

# CHAPTER 41

## EVIDENCE

*Ordinances Nos. 24 of 1944, 46 of 1965. Act No. 6 of 1975*  
AN ACT TO AMEND THE LAW OF EVIDENCE  
[30th December, 1944.]

*Short title*

1. This Act may be cited as the Evidence Act.

*Interpretation and savings*

- 2.—(1) In this Act—
  - “business” includes any public utility or undertaking carried on by any city or town council or by any other board or authority established under the provisions of any Act, and any of the activities of the Permanent Secretary for Posts and Telecommunications;  
(*Inserted by 46 of 1965, s. 2.*)
  - “document” includes books, maps, plans, drawings, photographs and any other device by means of which information is recorded or stored;  
(*Amended by 46 of 1965, s. 2.*)
  - “statement” includes any representation of fact, whether made in words or otherwise;
  - “proceedings” includes arbitrations and references, and “court” shall be construed accordingly.
- (2) Nothing in this Act shall—
  - (a) prejudice the admissibility of any evidence which would apart from the provisions of this Act be admissible; or
  - (b) enable documentary evidence to be given as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Act had not been passed.

*Admissibility of documentary evidence as to facts in issue in civil proceedings*

- 3.—(1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the following conditions are satisfied, that it to say—
  - (a) If the maker of the statement either—
    - (i) had personal knowledge of the matters dealt with by the statement; or
    - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

(b) if the maker of the statement is called as a witness in the proceedings: Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence—

(a) notwithstanding that the maker of the statement is available but is not called as a witness;

(b) notwithstanding that the original document is not produced if in lieu thereof there is produced a copy of the original document or of the material part thereof certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible. (*Section amended by 46 of 1965, s. 3.*)

*Admissibility of certain trade or business records in criminal proceedings*

4. In any criminal proceedings where direct oral evidence of a fact would be admissible, any statement contained in a document and tending to establish that fact shall, on production of the document, be admissible as evidence of that fact if—

(a) the document is, or forms part of, a record relating to any trade or business and compiled, in the course of that trade or business, from information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; and

(b) the person who supplied the information recorded in the statement in question 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 supplied the information and to all the circumstances) to have any recollection of the matters dealt with in the information he supplied.

(*Inserted by 46 of 1965, s. 4.*)

*Court may draw inferences from documents*

5. For the purpose of deciding whether or not a statement is admissible as evidence by virtue of any of the provisions of this Act, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a registered medical practitioner or medical officer. (*Inserted by 46 of 1965, s. 4.*)

*Weight to be attached to evidence*

6.—(1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by the maker of the statement.

*Proof of instrument to validity of which attestation is necessary*

7. Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive:

Provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

*Presumption as to documents twenty years old*

8. In any proceedings, whether civil or criminal, there shall, in the case of a document proved, or purporting, to be not less than twenty years old, be made any presumption which immediately before the commencement of this Act would have been made in the case of a document of like character proved, or purporting, to be not less than thirty years old.

*Convictions as evidence in civil proceedings*

\*9.—(1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in Fiji 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:

Provided that, for the avoidance of doubt, it is hereby declared that no conviction which has subsequently been quashed or in respect of which a pardon has been granted or which for any other reason has lapsed or is deemed no longer to be a conviction, shall be a conviction for the purposes of this section and section 10.

(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 Fiji—

(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 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 10 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) or subsection (2) of section 10 or of any other written law 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.

(5) Where in any civil proceedings, evidence that a person has been convicted of an offence is admissible under this section or section 10 or under any other written law, a copy of a judgment given under section 157 of the Criminal Procedure Code or a copy of the conviction or order drawn up and certified by an officer of the court, whether or not he was the person who drew up or who signed the original document, shall be conclusive evidence of such conviction unless the contrary is proved.

(Cap. 21.)

*Conclusiveness of convictions for purposes of defamation actions*

\*10.—(1) In an action for defamation 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.

(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 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 Fiji.

(4) The foregoing provisions of this section shall apply for the purpose of any action begun after the first day of January, 1975, whenever the cause of action arose, but shall not apply for the purposes of any action begun before that date or any appeal or other proceedings arising out of any such action.

*Controlled by Ministry of the Attorney-General*