

CONSOLIDATED TO 30 JUNE 2014

LAWS OF SEYCHELLES

CHAPTER 74

EVIDENCE ACT

[21st January, 1882]

Act 16 of 1856*

Act 15 of 1881*

*Mauritius Ordinances.

Act 5 of 1900

Act 1 of 1908

Act 16 of 1915

Act 6 of 1958

Act 12 of 1962

Act 25 of 1965

SI. 95 of 1975

SI. 72 of 1976

Act 23 of 1976

Act 7 of 1990

S.I 76 of 1992

Act 19 of 1994

Act 16 of 1996

Act 23 of 2013

ARRANGEMENT OF SECTIONS

Short title

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

Interpretation

2. (1) In this Act, unless the context otherwise requires

"accused " means a person charged with any offence at a criminal trial;

"affidavit" includes affirmation, statutory or other declaration, acknowledgment, examination and attestation or protestation of honour;

"British possession" means any part of Her Majesty's dominions exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local Legislature, shall include both all parts under the central Legislature and each part under a local Legislature;

"civil trial" includes any arbitration and any trial before a person or any tribunal or similar institution where the strict rules of evidence are applied;

"court" includes a court martial under the Defence Forces (Offences) Act;

"criminal trial" includes a court martial, trial before a peace officer or justice of peace under the Peace Officers (Inner Islands and Outlying Islands) Act and a preliminary inquiry held under the Criminal Procedure Code;

"document" includes

(a) a map, plan, graph or drawing;

(b) a photograph;

(c) a 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 devices 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;

"evidence" includes testimony upon oath or solemn affirmation viva voce or by affidavit in writing and the unsworn personal answers of parties to trials;

"film" includes a microfilm;

"Government printer" means, as respects the United Kingdom or any British possession, the printer purporting to be the printer authorised to print the acts, ordinances, or statutes of the Legislature of the United Kingdom or of that possession, or otherwise to be the Queen's Printer of Acts of Parliament or the Government printer of that possession;

"oath" includes affirmation and declaration;

"statement" means any representation of facts, whether made in words or otherwise;

"trial" includes any inquiry, hearing or other proceeding in any court of justice or before any person having now or hereafter by law or by consent of parties authority to hear, receive or examine evidence.

(2) In this Act, any reference to a copy of a document includes

(a) in the case of a document falling within paragraph (c) of the definition of document, a transcript of the sounds or other data embodied therein;

(b) in the case of a document falling within paragraph (d) of the definition of document, a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not;

(c) in the case of a document falling within paragraphs (c) and (d) of the definition of document, a transcript of the sound or other data embodied therein together with a still reproduction of the image embodied therein, whether enlarged or not;

(d) in the case of a document not falling within paragraph (d) of the definition of document of which a visual image is embodied in a document falling within the paragraph, a reproduction of that image, whether enlarged or not,

and any reference to a copy of the material part of a document shall be construed accordingly.

General Provisions

Oral evidence to prove occupation of immovable property

3. In any claim to rent or indemnity for the occupation of immovable property, oral evidence shall, when a lease is denied and is not completely established by writing, be admissible to prove or disprove the occupation and the amount or payment of the indemnity; and the party suing shall be entitled to such indemnity although it may result from the oral evidence given that the occupation existed under a lease:

Provided that such claim for indemnity shall be barred by one year's prescription:

Provided further that nothing in this section contained shall alter any law by virtue of which the possessor of immovable property is entitled to retain the fruits thereof, and to make them his own.

Examination on unsworn personal answers

4. Whenever a party to a suit is called upon to give his unsworn personal answers, he may be examined as an adverse witness by the party calling him and afterwards examined on his own behalf, but only as to matters arising out of the examination made by the party calling him; and he may then be re examined touching any question put to him on his behalf.

