Tanzania

Evidence Act

Chapter 6

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Evidence Act
Contents

Tanzania

Evidence Act
Chapter 6

Commenced on 1 July 1967

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[G.N. No. 225 of 1967; Acts Nos. 6 of 1967; 5 of 1971; 9 of 1980; 4 of 1998; 21 of 2002; 2 of 2007; 3 of 2011; 6 of 2012; 13 of 2015; 4 of 2016]

An Act to declare the law of evidence.

Chapter I
Preliminary provisions

1. Short title

This Act may be cited as the Evidence Act.

2. Application

Except as otherwise provided in any other law this Act shall apply to judicial proceedings in all courts, other than primary courts, in which evidence is or may be given but shall not apply to affidavits presented to any court or officer not to arbitration proceedings.

3. Interpretation

(1) In this Act, unless context otherwise requires—

"**confession**" means—

(a) words or conduct, or a combination of both words and conduct, from which, whether taken alone or in conjunction with other facts proved, an inference may reasonably be drawn that the person who said the words or did the act or acts constituting the conduct has committed an offence;

(b) a statement which admits in terms either an offence or substantially that the person making the statement has committed an offence;

(c) a statement containing an admission of all the ingredients of the offence with which its maker is charged; or

(d) a statement containing affirmative declarations in which incriminating facts are admitted from which, when taken alone or in conjunction with the other facts proved, an inference may reasonably be drawn that the person making the statement has committed an offence;

"**court**" includes all judges, magistrates and assessors and all persons, except arbitrators, legally authorised to take evidence;

"**document**" means any writing, handwriting, typewriting, printing, Photostat, photography, computer data and every recording upon any tangible thing, any form of communication or representation including in electronic form, by letters, figures, marks or symbols or more than one of these means, which may be used for the purpose of recording any matter provided that recording is reasonably permanent and readable;

"**documentary evidence**" means all documents produced as evidence before the court;

"**evidence**" denotes the means by which an alleged matter of fact, the truth of which if submitted to investigation, is proved or disproved; and without prejudice to the preceding generality, includes statements and admissions by accused persons;

"**fact**" includes—

(a) anything, state of things, or relation of things, capable of being perceived by the senses;

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

"**fact in issue**" means any fact from which, either by itself or in connection with other facts, the existence, non-existence, nature or extent of any right, liability or disability, asserted or denied in any suit or proceeding, necessarily follows;

"**husband**" or "wife" means the spouse of a marriage which is valid according to the written law or customary laws of the United Republic;

"**oral evidence**" means all statements which the court permits or requires to be made before it by witnesses being physically present at the time of making the statement or by use of other means of communication including teleconference or video conference, in relation to matters of fact under inquiry;

"**police officer**" means any member of the Police Force of or above the rank of constable;

"**relevant**" in relation to one fact and another, means the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

(2) A fact is said to be proved when—

(a) in criminal matters, except where any statute or other law provides otherwise, the court is satisfied by the prosecution beyond reasonable doubt that the fact exists;

(b) in civil matters, including matrimonial causes and matters, its existence is established by a preponderance of probability.

[Acts Nos. 3 of 2011 s. 4; 13 of 2015 s. 42]

4. Permissible inferences

Whenever it is provided by this Act or any other written law that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or the court may call for proof of it.

5. Presumptions

Wherever it is provided by this Act or any other written law that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

6. Conclusive proof

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

Chapter II
The relevancy facts

Part I – General

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

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

8. Relevancy of facts forming part of same transaction

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

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

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

10. Motive, preparation and previous or subsequent conduct

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

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

(3) When the conduct of any person is relevant, any statement made by him or in his presence and hearing which affects such conduct is relevant.

(4) The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this provision shall not affect the relevancy of statements under any other section of this Act.

11. Facts necessary to explain or introduce relevant facts

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

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

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons referring to or in execution or furtherance of their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so

conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

13. When facts not otherwise relevant become relevant

Facts not otherwise relevant are relevant—

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

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

14. In suits for damages, facts tending to enable court to determine amount which are relevant

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

15. Facts affecting existence of right or custom

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

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

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

16. Facts showing existence of state of mind or of body, or of bodily feeling

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

(2) A fact relevant within the meaning of subsection (1) as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.

