the burden of proof as to the good faith of any transaction between them, from which such other person derives advantage, shall be upon such other person.

General Presumptions

Presumption of regularity of official and judicial acts.

90. Where a person is proved to have done any act in any official or judicial capacity, the court shall presume, until the contrary is shown, that all circumstances had happened and all conditions were fulfilled which were necessary to give validity to such act.

-
- 91.** Where a person is found in the possession of property proved to have been recently stolen he shall be presumed to have stolen it, or to have received it knowing it to have been stolen according to the circumstances of the case, unless he shall give some satisfactory explanation of the manner in which it came into his possession. Presumption of guilt of person found in possession of property recently stolen.
- 92.** Where any person is proved to have been alive at any date, the court shall presume, until the contrary is shown, that he continued alive up to any subsequent date which it may consider reasonable having regard to the age of the person and the other circumstances of the case. Presumption of the continuance of life.
- 93.** Where any person is proved not to have been heard of for seven years after proper inquiry made by or on behalf of those who naturally would have heard of him if he had been alive, the court shall presume, until the contrary is shown, that he is dead but the court in such a case shall make no presumption as to the time of his death, and the burden of proof that he died at any particular time shall be on the person who asserts it. Presumption of death where person not heard of for seven years.
- 94.** The court shall presume, until the contrary is shown, that any two persons cohabiting in the reputed relationship of marriage were validly married. Presumption of marriage from cohabitation.
- 95.** Where a marriage is proved to have been celebrated the court shall presume, unless the contrary is conclusively proved, that all circumstances happened and that all conditions were fulfilled which were necessary to give validity to such marriage. Presumption of validity of marriage shown to have been celebrated.
- 96.** Where a person is proved to have been born during the continuance of a valid marriage between the mother and any man or within two hundred and eighty days after its dissolution, the mother remaining unmarried, the court shall presume that the person is the legitimate child of that man, unless it is shown by evidence that the person could not be the legitimate child of that man. Presumption of legitimacy of offspring.
- 97.** Where there are conflicting presumptions, neither which is conclusive, the question which presumption is to prevail is a question of fact to be decided by the court according to the circumstances of the case. Where presumptions conflicting, question of fact for court.

Admission of evidence recorded on CCTV establishes presumption of presence at the crime scene.
11 of 2014, s.3.

97A. Where the digital image of a person is recorded on closed circuit television, at a place where an offence is alleged to have been recently committed, the accused person shall be presumed to have been present at the material time, at the scene of the crime; unless the accused person shall give some satisfactory explanation of the manner in which the accused person came to be present or the accused person's image was so captured.

Presumption of presence when electronic monitoring device is found at the scene of an alleged crime.
11 of 2014, s.3.

97B. Where the electronic monitoring device assigned to an accused person is found at a place where an offence is alleged to have been recently committed, the accused person shall be presumed to have been present at that place, according to the circumstances of the case, unless the accused person shall give some satisfactory explanation of the manner in which the electronic monitoring device uniquely identifying him came to be present at that place.

Presumptions as to Documents

Presumption of authenticity of document admissible in evidence on proof that certain prescribed conditions are complied with.

98. When any document is produced before a court purporting to be a document which by any statute at the time in force is admissible in evidence provided that it is signed or stamped or sealed, or otherwise authenticated as required by the statute, the court shall presume until the contrary is shown —

- (a) that the signature, stamp, seal or other authentication of the document is genuine;
- (b) that the person signing, stamping, sealing or otherwise authenticating it had at the time when he so signed, stamped, sealed or authenticated it the official or other character which he claims:

Provided that the document is substantially in the form, and purports to be executed in the manner directed by the law in that behalf.

Presumption of authenticity of judicial record purporting to be signed by judge or magistrate.

99. Whenever any document purporting to be signed by any judge or magistrate is produced before any court, purporting to be —

- (a) a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding in any court;
- (b) a statement or confession by any prisoner or accused person taken in accordance with law,

the court shall presume, until the contrary is shown, that the document is genuine, or that any statements as to the circumstances under which it was taken purporting to be made by the person signing it are true, or that the evidence, statement or confession was duly taken.

100. The court shall presume, until the contrary is shown, the genuineness —

Presumption of genuineness of certain documents.

- (a) of every notice purporting to be a Government notice in any document purporting to be the *Gazette*;
- (b) of every document purporting to be the *Government Gazette* of any country of the Commonwealth, or to be the *Gazette* issued by the local Government of any part of such country of the Commonwealth;
- (c) of every document purporting to be a newspaper or journal;
- (d) of every document purporting to be a document directed by law to be kept by any person if the document is kept substantially in the form required by law and is produced from the proper custody, as defined by section 107.