Insufficiency of notices not to exclude evidence

5. Whenever the Republic or any other party to a trial is required by any law or rule of court in force in Seychelles to file a list of witnesses or give a notice of facts, if at the trial witnesses be tendered whose names have not been included in such list, or who have not been sufficiently described therein, or if evidence be tendered of a fact omitted from or not sufficiently set out in such notice of facts, or if such lists or notice shall not have been filed or given within the time fixed by law, it shall not be lawful for the court to reject the proof of such facts or refuse the witnesses offered merely on the ground that such notice of facts, list or description of witnesses has not been served in time, provided the court is satisfied that there has been no mala fides, but the court shall be at liberty to postpone the trial with such terms as to costs, if any, as to the court may seem just:

Provided that the Republic shall not be condemned in costs in any criminal trial.

Republic need not file list of witnesses in reply

6. It shall not be necessary for the Republic to file any list of witnesses to be called in reply to witnesses for the defendant in any criminal trial; but when the Republic shall call any witnesses in reply it shall be lawful for the court to allow the defendant to produce further evidence to rebut the witnesses heard in reply.

Copies of public documents admissible

7. At any trial the contents of any record, book, deed, map, plan or other document in the official custody of the Supreme Court, the Registrar of Mortgages, the Land Registrar, or any Government department, of any magistrate's or stipendiary court, or of any notary may be proved by means of a copy or extract certified under the hand of the Registrar of the Supreme Court, the Registrar of Mortgages, the Land Registrar, the chief clerk or head of such department, the magistrate's or stipendiary clerk, or of such notary as the case may be, to be a true copy or extract. Such copy shall be admissible in evidence at any trial to the same extent, and in the same manner as the original would but for this Act be admissible. Certificates that such copies or extracts are true and purporting to be

signed by the Registrar of the Supreme Court or other person aforesaid shall in the absence of proof to the contrary be held to have been so signed.

Custodians of public documents not to be summoned as witnesses except in certain cases

8. No person having the official custody of such original documents as in section 7 mentioned shall be subpoenaed or summoned to produce the same, nor shall they be admissible in evidence at any trial except upon the order of a Judge of the Supreme Court. Such order shall only be made when it shall appear to the Judge that the authenticity of the document itself is in question, or that the proof sought to be given cannot be given by means of a copy or extract, and that the proof of such authenticity or such proof sought to be given is material to the matter at issue; and in every such case the same fee shall, in addition to the allowance to be paid for the attendance of the person so subpoenaed or summoned, be charged for the production of such document as would have been payable for a copy or extract:

Provided always that any record of any court shall be admissible in evidence in the court to which its custody belongs to the same extent and in the same manner as it would have been had this section not been enacted.

Privilege not affected

9. Nothing in this Act contained shall, except where there is an express provision to the contrary, be held in any way to affect any right to refuse to produce any document or to answer any question on the ground of privilege.

Cross-examination on written statements of witness

10. Any witness may be cross examined at any trial as to previous statements made by him in writing or reduced into writing relative to the subject matter of the trial, without such writing being shown to him, or read; 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 so contradicting him:

Provided that it shall be competent for the court, at any time during the trial, to require the production of the writing to be used for the purposes of the trial in any way that to the court seem proper.

Rogation

11. The Supreme Court may in any civil cause or matter, when a party or witness cannot attend before the court through illness or other lawful impediment and where it shall appear necessary for the purposes of justice, make an order for the examination on personal answers or upon oath or solemn affirmation before any person appointed to be examiner; and at any place, of any witness or person, and may make such order as may seem proper as to notices to be given to interested parties and as to the mode in which

such examination is to be conducted, and may order any deposition so taken to be filed in the registry of the court, and the court may, at the hearing of such cause or matter, of the court, and the court may, at the hearing of such cause or matter, empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the court may direct. Every examiner so appointed shall have power to administer an oath or solemn affirmation.

Evidence of a child

11A. At any trial the evidence of a child shall be received unless it a child appears to the court that the child is incapable of giving intelligible evidence.