(3) Where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of subsection (1), the previous conviction of such person shall also be a relevant fact.

17. Facts bearing on question whether act was accidental or intentional

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

18. Existence of course of business when relevant

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

Part II – Admissions

19. Admission defined

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

[Act No. 13 of 2015 s. 43]

20. Statements by party to suit or agent or interested party

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

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

(3) Statements made by—

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

(b) persons from whom the parties to the suit have derived their interest in the subject matter of the suit, are admissions if they are made during the continuance of the interest of the persons making the statements.

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

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

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

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

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

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

(a) an admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead, it would be relevant as between third parties under section 34;

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

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

24. Oral admissions regarding contents of documents

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

25. Admissions made without prejudice in civil cases

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

(2) Nothing in subsection (1) shall be taken to exempt any advocate from giving evidence of any matter of which he may be compelled to give evidence under section 137.

26. Admissions not conclusive proof, but may estop

Admissions are not conclusive proof of the matters admitted, but they may operate as estoppel under the provisions of this Act.

Part III – Confessions

27. Admissibility of confessions to police officers

(1) A confession voluntarily made to a police officer by a person accused of an offence may be proved as against that person.

(2) The onus of proving that any confession made by an accused person was voluntarily made by him shall lie on the prosecution.

(3) A confession shall be held to be involuntary if the court believes that it was induced by any threat, promise or other prejudice held out by the police officer to whom it was made or by any member of the Police Force or by any other person in authority.

[Act No. 19 of 1980 s. 4]

28. Confessions before magistrate

A confession which is freely and voluntarily made by a person accused of an offence in the immediate presence of a magistrate as defined in the Magistrates' Courts Act, or a justice of the peace under that Act, may be proved as against that person.

[Act No. 19 of 1980 s. 5; Cap. 11]

29. Confession caused by inducement, threat or promise

No confession which is tendered in evidence shall be rejected on the ground that a promise or a threat has been held out to the person confessing unless the court is of the opinion that the inducement was made in such circumstances and was of such a nature as was likely to cause an untrue admission of guilt to be made.

30. Confession made after removal of impression caused by inducement, threat or promise

Where an inducement has been made to a person accused of an offence in such circumstances and of such a nature as are referred to in section 29 and a confession is made after the impression caused by the inducement has, in the opinion of the court, been fully removed, the confession is relevant and need not be rejected.

31. Relevance of information received from accused in police custody

When any fact is deposed to as discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, is relevant.

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

Where a confession referred to in section 29 is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.

[Cap. 4 s. 8]

33. Confession may be taken into consideration against co-accused

(1) When two or more persons are being tried jointly for the same offence or for different offences arising out of the same transaction, and a confession of the offence or offences charged made by one of those persons affecting himself and some other of those persons is proved, the court may take that confession into consideration against that other person.

(2) Notwithstanding subsection (1), a conviction of an accused person shall not be based solely on a confession by a co-accused.

(3) In this section, "offence" includes the abetment of, or attempt to commit, the offence charged and any other offences which are minor and cognate to the offence charged which are disclosed in the confession and admitted by the accused.

[Act No. 19 of 1980 s. 6]

Part IV – Statements by persons who cannot be called as witnesses

34. Statement of persons who cannot be called as witnesses

Statements, written, electronic or oral, of relevant facts made by a person who is dead or unknown, or who cannot be found, or who cannot be summoned owing to his entitlement to diplomatic immunity, privilege or other similar reason, or who can be summoned but refuses voluntarily to appear before the court as a witness, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court to be unreasonable, are themselves admissible in the following cases—

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

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

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

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

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

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

(g) when the statement is contained in any deed or other document which relates to any such transaction as is mentioned in paragraph (a) of section 15; or

(h) when the statement was made by expressed feelings or impressions on their part relevant to the matter in question.