101. The court shall presume, until the contrary is shown, the genuineness —

Presumption of genuineness of book containing laws or reports of judicial decisions.

- (a) of every book purporting to be printed or published under the authority of the government or of the legislature of any country, and to contain any laws of the country;
- (b) of every book purporting to contain reports of decisions of the courts of that country.

102. (1) The court shall presume until the contrary is shown that every document purporting to be a power of attorney and to have been executed and authenticated by the oath of one of the subscribing witnesses to, or by the acknowledgement of, the person executing the same, or if they are absent from The Bahamas or dead or not easily accessible or they have declined to attend to prove the execution thereof, and there shall be nothing on the face of the deed or document or otherwise to raise a reasonable suspicion of its not being genuine or that its execution was otherwise than *bona fide*, by the oath of any person as to

Presumption of authenticity of power of attorney.

the handwriting of any of the signatures thereto, was so executed and authenticated:

Provided that —

- (a) such oath or acknowledgement shall be made or taken before and authenticated by a diplomatic agent or consular officer of The Bahamas, a judge, a justice of the peace, a notary public or any other person legally authorised to administer oaths or take acknowledgements; and
- (b) when such oath or acknowledgement is made or taken in a foreign country (except when such oath or acknowledgement is made or taken before a diplomatic agent or consular officer of The Bahamas), the official character of the officer before whom the same was made or taken or the official standing of the person who attests or certifies the official character of such officer shall be verified by a diplomatic agent or consular officer of The Bahamas.

(2) Every document purporting to be a power of attorney executed and authenticated before the coming into operation of this Act in accordance with the provisions of subsection (1), shall, until the contrary is shown, be deemed to have been duly executed and authenticated.

Presumption as to authorship and date of books, maps, etc.

103. The court may presume, until the contrary is shown, that any book to which it may refer for information on matters of public or general interest, and that any published map or chart, 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 of accuracy of telegraphic message.

104. The court may presume, until the contrary is shown, 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 validity of document called for and not produced.

105. The court shall presume, until the contrary is shown, that every document called for and not produced after notice to produce, given under section 47 was

attested, stamped and executed in the manner required by law.

106. Where any document purporting or proved to be thirty years old is produced from any custody which the court in the particular case considers proper the court may presume that the signature and every other part of 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.

Presumption of genuineness and validity of document 30 years old produced from proper custody.

The next page is 56B

This page is intentionally left blank

The next page is 57

107. For the purposes of sections 100 and 106 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; or if they are in any custody which is proved to have had a legitimate origin, or which the court considers legitimate from the circumstances of the case.

Meaning of proper custody.

108. The court shall presume, until the contrary is shown, that every document bearing a date was executed on the date which it bears, and if more documents than one bear the same date, the court shall presume, until the contrary is shown, that they were executed in the order necessary to effect the object for which they were executed, but the court in its own discretion may require to be satisfied by evidence independent of the document as to the date of the execution where the circumstances are such that the person executing it may have been under any inducement to be guilty of fraud or collusion in connection with the dating thereof.

Presumption as to date and order of execution of documents.

109. The court shall presume, until the contrary is shown, that any document purporting to be a deed and stamped as a deed, and proved or presumed to have been duly signed and attested, was duly sealed and delivered, although no impression of a seal appears thereon.

Presumption as to execution of deed.

110. The court shall presume, until the contrary is shown —

Presumption as to alterations and interlineations of documents.

- (a) that any alteration or interlineation appearing on the face of a deed was made before the deed was completed;
- (b) that any alteration or interlineation appearing on the face of a will was made after the will was executed;
- (c) that any alteration or interlineation appearing on the face of any document, not being a bill of exchange or a promissory note, was made at such a time and under such circumstances as not to constitute an offence against the law.

Position of person producing document appearing to be altered in material particular.

111. (1) A person producing a document which upon the face of it appears to have been altered in any material particular, shall not be permitted in any proceeding to claim against any party thereto or his representative in interest any right created by such document, unless the alteration was made before the completion of the document, or with the consent of the party to be charged under it or his representative in interest or unless he shall prove to the satisfaction of the court that the alteration was made unintentionally or under a mistake, or without his authority.

(2) An alteration is said to be material when, if it had been made with the consent of the party charged, it would have affected his interest or varied his obligations under the document.

PART V PUBLIC DOCUMENTS

Public documents.

112. The following documents are public documents —

- (a) documents forming the acts or records of the acts —
 - (i) of the Government,
 - (ii) of official bodies and tribunals,
 - (iii) of public officers, legislative, judicial and executive;
- (b) public records of private documents;
- (c) registers of births, marriages and deaths kept under the authority of law.

Meaning of certified copy.