Evidence of vulnerable witness

11B. (1) In this section -

“Special arrangement” means an arrangement for -

(a) evidence of a witness to be given outside the courtroom and simultaneously transmitted to the courtroom by means of close circuit-television;

(b) obscuring a witness’ view of a party to whom the evidence of the witness relates or any other person who might intimidate or otherwise cause distress to the witness to be seen and heard by the court and the parties to the proceedings by allowing the witness to give evidence behind a screen, partition or one-way glass;

(c) a witness shall be accompanied by a relative or friend for the purpose of providing emotional support to the witness but where the relative or friend is visible to and can be heard by the court and all parties to the proceedings;

“vulnerable witness” means -

(a) a witness who is under the age of 16 years;

(b) a witness who suffers from an intellectual disability;

(c) a witness who is the alleged victim of a sexual offence to which the proceedings relate;

(d) a witness who is, in the opinion of the court, at some special disadvantage because of the circumstances of the case, or the circumstances of the witness.

(2) Where the court is of the opinion that it is desirable and practicable that special arrangement be made for the taking of evidence from a vulnerable witness -

(a) to protect the witness from embarrassment or distress;

(b) to protect the witness from being intimidated by the atmosphere of the courtroom;

(c) for any other proper reasons,

and that the special arrangement would not prejudice a party to the proceedings the court may, subject to this section, make an order accordingly.

(3) Where, on a trial by jury, the court makes an order under subsection (2), the judge shall warn the jury not to draw from that fact any inference adverse to an accused and not to allow it to influence the weight to be given to the evidence of the witness in respect of whom the order was made.

(4) The Court may, of its own motion or on the application of a party to the proceeding or the witness, vary or revoke an order made under subsection (2).

Evidence of Witness from outside the courtroom

11C. (1) In this section “live television link” means an arrangement for the evidence of a witness to be given from outside the courtroom, or from outside Seychelles, and transmitted to the courtroom by means of a two-way simultaneous video and audio link.

(2) Where –

(a) a person other than the accused is outside Seychelles; or

(b) it is not reasonably practicable for a person, other than the accused, to be brought before the court in person; and

(c) the court is of the opinion that it is desirable and practicable that the person give evidence before the court under this section; and

(d) the arrangement would not unfairly prejudice a party to the proceedings,

then the court may subject to this section make an order that the person give evidence through a live television link.

(3) In making an order under this section, the court may set out such conditions as appear just and necessary, and in particular may require that –

(a) the evidence be given from a particular location; or

(b) the evidence be given in the presence of a person approved by the court.

(4) Where, in a trial by jury, the court makes an order under subsection (2), the judge shall warn the jury not to draw from that fact any inference adverse to an accused and not

to allow it to influence the weight to be given to the evidence of the witness in respect of whom the order was made.

(5) The Court may at any time, of its own motion or on the application of a party to the proceedings or the witness, vary or revoke an order made under subsection (2).

(6) A statement under oath given in evidence under this section shall be treated as if it had been given in the proceedings in the courtroom.

Section 11C inserted by Act 23 of 2013 with effect from 6 January 2014.

English law of evidence and practice to be followed

12. Except where it is otherwise provided in this Act or by special laws now in force in Seychelles or hereafter enacted, the English law of evidence for the time being shall prevail.

Evidence to prove unrecorded event did not happen

13. (1). Where in any trial the happening of an event of any description is in question, and it is shown that a system has been followed whereby a person acting under a duty has compiled a record of the happening of all events of that description, oral or other evidence that there is no record of the happening of the event in question shall be admitted to prove that the event did not happen.

(2). Where evidence is, or is proposed to be tendered under this section, the court may require that the whole or part of the record concerned be produced and, in default, may reject the evidence or, if it has been received, exclude it.

(3) This section shall not apply to any record compiled in connexion with any criminal trial or with any investigation relating or leading to any criminal trial.

Evidence from documentary records

14. (1). Subject to this section, a statement contained in a document shall be admissible in any trial 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 supposed to have had, personal knowledge of the matters dealt with in that information; and

(b) the person who supplied the information

(i) is dead or by reason of his bodily or mental condition unfit to attend as witness ;

- (ii) is outside the Republic and it is not reasonably practicable to secure his attendance ;
- (iii) cannot be identified and all reasonable steps have been taken to identify him ;
- (iv) his identity being known, cannot be found and all reasonable steps have been taken to find him ;
- (v) 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; or
- (vi) having regard to all the circumstances of the case, cannot be called as a witness without his being so called being likely to cause undue delay or expense.