[Acts Nos. 19 of 1980 s. 4; 13 of 2015 s. 44]

34A. Admissibility of certain trade or business records, etc

(1) In any criminal proceedings where direct oral evidence of a relevant fact would be admissible, any statement contained in any writing, record or document, whether in the form of any entry in a book or in any other form and which tends to establish that fact shall, on production of the writing, record or document, be admissible as evidence of that fact if—

(a) the statement was made as a memorandum or record of the act, transaction, occurrence or event; or

(b) the writing, record or document is, or forms part of, a record relating to any trade or business and was made or compiled in the regular course of business where it is the practice to record such act, transaction, occurrence or event when it takes place or within a reasonable time thereafter.

(2) All other circumstances of the making of the statement, including lack of personal knowledge by the person making it, may be held as affecting its weight as evidence but those circumstances shall not affect its admissibility.

(3) In estimating the weight, if any, to be attached to a statement admissible as evidence by virtue of this section regard shall be had to all circumstances from which any inference can be reasonably drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the person making the statement, or concerned with making or keeping the writing, record or document, containing the statement, had any incentive to conceal or misrepresent the facts.

(4) For the purposes of this section—

"business" includes a business, occupation, profession, trade or calling of every kind;

"statement" includes any representation of fact, whether made in words or in any other way.

[Act No. 19 of 1980 s. 8]

34B. Proof by written statements in criminal proceedings

(1) In any criminal proceedings where direct oral evidence of a relevant fact would be admissible, a written or electronic statement by any person who is, or may be, a witness shall subject to the following provisions of this section, be admissible in evidence as proof of the relevant fact contained in it in lieu of direct oral evidence.

(2) A written or electronic statement may only be admissible under this section—

(a) where its maker is not called as a witness, if he is dead or unfit by reason of bodily or mental condition to attend as a witness, or if he is outside Tanzania and it is not reasonably practicable to call him as a witness, or if all reasonable steps have been taken to procure his attendance but he cannot be found or he cannot attend because he is not identifiable or by operation of any law he cannot attend;

(b) if the statement is, or purports to be, signed by the person who made it;

(c) if it contains a declaration by the person making it to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that if it were tendered in evidence, he would be liable to prosecution for perjury if he wilfully stated in it anything which he knew to be false or did not believe to be true;

(d) if, before the hearing at which the statement is to be tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings;

(e) if none of the other parties, within ten days from the service of the copy of the statement, serves a notice on the party proposing or objecting to the statement being so tendered in evidence:

Provided that, the court shall determine the relevance of any objection;

(f) if, where the statement is made by a person who cannot read it, it is read to him before he signs it and it is accompanied by a declaration by the person who read it to the effect that it was so read.

(3) Notwithstanding that a written or electronic statement made by any person may be admissible as evidence by virtue to this section—

(a) the party by whom or on whose behalf a copy of the statement was served may call that person to give evidence; and

(b) the court may, of its own motion or on the application of any party to the proceedings, require that person to attend before the court and give evidence.

(4) So much of any statement as is admitted in evidence by virtue of this section shall, unless the court directs otherwise, be read aloud at the hearing and where the court so directs an account shall be given orally of so much of any statement as is not read aloud.

(5) Any document or object referred to as an exhibit and identified in a written or electronic statement tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the maker of the statement.

(6) For the purposes of any rule of law or practice which requires that evidence be corroborated or regulates the manner in which uncorroborated evidence is to be treated, a statement admissible under this section shall not be treated as corroboration of evidence given by the maker of the statement.

[Act Nos. 19 of 1980 s. 8; 6 of 2012 s. 34; 13 of 2015 s. 45]

34C. Proof by written statements in civil proceedings

(1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document tending to establish that fact shall, in production of the original document, be admissible as evidence of that fact in lieu of the attendance of the witness if the following conditions are satisfied—

(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 in it are not within his personal knowledge, is 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, but 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 not in Tanzania and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him, or to identify 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 the statement mentioned in subsection (1) shall be admissible as evidence or may, without the order having been made, admit the 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 of the original there is introduced, a copy of the original document or of the material part of it certified in the order or as the court may approve.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at the 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 of it was written, made or reproduced 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.