113. (1) A certified copy of a document is a copy of the document or of part of a document with a certificate attached thereto, or inscribed thereon, that it is a true copy of the document or of part thereof subscribed by the officer who has the official custody of the document with his name and official title, and in cases where the officer is authorised by law to make use of a seal authenticated by such seal.

(2) Notwithstanding anything to the contrary in this Act or any other law, a print whether enlarged or not purporting to be made from a film of a public document

and purporting to be certified to be a print made from a film of a public document by a public officer or person who has custody of the film, shall be admitted in evidence as evidence of the contents of that document in any proceedings before a court of tribunal on its production without further proof and on such production it shall be presumed by the court or tribunal until the contrary is proved —

- (a) that a certificate purporting to be signed by the public officer or person having custody of the film has been signed by him; and
 - (b) that the print to which the certificate refers has been made from a film of the public document.
- (3) For the purposes of subsection (2) —
- (a) “public document” includes any document, record book or register to which subsection (2)(e) of section 39 or section 112 refers;
 - (b) the meaning assigned by subsection (6) of section 57 to any expressions used in this section shall respectively apply.

114. Every public officer having the custody of a public document, which any person has a right to inspect, shall on request give that person on payment of the legal fees therefor a certified copy thereof.

Duty of custodian of public documents to furnish certified copy.

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

- (a) Acts, orders or notifications of the Government of The Bahamas in any of its departments — by the records of the departments certified by the head of the department or by the Minister for the time being, or by Government Notices appearing in the *Official Newspaper* or the *Gazette*;
- (b) the proceedings of the Senate — by the minutes of the Senate, or by any published record of its proceedings purporting or appearing by the contents thereof to be printed by its authority;
- (c) the proceedings of the House of Assembly — by the minutes of the House, or by any published record of its proceedings purporting or appearing by the contents thereof to be printed by its authority;

Special methods of proving certain public documents.

-
- (d) the proceedings of any public board in The Bahamas — by the minutes of the board;
 - (e) copies of Acts, ordinances and statutes passed (whether before or after the coming into operation of this Act) — by the legislature of a country of the Commonwealth; and of orders, regulations, and other instruments issued or made (whether before or after the coming into operation of this Act) under the authority of any such Act, ordinance or statute, if purporting to be printed by the Government printer of the particular country shall be received in evidence by all courts of justice in The Bahamas without any proof being given that the copies were so printed;
 - (f) proclamations, treaties and acts of state of a foreign state — by copies authenticated by the seal of the foreign state;
 - (g) judgments, decrees, orders or other judicial proceedings of a foreign state — by copies authenticated by the seal of the court to which the original document belongs, or, if the court has no seal, signed by the judge, or, if there be more than one judge, by any one of the judges of the court accompanied by a statement attached to his signature that the court whereof he is judge has no seal;
 - (h) all other public documents of a foreign state — by certified copies certified by the person having the official custody thereof accompanied by a certificate under the seal of a diplomatic agent or consular officer of The Bahamas, attesting the official character of the person so certifying and upon proof of the nature of the document according to the law of the foreign state;
 - (i) acts, orders or notifications of the Government of any country of the Commonwealth — by Government Notices appearing in any paper purporting to be the *Official Gazette* of such country;

-
- (j) judgments, decrees, orders or other judicial proceedings of a lawfully constituted court in a country of the Commonwealth — by copies authenticated by the seal of the court to which the original document belongs, or if the court has no seal signed by the judge, or if there be more than one judge by any one of the judges of the court, accompanied by a statement attached to his signature that the court whereof he is judge has no seal;
 - (k) all other public documents of a country of the Commonwealth — by certified copies certified by the person having the official custody thereof accompanied by a certificate under the seal of a notary public attesting the official character of the person so certifying, and upon proof of the nature of the document according to the law of the country or possession.

(2) If any person prints any copy or pretended copy of any Act, ordinance, statute, order, regulation or instrument which falsely purports to have been printed by the government printer of a particular country, or tenders in evidence any such copy or pretended copy which falsely purports to have been so printed, knowing that it was not so printed, he is guilty of an offence and shall be liable on summary conviction to a fine of two thousand dollars or to imprisonment for twelve months.

116. (1) Where any person has been convicted by any court of any offence, the conviction may be proved in any subsequent proceedings by the production of a certificate signed by the clerk of the court, or other person having the custody of the records of the court, and containing the substance and effect of the information or charge and of the conviction.

Previous convictions, how proved.

(2) Where in any proceedings a certificate is produced to prove a conviction, it shall be proved to the satisfaction of the court that the accused is the person named in the certificate.

(3) A court fee as may be prescribed shall be chargeable for every such certificate, except in cases in which it is required in proceedings taken on behalf of the Crown.