(2) Subsection (1) applies

(a) 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

(b) whether or not the person compiling the record is himself the person by whom the information is supplied.

(3) A statement made in connection with a criminal trial or with an investigation relating or leading to a criminal trial shall not be admissible under this section in a criminal trial.

(4) Subject to subsection (5), where in any trial a statement based on information supplied by any person is given in evidence under 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 the trial; and

(b) 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 it shall be admissible for the purpose of showing that he had contradicted himself.

(5) Nothing in subsection (4) shall enable evidence to be given of any matter of which, if the person in question had been called as a witness, could not have been adduced by the cross examining party.

(6) A statement which is admissible under 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 (1)(b)(i) whether a person is fit to attend as a witness the court may act on a certificate purporting to be signed by a medical practitioner.

(8) Where in a civil trial 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 trial 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 information.

(9) Nothing in this section affects the admissibility of a document where the document is tendered otherwise than for the purpose of proving a fact stated in it.

(10) This section does not apply to a document to which section 15 applies

Documentary evidence from computer records

15. (1) In any trial, a statement contained in a document produced by a computer shall be admitted as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that

(a) the computer was used to store, process or retrieve information for the purposes of any activities carried on by any body or person ;

(b) the information contained in the statement reproduces or is derived from information supplied to the computer in the course of these activities; and

(c) while the computer was so used in the course of those activities

(i) appropriate measures were in force for preventing unauthorized interference with the computer; and

(ii) 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.

(2). Notwithstanding subsection (1) and subject to subsection (3), a statement contained in a document produced by a computer used over any period to store, process or retrieve information for the purposes of any activities (hereinafter referred to as the "relevant

activities") carried on over that period shall be admitted in any trial as evidence of any fact stated therein of which direct oral evidence would be admissible if

(a) it is shown that no person, other than, in the case of a criminal trial, an accused in respect of an offence to which the statement relates, who occupied a responsible position during that period in relation to the operation of the computer or the management of the relevant activities

(i) can be found; or

(ii) if found, is willing or able to give evidence relating to the operation of the computer during that period ;

(b) the document was so produced under the direction of the person having practical knowledge of and experience in the use of computers as a means of storing, processing or retrieving information ; and

(c) at the time that the document was so produced the computer was operating properly or, if not, 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.

(3) A statement contained in a document referred to in subsection (2) which is tendered in evidence in a criminal trial by or on behalf of an accused in respect of an offence to which the statement relates shall not be admissible under subsection (2) if that person, being the accused, occupied a responsible position during that period in relation to the operation of the computer or the management of the relevant activities.

(4) Where over a period the function of storing, processing or retrieving information for the purposes of any activities carried on over that period was performed by computer, 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 whether by one or more bodies or persons during that period shall be treated for the purposes of this section as constituting one computer.

(5). Subject to subsection (6), in any trial where it is desired to give a statement in evidence under this section, a certificate

(a) identifying the document containing the statement and describing the manner in which it was produced, and explaining, so far as may be relevant in the trial, the nature and contents of the document ;

(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 (1)(a) to (c) relate; and

(d) purporting to be signed by the person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities, as the case may be,

shall, on its production without further proof, be admitted in the trial as evidence of any matter stated in the certificate and for the purpose 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.

(6). Unless the court otherwise orders, a certificate shall not be admitted in evidence under subsection (5) unless 14 days' notice in writing of the intention to tender the certificate in evidence, together with a copy thereof and of the statement to which it relates, has been served

(a) in a civil trial, by the party tendering such certificate on any other party thereto who is likely to be adversely affected in the trial by the statement if admitted in evidence under this section ;

(b) in a criminal trial

(i) if the certificate is tendered by the prosecutor, on the accused or, if more than one, on each accused, or legal practitioner representing the accused;

(ii) if such certificate is tendered by the accused, on the Attorney General,

but nothing in the subsection shall affect the admissibility of a certificate in respect of which notice has not been served in accordance with this subsection if no person entitled to be so served objects to its being so admitted.