(5) For the purposes of deciding whether or not a statement is admissible as evidence under this section, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a duly registered medical practitioner; and, notwithstanding that the requirements of this section are satisfied with respect to a statement, a court may in its discretion reject the statement if for any reason it appears to the court to be inexpedient in the interests of justice that the statement should be admitted.

(6) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the 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 facts.

(7) 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 admissible as evidence

under this section shall not be treated as corroboration of evidence given by the maker of the statement.

[Act No 19 of 1980 s. 8]

35. Relevancy of evidence given in previous proceedings

(1) Evidence given by a witness in judicial proceedings is relevant for the purpose of proving in subsequent judicial proceedings or in a later stage of the same judicial proceedings, the truth of the facts which it states in the following circumstances—

(a) where the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or where his presence cannot be obtained without an amount of delay or expense which in the circumstances of the case the court considers unreasonable; and

(b) where, in the case of subsequent proceedings—

(i) the proceedings are between the same parties or their representatives in interest; and

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

(iii) the questions in issue were substantially the same in the prior as in the subsequent proceedings.

(2) For the purposes of this section—

(a) the expression "judicial proceedings" shall be deemed to include any proceeding in which evidence is taken by a person authorized by law to take that evidence on oath;

(b) a criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused.

Part V – Statements under special circumstances

36. Entries in books of account

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

37. Entries in public records

Any entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.

38. Statements, etc., in maps, charts and plans

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

39. Statement of fact in laws, Gazettes, etc

When a court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act, or in any law of the United Republic duly promulgated, or in a notification of the Government appearing in the *Gazette* is a relevant fact.

40. Statements regarding law contained in books

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

40A. Evidence obtained undercover operations

In any criminal proceedings—

(a) an information retrieved from computer systems, networks or servers;

(b) the records obtained through surveillance of means of preservation of information including facsimile machines, electronic transmission and communication facilities; or

(c) the audio or video recording of acts or behaviours or conversation of persons charged,

shall be admissible in evidence.

[Act No. 2 of 2007 s. 33]

Part VI – Extent to which statement is to be proved

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

When any statement of which evidence is given forms part of a longer statement, or of a conversation or part of an isolated document, or is contained in a document which forms part of a book, or of a connected series of letters or papers, evidence shall be given of so much and no more of the statement, conversation, document, book or series of letters or papers as the court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and of the circumstances in which it was made.

Part VII – Relevancy of judgements

42. Previous judgements relevant to bar a second suit or trial

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

43. Relevancy of certain judgements in probate and other jurisdictions

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

(2) A judgement, order or decree referred to in subsection (1) is conclusive proof—

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

(b) that any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgement, 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 such judgement, order or decree declares that it had ceased or should cease; and

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

43A. Relevancy of judgements in criminal proceedings

A final judgement of a court in any criminal proceedings shall, after the expiry of the time limit for an appeal against that judgement or after the date of the decision of an appeal in those proceedings, whichever is the later, be taken as conclusive evidence that the person convicted or acquitted was guilty or innocent of the offence to which the judgement relates.

[Act No. 19 of 1980 s. 9]

44. Relevancy and effect of judgements, orders or decrees, other than those mentioned in section 43

Judgements, orders or decrees other than those mentioned in section 43 are relevant if they relate to matters of a public nature relevant to the inquiry, but such judgements, orders or decrees are not conclusive proof of that which they state.

45. Relevancy of judgements, etc., other than those mentioned in sections 42 to 44

Judgements, orders or decrees, other than those mentioned in sections 42, 43, and 44 are irrelevant unless the existence of such judgement, order or decree is a fact in issue, or is relevant under some other provision so this Act.

46. Fraud or collusion in obtaining judgement, or incompetency of court, may be proved

Any party to a suit or other proceedings may show that any judgement, order or decree which is relevant under sections 42, 43 or 44, and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or was obtained by fraud or collusion.