PART VI JUDGMENTS

Meaning of judgment.

117. In this Part —

“judgment” means —

- (a) the judgment of a court in The Bahamas; or
- (b) a judgment of the Judicial Committee of Her Majesty’s Privy Council given on appeal from a decision of a court in The Bahamas.

Effect of judgment.

118. Every judgment is conclusive evidence against all persons of the legal result which it effects.

Effect in evidence of judgment of court in exercise of probate, matrimonial, admiralty or bankruptcy jurisdiction.

119. A final judgment, 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 special person but absolutely is in a civil proceeding conclusive proof and in a criminal proceeding *prima facie* proof —

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

Judgment conclusive proof of facts therein stated in favour of court delivering it.

120. (1) Where a judgment shows on the face of it, or when read in connection with the proceedings to which it relates, that, assuming the truth of the facts stated in the judgment, the court delivering the judgment had jurisdiction to deal with the subject matter of the proceedings, no evidence shall be given to show that the facts were otherwise than as stated in the judgment.

(2) Subsection (1) shall not apply to cases in which the court shall have acted without jurisdiction either wilfully or under a mistake of law.

121. (1) Every judgment is conclusive proof in all subsequent proceedings between the same parties or their privies, of facts directly in issue in the case actually decided by the court, but not of facts which are only collaterally or incidentally in issue, even though the decision of such facts was necessary to the decision of the case.

Judgment
conclusive as to
issues decided
between parties.

(2) In order to prove that such fact was directly in issue, evidence may be given —

- (a) of the judgment itself;
- (b) of observations made by the court in delivering the judgment;
- (c) of the proceedings in the case prior to the judgment.

122. Any party against whom any judgment is offered in evidence may prove that the court which gave it had no jurisdiction or that it had been reversed or that it was obtained by any fraud or collusion to which neither he nor any person to whom he is a privy was a party or that the decision was not given upon the merits of the case.

Proof by party
against whom
any judgment is
offered in
evidence.

123. (1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in The Bahamas or by a court-martial there or elsewhere shall, subject to subsection (3), be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.

Convictions as
evidence in civil
proceedings.

(2) In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any court in The Bahamas or by a court-martial there or elsewhere —

- (a) he shall be taken to have committed that offence unless the contrary is proved; and

- (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted, shall be admissible in evidence for that purpose.

(3) Nothing in this section shall prejudice the operation of section 125 or any other written law whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(4) Where in any civil proceedings the contents of any document are admissible in evidence by virtue of subsection (2), a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

124. (1) In any civil proceedings —

- (a) the fact that a person has been found guilty of adultery in any matrimonial proceedings; and
- (b) the fact that a person has been adjudged to be the father of a child in affiliation proceedings before any court in The Bahamas,

shall, subject to subsection (3), be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those civil proceedings, that he committed the adultery to which the finding relates or, as the case may be, is or was the father of that child, whether or not he offered any defence to the allegation of adultery or paternity and whether or not he is a party to the civil proceedings; but no finding or adjudication other than a subsisting one shall be admissible in evidence by virtue of this section.

(2) In any civil proceedings in which by virtue of this section a person is proved to have been found guilty of adultery as mentioned in paragraph (a) of subsection (1) or to have been adjudged to be the father of a child as mentioned in paragraph (b) of subsection (1) —

Findings of adultery and paternity as evidence in civil proceedings.

-
- (a) he shall be taken to have committed the adultery to which the finding relates or, as the case may be, to be or have been the father of that child, unless the contrary is proved; and
 - (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the finding or adjudication was based, the contents of any document which was before the court, or which contains any pronouncement of the court, in the matrimonial or affiliation proceedings in question shall be admissible in evidence for that purpose.

(3) Nothing in this section shall prejudice the operation of any written law whereby a finding of fact in any matrimonial or affiliation proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(4) Subsection (4) of section 123 shall apply for the purposes of this section as if the reference to subsection (2) were a reference to subsection (2) of this section.

(5) In this section —

“matrimonial proceedings” means any matrimonial cause in the Supreme Court, or any appeal arising out of any such cause.

125. (1) In an action for libel or slander in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in the action, proof that at the time when that issue falls to be determined, that person stands convicted of that offence shall be conclusive evidence that he committed that offence; and his conviction thereof shall be admissible in evidence accordingly.

Conclusiveness of convictions for purposes of defamation actions.

(2) In any such action as aforesaid in which by virtue of this section a person is proved to have been convicted of an offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge sheet on which that person was convicted, shall, without prejudice to the reception of any other admissible evidence

for the purpose of identifying the facts on which the conviction was based, be admissible in evidence for the purpose of identifying those facts.