(7). Notwithstanding subsection (5), a court may, except where subsection (2) applies, require oral evidence to be given of any matter mentioned in subsection (5).

(8). A person who in a certificate tendered in evidence under subsection (5) makes a statement which he knows to be false or does not believe to be true shall be guilty of an offence and shall be liable to imprisonment for 2 years and to a fine of R10,000.

(9). For the purposes of this section

(a) information shall be taken to be supplied to a computer if it is supplied to it 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 body or person, information is supplied with a view to its being stored, processed or retrieved for the purposes of these activities by a computer operated otherwise than in the course of these activities, that information, if duly supplied to that computer shall be taken to be supplied to it in the course of these 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.

(10). Nothing in this section affects the admissibility of a document produced by a computer where the document is tendered otherwise than for the purpose of proving the fact stated in it.

(11). Subject to subsection (4), in this section "computer" means

(a) any electronic device for storing, processing or retrieving 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; and

(b) any other device or category of device which the President may by Notice published in the Gazette specify.

(12). The President may by Notice published in the Gazette extend the meaning of computer in subsection (11).

Provision supplementary to sections 13, 14 and 15

16. (1) Any reference in section 13 or section 14 to a person acting under a duty includes a reference to a person acting in the course of any occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

(2) Where in a trial a statement contained in a document is admissible in evidence under section 14 or section 15, it may be proved by the production of that document or, whether or not that document is in existence, by the production of a copy of that document or of the material part thereof.

(3) Where in a trial a statement contained in a document is admitted in evidence by virtue of section 14 or section 15, 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 the form and contents of the document in which the statement is contained.

(4) In estimating the weight, if any, to be attached to a statement admitted in evidence under section 14 or section 15, 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 section 14, 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 fact 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

(b) in the case of a statement falling within section 15, 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 purposes of being supplied to it, 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 the 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.

(5) Nothing in section 14 or section 15 shall prejudice the admissibility of any evidence that would be admissible apart from that section.

Expert opinion

17. (1) In any trial a statement, whether of fact or opinion or both, contained in an expert report made by a person, whether called as a witness or not, shall, subject to this section, be admissible as evidence of the matter stated in the report of which direct oral evidence by the person at the trial would be admissible.

(2) The Chief Justice may make rules as to

(a) the condition subject to which an expert report may be admitted as evidence at a trial;

(b) the condition subject to which oral expert evidence may be given at a trial,

and rules made under this section may make different provision for different classes of cases, for expert report dealing with matters of different classes and for other different circumstances.

(3) Nothing in this section affects the admissibility of an expert report under any other written law or otherwise than for the purpose of proving the matter stated in the expert report.

(4) In this section "expert report" means a written report by a person dealing wholly or mainly with matters on which the person is or would, if living, be qualified to give expert evidence.

Affirmation by Hindus and Mohammedans in lieu of Oath

Affirmation by Hindus and Mohammedans

18. Instead of any oath now authorised or required by law, every person of the Hindu or Mohammedan religion shall make affirmation to the following effect:

"I solemnly affirm in the presence of Almighty God that what I shall state shall be the truth, the whole truth and nothing but the truth."

Penalty for false statement

19. If any person making such affirmation as aforesaid shall wilfully and falsely state any matter or thing which would amount to false evidence, every such offender shall be subject in all courts to the same punishment to which persons convicted of giving false evidence are subjected by the laws in force in Seychelles.

Procuring false statement

20. Any person causing or procuring another to commit the offence defined in section 19 shall be subject in all courts to the same punishment to which persons convicted of subornation or perjury were subject before this Act came into operation.

Oaths, Declarations and Affidavits

When declaration may be made instead of an oath

21. Every person who shall object to being sworn, and shall state, 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, shall be permitted to make a declaration, instead of taking an oath, in all places and for all purposes where an oath is or shall be required by law, and such declaration shall be of the same force and effect as if he had taken the oath; and if any person making such declaration shall wilfully and falsely declare any matter or thing which, if stated on oath, would have amounted to false evidence, he shall be liable to prosecution and punishment in all respects as if he had given false evidence on oath.