Part VIII – Relevancy of opinions of third person

47. Opinions of experts

When a court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger or other impressions, the opinion, upon that point of persons (generally called experts) possessing special knowledge, skill, experience or training in such foreign law, science or art or question as to identity of handwriting or finger or other impressions are relevant facts.

48. Facts bearing upon opinions of experts

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

49. Relevancy of opinion regarding handwriting

(1) When a court has to form an opinion regarding the person by whom, any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it

is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

(2) For the purposes of subsection (1) a person is said 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.

50. Relevancy of opinion regarding existence of right or custom

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

(2) For the purposes of subsection (1), the expression "general custom or right" includes customs or rights common to any considerable class of persons.

51. Relevancy of opinion regarding usages, tenets, etc.

When the court has to form an opinions as to—

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

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

(c) the meaning of words or terms used in particular districts or by particular classes of people, the opinion of persons having special means of knowledge thereon are relevant facts.

52. Relevancy of opinion on relationship

When a court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Provided that, such opinion shall not be sufficient to prove a marriage in any proceedings, whether civil, matrimonial or criminal under the Law of Marriage Act.

[Cap. 29]

[Act No. 5 of 1971 2nd Sch.]

53. Grounds of opinion

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

Part IX – Relevancy of character

54. Character in civil cases

(1) In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

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

55. Good character in criminal cases

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

56. Bad character in criminal cases

(1) In criminal proceedings the fact that the accused person is of bad character is irrelevant, unless evidence has been given that he has a good character in which case it becomes relevant:

Provided that, a previous conviction for any offence becomes relevant, after conviction in the case under trial, for the purpose of affecting the sentence to be awarded by the court.

(2) Subsection (1) does not apply to cases in which the bad character of any person is itself a fact in issue.

(3) A previous conviction is relevant as evidence of bad character.

(4) A person charged and called as a witness in pursuance of subsection (4) of section 130 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 with which he is then charged, or that he is of bad character, unless—

(a) 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 with which he is charged;

(b) he has personally or by his advocate asked questions of the witness for the prosecution with a view to establishing his own good character, or has given evidence of his own good character, or the nature or conduct of the defence is such as to involve imputations on the character of the complainant or the witness for the prosecution; or

(c) he has given evidence against any other person charged with the same offence.

57. Definition of "character"

In this Part the word "character" includes both reputation and disposition but, except as provided in sections 54 and 56, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

Chapter III
Proof

Part I – Facts requiring no proof

58. Facts judicially noticed

No fact of which a court takes judicial notice need be proved.

59. Facts of which court shall take judicial notice

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

(a) all written laws, rules, regulations, proclamations, orders or notices having notice the force of law in any part of the United Republic;

(b) the existence and title of societies or other bodies the registration of which has been notified in the *Gazette*;

(c) the course of proceedings of Parliament;

(d) all seals of all the courts of the United Republic duly established and of notaries public, and all seals which any person is authorised to use by any written law;

(e) the accession to office, names, titles, functions and signatures of the persons holding any public office in any part of the United Republic, if the fact of their appointment to such office is notified in the *Gazette*;

(f) the existence, title and national flag of every State or Sovereign recognised by the United Republic;

(g) the divisions of time, the geographical divisions of the world, and public festivals, feasts and holidays notified in the *Gazette*;

(h) the commencement, continuance and termination of hostilities between the United Republic and any other State or body of persons;

(i) the names of the members and officers of the court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates and other persons authorised by law to appear or act before it.

(2) In all cases referred to in subsection (1) and also in 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 such person produces any such book or document as it may consider necessary to enable it to do so.

60. Facts admitted in civil proceedings need not be proved

No fact need be proved in any civil proceeding which the parties thereto or their agents agree to admit at the hearing or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that, the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

Part II – Oral evidence

61. Oral evidence

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

62. Oral evidence must be direct

(1) Oral evidence must, in all cases whatever, be direct; that is to say—

(a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

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

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

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

Provided that, the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the

author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable.