(3) For the purposes of this section a person shall be taken to stand convicted of an offence if but only if there subsists against him a conviction of that offence by or before a court in The Bahamas or by a court-martial there or elsewhere.

(4) Subsection 4 of section 123 shall apply for the purposes of this section as it apply for the purposes of that section, but as if in the said subsection (4) the reference to subsection (2) were a reference to subsection (2) of this section.

(5) The provisions of this section shall apply for the purposes of any action begun after the passing of this Act, whenever the cause of action arose, but shall not apply for the purposes of any action begun before the passing of this Act or any appeal or other proceedings arising out of any such action.

PART VII JUDICIAL PROCEDURE

Oaths and Affirmations

All evidence to be given on oath.

126. Subject to section 129 and to any other law to the contrary, all evidence shall be given on oath.

Court to administer oath.

127. Every court shall have authority to administer an oath to all witnesses legally called before it.

Form of oath to be administered.

128. If upon the swearing of any witness any question arises as to the form, or as to the ceremonies of the oath, the oath shall be administered in such form and with such ceremonies as the witness declares to be binding on his conscience.

Solemn affirmation permitted.

129. If any person who is called as a witness or to whom an oath is tendered for the purpose of an affidavit objects to be sworn stating, as the ground of such objection, either that he has no religious belief or that the taking of an oath is contrary to his religious belief, he shall be permitted to make his solemn affirmation instead of taking an oath.

Competency of Witnesses

130. (1) Subject to the provisions of Part VIII 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 or from understanding the nature of an oath by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Who may testify.

(2) For the purposes of subsection (1) the court may inform itself in any manner the court thinks fit.

131. A person called as a witness who is unable to speak shall not be deemed incompetent to testify but may give his evidence by writing, or by signs or in any other manner in which he can make it intelligible and all such evidence shall be given in open court and shall be deemed to be oral evidence. Dumb witnesses.

Privileges of Witnesses as to Certain Questions

132. (1) No judge, and except upon the special order of the Supreme Court no magistrate, shall be compelled to answer any questions as to his own conduct in court as such judge or magistrate, or as to anything which came to his knowledge in court as such judge or magistrate; but he may be examined as to other matters which occurred in his presence while he was so acting. Judges and magistrates.

(2) This section shall not apply to any proceeding instituted against a magistrate in respect of anything done in the execution of the duties of his office.

133. (1) Where the public interest in admitting evidence that relates to matters of state is outweighed by public interest in preserving secrecy or confidentiality in relation to it, the court may, either of its own motion or on the application of any person (whether or not a party) direct that the evidence be not given. Official communications.

(2) For the purposes of subsection (1) evidence that relates to matters of state includes —

- (a) evidence that relates to the security or the defence of The Bahamas;

- (b) evidence that relates to international relations between The Bahamas and another country or between two or more countries;
- (c) evidence the giving of which would tend to prejudice the proper functioning of government.

Information as to
commission of
offences.

134. No magistrate or peace officer shall be compelled to say whence he derived any information as to the commission of any offence and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the laws relating to the public revenue.

Professional
communications.

135. (1) Subject to subsection (2), no counsel and attorney, unless with his client's express consent, shall at any time be permitted to disclose in evidence —

- (a) any communication made to him in the course and for the purpose of his employment as such, by or on behalf of his client;
- (b) the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment;
- (c) any advice given by him to his client in the course and for the purpose of such employment.

(2) Nothing in subsection (1) shall protect from disclosure —

- (a) anything done or any communication made in furtherance of any illegal purpose;
- (b) any fact observed by any counsel and attorney in the course of his employment as such, showing that any crime or fraud had been committed since the commencement of his employment.

(3) This section shall apply to the clerks or servants of counsel and attorneys with reference to facts coming to their knowledge in that capacity.

Confidential
communications
with legal
advisers.

136. No one shall be compelled to disclose to the court any confidential communication which has taken place between himself and his counsel and attorney.

137. Subject to section 175, no husband shall be compelled to disclose any communication made to him by his wife during the marriage, and no wife shall be compelled to disclose any communication made to her by her husband during the marriage.

Communications during marriage.

138. Subject to the provisions of Part VIII, a witness shall not be compelled to answer any question which would tend to expose the witness or the wife or husband of the witness to a criminal charge or to a penalty or forfeiture.

Witness not compelled to answer certain questions.

Number of Witnesses

139. In actions for breach of promise of marriage no plaintiff shall recover a verdict unless his or her testimony shall be corroborated by some material evidence in support of such promise.

Corroboration of evidence in actions for breach of promise of marriage.

140. In trials for perjury no person shall be liable to be convicted, unless the falsity of the statement alleged to have been sworn to by him is proved by two witnesses, or by a witness corroborated by material and independent circumstances.