Form of declaration

22. Every such declaration shall be as nearly as may be in the form following:

"I, do solemnly, sincerely, and truly declare" and shall then proceed with the words of the oath prescribed by law, omitting any words of imprecation or calling to witness.

Validity of oath, etc., not affected by error

23. Where an oath has been duly administered and taken, the fact that the person to whom the same was administered should have made a solemn affirmation under sections 18 and 19 or a declaration under section 21, or where a solemn affirmation or declaration has been made by a person who should have taken an oath, such error shall not affect the validity of the oath, solemn affirmation or declaration respectively, if no protest was made by the person sworn, solemnly affirmed, or making the declaration, at the time such oath, solemn affirmation, or declaration was made or taken.

Form of declaration in writing

24. Every declaration in writing shall commence

"I do solemnly, sincerely, and truly declare"; and the form in lieu of jurat shall be "declared at this day of Before me "

Penalty for swearing false affidavit

25. Any person swearing or declaring a false affidavit, whenever an affidavit is required or may be used, shall be liable to imprisonment not exceeding three years and to a fine not exceeding one thousand rupees.

Swearing with uplifted hands

26. If any person to whom an oath is administered desires to swear with uplifted hand, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question.

Admission in Evidence of Statutes passed by Legislatures of the United Kingdom and British Possessions and Protectorates

Proof of statutes of British possessions

27. (1) Copies of acts, ordinances, and statutes passed (whether before or after the passing of this Act) by the Legislature of the United Kingdom or of any British possession, and of orders, regulations, and other instruments issued or made, whether before or after the passing of this Act under the authority of any such act, ordinance, or statute, if purporting to be printed by the Government printer, shall be received in evidence by all courts of justice in Seychelles without any proof being given that the copies were so printed.

(2) If any person prints any copy or pretended copy of any such act, ordinance, statute, order, regulation, or instrument which falsely purports to have been printed by the Government printer, 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 shall on conviction be liable to be sentenced to imprisonment with or without hard labour for a period not exceeding twelve months.

(3) The President acting after consultation with the Chief Justice may extend this Act to Cyprus and any British Protectorate, and where so extended this Act shall apply as if Cyprus or the Protectorate were a British possession, and with such other necessary adaptations as may be made by the order.

Judicial Recognition of Documents sworn before Diplomatic or Consular Officers in Foreign Countries or public documents executed in the territories of a Convention State

Admissibility of document sworn in foreign country without proof of seal or signature

28. (1) When any document executed in any foreign country or place not being a public document executed in the territory of a Convention or State is produced before any court in Seychelles purporting to have foreign country affixed, impressed subscribed thereon the seal and signature of any without British Ambassador, Envoy Minister, Chargé d'Affaires, Secretary of proof of seal Embassy or Legation, British Consul General, Consul, or Vice Consul, signature Acting Consul, Pro Consul, Consular agent, Acting Consul General, Acting Vice Consul, or Acting Consular agent, duly authorised by section 6, subsection (1) of the Commissioners for Oaths Act, 1889, of the Imperial Parliament as amended by section 2 of the Commissioners for Oaths Act, 1891, of the Imperial Parliament to administer an oath in testimony of any oath, affidavit or act being administered, taken or done by or before any such officer, such document shall be admitted in evidence without proof of the seal or signature being the seal or signature of any such officer and without proof of the official character of any such officer, and the court shall presume that such seal or signature is genuine and that the officer signing any such document held at the time when he signed it the official character which he claims, and the document shall be admissible for the same purpose for which it would be admissible in the United Kingdom of Great Britain and Northern Ireland in accordance with the English law of evidence for the time being:

Provided always that anything in this section contained shall not be deemed or taken to render inadmissible as evidence in the courts in Seychelles any deed, writing, act or thing which before the passing of this Act would have been admissible or would by law have been taken judicial notice of.