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

Part III – Documentary evidence

63. Proof of contents of documents

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

64. Primary evidence

(1) Primary evidence means the document itself produced for the inspection of the Court.

(2) Where a document is executed in several parts, each part is primary evidence of the document.

(3) 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.

(4) Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents, of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

64A. Admissibility of electronic evidence

(1) In any proceedings, electronic evidence shall be admissible.

(2) The admissibility and weight of electronic evidence shall be determined in the manner prescribed under section 18 of the Electronic Transaction Act.

(3) For the purpose of this section, "electronic evidence" means any data or information stored in electronic form or electronic media or retrieved from a computer system, which can be presented as evidence."

[Act No. 13 of 2015 s. 46; Cap. 442]

65. Secondary evidence

Secondary evidence includes—

(a) certified copies in accordance with the provisions of this Act;

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

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

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

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

66. Proof of documents by primary evidence

Documents must be proved by primary evidence except as otherwise provided in this Act.

67. Proof of documents by secondary evidence

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

(a) when the original is shown or appears to be in the possession or power of—

(i) the person against whom the document is sought to be proved;

(ii) a person out of reach of, or not subject to, the process of the court; or

(iii) a person legally bound to produce it, and when, after the notice specified in section 68, such person does not produce it;

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

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 83;

(f) when the original is a document of which a certified copy is permitted by this Act or by any written law to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.

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

(3) In the case mentioned in paragraph (b) of subsection (1) the written admission is admissible.

(4) In the cases mentioned in paragraphs (e) and (f) of subsection (l), a certified copy of the document, but no other kind of secondary evidence, is admissible.

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

68. Rules as to notice to produce

Secondary evidence of the contents of the documents referred to in paragraph (a) of subsection (1) of section 67 shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as a court considers reasonable in the circumstance of the case:

Provided that, the notice shall not be required in order to render secondary evidence admissible in any of the following cases—

(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;

(e) when the adverse party or his agent has admitted the loss of the document;

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

(g) in any other case in which the court thinks fit to dispense with the requirement.

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

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

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

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

71. Proof where no attesting witness found

If no attesting witness can be found or when the witness is not subject to the process of the court or is incapable of giving evidence, it must be proved that the attestation of one attesting witness is in his handwriting and that the signature of the person executing the document is in the handwriting of that person.

72. Admission of execution by party to attested document

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 might be a document required by law to be attested.

73. Proof when attesting witness denies the execution

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

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

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

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

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

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

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

Part IV – Bankers' books

76. Definitions of Part IV

For the purposes of this Part—

"**bank**" or "banker" means any person carrying on the business of banking in the United Republic, and for the purpose of sections 77, and 78, 79 and 80 includes any person carrying on the business of banking in any country, if his business as a banker is a relevant fact or is connected to a fact which is relevant in any proceedings;

"**Banker's books**" include ledgers, cash books, account books and any other records used in the ordinary business of the bank or financial institution, whether the records are in written form or a data message or kept on an information system including, but not limited to computers and storage devices, magnetic tape, micro-film, video or computer display screen or any other form of mechanical or electronic data retrieval mechanism;

"**court**" means the court, judge, arbitrator or person or persons before whom legal proceedings are held or taken;

"**legal proceedings**" means any civil or criminal proceedings or inquiry, including an arbitration, in which evidence is or may be given in the United Republic, and for the purposes of section 81 includes any such proceedings or inquiry in Kenya or in Uganda.

[Act Nos. 19 of 1980 s. 10; 2 of 2007 s. 34]

77. Mode of proof of entries in banker's books

Subject to this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded.

78. Proof that book is banker's book

(1) A copy of an entry in a banker's book shall not be received in evidence under this Act unless it is first proved that the book was at the time of the making of the entry one of the ordinary books of the bank and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

(2) Such proof under subsection (1) may be given by a partner or officer of the bank and may be given orally or by an affidavit sworn before any commissioner for oaths or a person authorised to take affidavits.