Number of witnesses or corroboration in trial for perjury.

141. Nothing in this Act shall be deemed to affect the practice or discretion of the court to decline to accept evidence without corroboration or to direct the jury to decline to accept evidence without corroboration in cases in which it may deem it expedient so to do.

Savings.

Examination and Cross-Examination of Witnesses

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

Types of examination.

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

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

143. 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.

Order of examination.

Examination and cross-examination.

144. The examination and cross-examination must relate to facts which in the opinion of the court are relevant to the issues before the court, but the cross-examination need not be confined to the facts to which the witness testified on his examination in chief.

Re-examination.

145. 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 the matter.

Re-calling of witnesses.

146. The court may in all cases permit a witness to be re-called, either for further examination in chief or for further cross-examination, and if it does so, the parties have the right to further cross-examination and re-examination respectively.

Cross-examination as to previous statements in writing.

147. (1) A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the proceeding, without such writing being shown to him but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of contradicting him.

(2) It shall be competent for the court, at any time during the trial, to require the production of the writing for its inspection, and it may thereupon make such use of it, for the purposes of the trial, as it shall think fit.

Questioning a witness as to conviction of an offence.

148. Subject to the provisions of Part VIII, a witness in any proceeding may be questioned as to whether he has been convicted of any offence and on being so questioned, if he either denies the fact or refuses, to answer, it shall be lawful for the opposite party to prove such conviction.

Questions lawful in cross-examination.

149. (1) When a witness may be cross-examined, he may, in addition to the questions hereinbefore referred to, be asked any questions which tend —

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

(2) The court may disallow any question which may appear to it vexatious and not relevant to any matter proper to be enquired into in the proceeding.

150. When a witness has been asked any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him, but if a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

When a witness may be contradicted.

151. (1) A witness may not be cross-examined by the party calling him unless in the opinion of the court he proves to be an adverse witness.

Adverse witness.

(2) In this Act —

“adverse witness” means a witness who appears to desire to avoid testifying about the facts in issue or to give only such testimony about the facts in issue as will harm the party calling him or will be of help to the adversary.

152. A party calling a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may in case the witness shall in the opinion of the court prove an adverse witness, contradict him by other evidence, or by leave of the court prove that he has made at other times a statement inconsistent with his present testimony, but before such last-mentioned proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness, and he must be asked whether or not he has made such a statement.

Impeaching credit of witness.

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

Person called to produce document.

Leading Questions

154. 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.

Leading questions.

When leading questions shall not be asked.

155. Leading questions shall 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.

When court may permit leading questions to be asked.

156. 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 leading questions may be asked.

157. Leading questions may be asked in cross-examination, but the questions must not assume that facts have been proved, or that particular answers have been given contrary to the fact.

When court may prohibit leading questions.

158. 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.

Refreshing Memory

When witness may use own writing.

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

When witness may use another's writing.

160. 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 read it he knew it to be correct.

When witness may use copy of document.

161. Whenever any witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a copy of the document but the court shall be satisfied that there is sufficient reason for the non-production of the original.

Experts may refer to treatises.

162. An expert may refresh his memory by reference to professional treatises.

Rights of adverse party.

163. Any writing referred to in sections 159 to 162 shall be produced and shown to the adverse party, if he requires it; and he may, cross-examine the witness thereupon.

Production of Documents

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

Document called for and produced on notice.

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

Document called for and refused on notice.

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

Production of document.

167. The court, if it sees fit, may inspect the document, and take other evidence to enable it to determine on its admissibility.

Court may inspect document.

General Powers of the Court

168. (1) The court may, in its discretion, ask any question in any form at any time of any witness, and with leave of the court any party may cross-examine the witness upon any answer given in reply to any such question.

Court's power to put questions.

(2) Subsection (1) shall not authorise the court to compel any witness to answer any question which the witness would be entitled to refuse to answer if the question were asked by the adverse party.

169. 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 actual possession, or in his power, in the same manner and subject to the same rules as if he 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.

Power of court to compel person present in court to give evidence.

Power of court to inspect.

170. In any proceeding the court may require the production of the subject matter of the evidence for its inspection, and may itself proceed to view and investigate the subject matter of the evidence by an inspection thereof and shall be entitled to access to any land or other property for the purpose of such inspection.

PART VIII
EVIDENCE BY PERSONS CHARGED WITH
OFFENCES AND THEIR HUSBANDS OR WIVES

Competency of witnesses in criminal cases.

171. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged 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 except upon his own application;
- (b) 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 made the subject of any comment by the prosecution;
- (c) subject to section 175, the wife or husband or the person charged shall not be called as a witness except upon the application of the person so charged;
- (d) nothing in this section shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage;
- (e) a person charged and being a witness in pursuance of this section may be compelled to answer any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;

-
- (f) 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 has committed or been convicted of or been charged with any offence other than that wherewith he is then charged or is of bad character; unless —
- (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged,
 - (ii) he has personally or by his counsel and attorney asked questions of the witnesses for the prosecution with a view to establish his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witness for the prosecution,
 - (iii) he has given evidence against any other person charged with the same offence;
- (g) every person called as a witness in pursuance of this section shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence;
- (h) nothing in this section shall affect the provisions of sections 120 and 201 of the Criminal Procedure Code Act or any right of the person charged to make a statement without being sworn.

Ch. 91.

172. A person charged and called as a witness who gives evidence against any other person charged jointly with him with the same offence, or whose evidence affects the defence of such other person may be cross-examined by such other person.

Cross-examination of a person charged and called as a witness.

- 173.** If at the trial of any person for an offence —
- (a) the defence intends to call two or more witnesses to the facts of the case; and
 - (b) those witnesses include the accused person,

Time for taking accused person's evidence.

the accused person shall be called before the other witness or witnesses unless the court in its discretion otherwise directs.

Right of reply.

174. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

Calling of husband or wife in certain cases.

175. Where —

- (a) a husband is charged with an offence against his wife, or a wife is charged with an offence against her husband;
- (b) a husband or wife is charged with an offence against any member of their family living with them at the time of the commission of the offence or; if the husband and wife are living apart, against and member of their family living with either of them at the time of the commission of the offence;
- (c) a husband or wife is charged with the offence of bigamy,

the husband or wife, as the case may be, of the person accused may be called as a witness without the application of such person and a husband or wife called as a witness in any such case shall not be entitled to refuse to answer questions on the ground that the answer to the question would disclose a communication made during the marriage, or that it would tend to incriminate the husband or wife of the witness as to the offence charged.

Calling of husband or wife on trial of civil right.

176. Nothing in this Part shall apply to any proceeding in which a charge is preferred for the purpose of trying a civil right only, but in every such case the husband or wife of the person charged may be called and examined according to the rules applicable to civil proceedings.

PART IX MISCELLANEOUS

Banker's book.

177.(1) A banker or officer of a bank shall not, in any legal proceedings to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of a judge made for special cause.

(2) On the application of any party to a legal proceeding a court may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceedings.

(3) An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed, unless the court otherwise directs.

(4) In this section —

“bank” and “banker” mean any person, partnership or company carrying on banking business;

“banker's book” include ledgers, day books, cash books, account books and all other records used in the ordinary business of the bank, whether those records are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

178. (1) In any criminal proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

Exclusion of unfair evidence.

(2) Nothing in this section shall prejudice any rule of law requiring a court to exclude evidence.

SCHEDULE

(Section 78B(7))

*36 of 2011, s. 5.
46 of 2014, s. 4.*

CRIMINAL PROCEEDINGS (EVIDENCE BY WAY OF LIVE TELEVISION LINK AND VIDEO RECORDING) RULES

1. For the purposes of these Rules, a “witness” means anyone (other than an accused person) for whose benefit an application, direction or order is made.

Interpretation.

PART I - EVIDENCE BY LIVE TELEVISION LINK

2. This Part applies —

Application of Part.

- (a) where the court gives leave under section 78B of the Act, for a person, other than the accused person, to give evidence by way of a live television link in criminal proceedings; and
- (b) where the court may, pursuant to section 78C of the Act, direct that an accused person may appear by live television link or by any other means that will allow the court and the accused to engage in simultaneous visual and oral communication.

Making an application for leave.

3. (1) A party to criminal proceedings who is desirous of the court exercising its power to give leave pursuant to rule 2 must —

- (a) apply in writing —
 - (i) as soon as reasonably practicable; or
 - (ii) in any event, not less than seven days before the trial; and
- (b) serve the application on —
 - (i) the court officer; and
 - (ii) each other party.

46 of 2014, s. 4.

(2) Notwithstanding paragraph (1) a party to a criminal proceeding who is desirous of the court exercising its powers to give leave pursuant to section 78B(2) may make an oral application at any time during such proceedings to the trial judge where the application has become necessary by reason of circumstances beyond the control of, or the need could not have been reasonably foreseen by, the applicant.

Content of application for a live television link direction.

4. (1) A party who is desirous of adducing evidence by way of a live television link must give to the court his reasons for wishing to do so.