(2) When any public document executed in the territory of a Convention State is produced before any court in Seychelles purporting to bear on it or on an allonge a certificate issued by the Competent Authority of the Convention State in which the document is executed, such document shall be admitted in evidence without proof of the seal or signature of the person executing it and the court shall presume that such seal or

signature is genuine and the person signing it held at the time it was signed the official character which the person claims and the document shall be admissible for the same purpose for which it would be admissible in accordance with the law of evidence for the time being.

(3) In this section -

“Competent Authority” means a person designated by a Convention State as a Competent Authority to issue the certificate in accordance with Article 4 of the Convention and referred to in subsection (2);

“Convention” means the Convention Abolishing the Requirements of Legalisation for Foreign Public Documents signed at the Hague on 5th October, 1961;

“public document” means -

(a) document emanating from an authority or an official connected with the courts or tribunals of a Convention State, including those emanating from a public prosecutor, a clerk of a court or a process server;

(b) administrative documents;

(c) notarial acts;

(d) official certificates which are placed on documents signed by persons in their private capacity, such as official certificate recording the registration of a document or the fact that it was in existence on a certain date and official and notarial authentications of signatures;

but does not include

(e) documents executed by diplomatic or consular agents; and

(f) administrative documents dealing directly with commercial or customs operations.

(4) Anything in subsection (2) shall not be deemed or taken to render inadmissible as evidence in the courts of Seychelles any documents which before the commencement of that subsection would have been admissible or would by law have been taken judicial notice of.

Admissibility and Effect of Judgments given in Criminal Jurisdiction

Previous convictions as evidence

29. (1) In a trial the fact that a person, other than, in the case of a criminal trial, the accused, has been convicted of an offence by or before any court in the Republic shall be

admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the trial, that that person committed the offence or otherwise, whether or not any other evidence of his having committed that offence is given.

(2) In a trial, other than in a civil trial for defamation, in which by virtue of this section a person, other than, in the case of criminal trial, the accused, is proved to have been convicted of an offence by or before a court in the Republic, he shall be taken to have committed that offence unless the contrary is proved.

(3) In a trial for defamation where evidence is admissible of the fact that the person has committed an offence, in so far as that evidence is relevant to any matter in issue in the trial, if the person is proved to have been convicted of the offence by or before any court in the Republic he shall be conclusively taken to have committed the offence.

(4) In a criminal trial where evidence is admissible of the fact that the accused has committed an offence, in so far as that evidence is relevant to any matter in issue in the trial, if the accused is proved to have been convicted of the offence by or before any court he shall be taken to have committed that offence unless the contrary is proved.

(5) Where evidence that a person has been convicted of an offence is admissible under this section, then without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based

(a) the contents of any document which is admissible as evidence of the conviction; and

(b) the contents of the information, complaint or charge sheet on which the person was convicted,

shall be admissible in evidence for that purpose.

Finding of adultery or adjudications in affiliation proceedings as evidence in civil proceedings

30. (1) In a civil trial

(a) that fact that a person has been found to have committed adultery in any matrimonial proceedings before a court in the Republic; and

(b) the fact that a person has been adjudged to be the father of a child in affiliation proceedings before a court in the Republic,

shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in the proceedings, that he committed the adultery to which the finding related or, as the case may be, is the father of the child.

(2) In a civil trial in which by virtue of the section a person is proved to have committed adultery or to have been adjudged the father of a child

(a) he shall be taken to have committed the adultery to which the finding relates or, as the case may be, to be the father of that child, unless the contrary is proved; and

(b) where evidence that a person has committed adultery or has been adjudged to be the father of a child is admissible under this section, then 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

(i) the contents of any document which contains the finding or adjudication, or

(ii) the contents of any document which was before the court in the matrimonial or affiliation proceedings,

shall be admissible in evidence in that purpose.

Copy of documents

31. Where in a trial a statement contained in a document is admissible in evidence under section 14, section 15, section 29 or section 30 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 manner as the court may approve.

Rules

32. The Chief Justice may make rules providing for any matter in respect of which rules are required to be made under this Act and prescribing the procedures to be followed in the implementation of, and for the purpose of supplementing, the provisions of this Act.

NO SUBSIDIARY LEGISLATION