78A. Electronic records

(1) A print out of any entry in the books of a bank on micro-film, computer, information system, magnetic tape or any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other process which in itself ensures the accuracy of such print out, and when such print out is supported by a proof stipulated under subsection (2) of section 78 that it was made in the usual and ordinary course of business, and that the book is in the custody of the bank, it shall be received in evidence under this Act.

(2) Any entry in any banker's book shall be deemed to be primary evidence of such entry and any such banker's book shall be deemed to be a "document" for the purpose of subsection (1) of section 64.

[Act No. 2 of 2007 s. 35]

79. Verification of copy

(1) A copy of any entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct.

(2) The proof under subsection (1) shall be given by person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner for oaths or a person authorised to take affidavits.

80. Case in which banker, etc., not compellable to produce book, etc

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 court made for special cause.

81. Court may order inspection, etc.

On the application of any party to legal proceedings 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 and 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.

82. Costs

The costs, under this Part, of any application to a court and the costs of anything done or to be done under an order of a court shall be in the discretion of the court which may order the same or any part thereof to be paid to any party by the bank where the same have been occasioned by any default or delay on the part of the bank and an order against a bank may be enforced as if the bank was a party to the proceedings.

Part V – Public documents

83. Public documents

The following documents are public documents—

(a) documents forming the acts or records of the acts of—

(i) the President of the United Republic;

(ii) official bodies and tribunals; and

(iii) public officers, whether legislative, judicial or executive;

(b) public records kept in the United Republic of private documents.

84. Private documents

All documents other than public documents are private.

85. Certified copies of public documents

(1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person, on demand, a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of the copy that it is a true copy of that document or part thereof, as the case may be, and such certificate shall be dated and subscribed by the officer

with his name and official title, and shall be sealed if the officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.

(2) Any officer who in the ordinary course of his official duty is authorised to deliver copies of public documents shall be deemed to have the custody of those documents within the meaning of this section.

86. Proof of documents by production of certified copies

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

87. Proof of other official documents

The following public documents may be proved as follows—

(a) Acts, orders or notifications of the Government of the United Republic, the Executive for Zanzibar, or any local government authority or of a Ministry or department of any of them—

(i) by the records of the service, authority, Ministry, or department certified by the head thereof; or

(ii) by any document purporting to be printed or published by order of the Government or other body concerned;

(b) the proceedings of the legislatures in the United Republic, by the journals of those bodies respectively, or by published Acts or abstracts, or by copies, purporting to be printed by order of Government;

(c) proclamations, orders or regulations issued by the President of the United Republic or of Zanzibar or by any department of the Government of the United Republic of the Executive for Zanzibar, by copies or extracts contained in the *Gazette* or purporting to be printed by the Government Printer;

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

(e) proceedings of a municipal body in the United Republic, by a copy of such proceedings certified by the legal keeper thereof, or by a printed book purporting to be published by the authority of such body;

(f) public documents of any other class in a foreign country, by the original or by a copy certified by the legal keeper thereof, with a certificate under the seal of a foreign service officer or diplomatic representative of a Commonwealth country that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the documents according to the law of the foreign country.

Part VI – Presumptions as to documents

88. Presumption regarding genuineness of certified copies

(1) A court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which—

(a) is by law declared to be admissible as evidence of any particular fact;

(b) purports to be duly certified by a public officer in the United Republic; and

(c) is substantially in the form and purports to be executed in the manner directed by law in that behalf.

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

89. Presumption regarding documents produced as record of evidence

(1) When a document is produced before a court, purporting to be a record or memorandum of the evidence, or of any part of the record of the evidence given by a witness in judicial proceedings or before any officer authorised by law to take that evidence, and purporting to be signed by a judge or a magistrate, or by any such other officer, the court shall presume—

(a) that the document is genuine;

(b) that any statements as to the circumstances in which it was taken, purporting to be made by the person signing it, are true; and

(c) that such evidence was duly taken.

(2) Notwithstanding subsection (1) and any other written law, where in criminal proceedings involving offence of terrorism or international terrorism, a question arises as to whether anything or a substance is in a state described or purported to be described in a document, that document shall be admissible in evidence without proof of the signature or authority of the person appearing to have signed it and shall, in the absence of evidence to the contrary, be proof of the facts stated therein.