(2) An applicant for a live television link direction must —

- (a) unless the court otherwise directs, identify the place from which the witness will give evidence;
- (b) show to the court that satisfactory arrangements are available to efficiently carry out the giving of evidence by live television link;
- (c) if the applicant wants the witness to be accompanied by another person while giving evidence —
 - (i) name that person, if possible, and
 - (ii) explain why it is appropriate for the witness to be accompanied.

46 of 2014, s. 4.

4A. (1) In determining whether a witness falls within section 78B(1)(b) the court must take into account in particular —

Evidence of witness on grounds of fear and distress.

- (a) the nature and alleged circumstances of the offence to which the proceedings relate;
- (b) the age of the witness;
- (c) such of the following matters as appear to the court to be relevant namely —
 - (i) the social and cultural background and the ethnic origins of the witness;
 - (ii) the domestic and employment circumstances of the witness; and
 - (iii) any religious beliefs or political opinions of the witness;
- (d) any behaviour towards the witness on the part of —
 - (i) any party to the proceeding;
 - (ii) members of the family or associates of the accused; or
 - (iii) any other person who is likely to be an accused or a witness in the proceedings.

46 of 2014, s. 4.

(2) In determining that question the court must in addition consider any views expressed by the witness.

5. Where the court —

- (a) gives leave for a person to give evidence by way of a live television link;
- (b) refuses to give permission,

Decision of court.

the court shall announce, at the hearing in public before the witness gives evidence, its decision.

6. (1) A party who is desirous of discharging a live television link direction must —

Application to discharge a live television link direction.

- (a) apply in writing, as soon as reasonably practicable after becoming aware of the grounds for doing so; and
 - (b) serve the application on —
 - (i) the court officer; and
 - (ii) each other party.
- (2) The applicant must —

- (a) explain what material circumstances have changed since the direction was given;
- (b) explain why it is in the interests of justice to discharge the direction.

Representations
in response.

7. (1) This rule applies where a party wants to make representations about —

- (a) an application for a live television link direction;
 - (b) an application for the discharge of such a direction;
or
 - (c) a direction or discharge that the court proposes on its own initiative.
- (2) Such a party must —
- (a) serve the representations on —
 - (i) the court officer; and
 - (ii) each other party;
 - (b) do so not more than fourteen days after, as applicable —
 - (i) service of the application; or
 - (ii) notice of the direction or discharge that the court proposes.

PART II - VIDEO RECORDING OF TESTIMONY FROM CHILD WITNESS

Application of
Part.

8. This Part applies where the court gives leave under section 78D of the Act for a child to give evidence by way of video recording.

Making of
application.

- 9.** The court may give leave under rule 10 —
- (a) on an application by a party to the proceedings; or
 - (b) on the court's own motion.

Requirements in
the case of a
child witness.

10. A party who is desirous of adducing the evidence of a child witness must as soon as reasonably practicable —

- (a) notify the court of the intention to adduce such evidence;
- (b) serve any video recorded evidence on —
 - (i) the court officer; and
 - (ii) each other party.

Application to
vary or discharge
a direction.

11. (1) A party who wants the court to vary or discharge a direction must —

-
- (a) apply in writing, as soon as reasonably practicable, after becoming aware of the grounds for doing so; and
 - (b) serve the application on —
 - (i) the court officer; and
 - (ii) each other party.
 - (2) The applicant must —
 - (a) explain what material circumstances have changed since the direction was given (or last varied, if applicable);
 - (b) explain why the direction should be varied or discharged; and
 - (c) ask for a hearing, if the applicant wants one, and explain why it is needed.
 - (3) The court can vary or discharge a direction —
 - (a) on application, if there has been a material change of circumstances; or
 - (b) on the court’s own motion.

12. (1) This rule applies where a party wants to make representations about — Representations
in response.

- (a) an application for a direction under this Part;
- (b) an application for the variation or discharge of such a direction; or
- (c) a direction, variation or discharge that the court proposes on its own initiative.
- (2) Such a party must —
 - (a) serve the representations on —
 - (i) the court officer; and
 - (ii) each other party;
 - (b) do so not more than fourteen days after, as applicable —
 - (i) service of the application; or
 - (ii) notice of the direction, variation or discharge that the court proposes.

13. (1) This rule applies where — Intermediary.

- (a) a video recorded interview with a witness is conducted through an intermediary;
- (b) the court directs the examination of a witness or defendant through an intermediary.

- (2) An intermediary must make a declaration —
 - (a) before such an interview begins;
 - (b) before the examination begins (even if such an interview with the witness was conducted through the same intermediary).
- (3) The declaration must be in these terms —
“I solemnly, sincerely and truly declare [or I swear by Almighty God] that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding”.

Custody of records.

14. Unless the court otherwise directs, the court officer shall secure any evidence adduced under these Rules, in a place of safe custody as directed by the Chief Justice.