[Act No. 21 of 2002 s. 54]

90. Presumption regarding Gazettes, newspapers, private Acts of National Assembly and other documents

(1) A court shall presume the genuineness of every document, purporting to be the Government *Gazette* of the United Republic or of the Revolutionary Government of Zanzibar, or to be a newspaper or a journal, or to be a copy of a private Act of the National Assembly printed by the Government Printer, and of every document purporting to be a document directed by any law to be kept by any person, if the document is kept substantially in the form required by law and is produced from proper custody.

(2) For the purposes of subsection (1), documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin or if the circumstances of the particular case are such as to render such an origin probable.

91. Presumption regarding maps or plans made by authority of Government

A court shall presume that maps or plans purporting to be made by the authority of Government were so made and are accurate; but maps or plans made for the purposes of any legal proceedings must be proved to be accurate.

92. Presumption regarding collections of laws and reports of decisions

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

93. Presumption regarding private documents executed outside the United Republic

A court shall presume that a private document purporting to be executed outside the United Republic was duly executed and the execution duly authenticated if—

(a) in the case of a document executed in Uganda, Kenya, Malawi or Zambia, it purports to be authenticated by a magistrate, registrar or judge under the seal of the court or by a notary public under his signature and seal of office;

(b) in the case of a document executed in Uganda, Kenya, Malawi or Zambia which affects or relates to property not exceeding an amount or value of five thousand shillings, there purports to be appended to or endorsed on such document a statement signed by a magistrate or a justice of the peace—

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

(ii) that two other persons known to him have separately testified before him that the person executing the document is known to each of them;

(c) in the case of a document executed in any other place outside the United Republic, if it purports to be authenticated by the signature and seal of office—

(i) of a foreign service officer of the United Republic or a diplomatic representative of a Commonwealth country in that place; or

(ii) of any Secretary of State, Minister, Undersecretary of State or any other person in such foreign place, who shall be shown by the certificate of the foreign service officer of the United Republic or a diplomatic representative of a Commonwealth country in that place, to be duly authorized under the law of that place to authenticate the document.

94. Presumption regarding powers of attorney

A court shall presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a notary public, or commissioner for oaths, any court, judge, magistrate, registrar, foreign service officer or diplomatic representative of a Commonwealth country, was so executed and authenticated.

95. Presumption regarding certified copies of foreign judicial records

A court may presume that a document purporting to be a certified copy of any judicial record of a foreign country is genuine and accurate, if the document purports to be certified in any manner which is certified by a foreign service officer or diplomatic representative of a Commonwealth country to be the manner commonly in use in that country for the certification of copies of judicial records.

96. Presumption regarding books, maps and charts

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

97. Presumption regarding telecommunications messages

A court may presume that message, forwarded from a telecommunications 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 such message was delivered for transmission.

98. Presumption regarding due execution, etc., of document not produced

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

99. Presumption regarding documents less than twenty years old

(1) When a document purporting or proved to be less than twenty 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 such 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.

(2) For the purposes of subsection (1), documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

Part VII – The exclusion of oral by documentary evidence

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

(1) When the terms of a contract, grant, or any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant, or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.

(2) Notwithstanding subsection (1), when a public officer is required by law to be appointed in writing, and it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

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

(4) Subsection (1) applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

(5) When there are more originals than one, one original only need be proved.

(6) The statement, in any document, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

101. Exclusion of evidence of oral agreement

When the terms of a contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 100, no evidence of any oral agreement or statement shall be admitted, as between the parties to that instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms:

Provided that—

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

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

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

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

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

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

102. Exclusion of evidence to explain patent ambiguity

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

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

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

104. Evidence as to latent ambiguity

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

105. Evidence regarding application of language which can apply to one only of several persons or things

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

106. Evidence regarding application of language to one of two sets of facts

When the language used in a document 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.

107. Evidence regarding meaning of illegible characters, etc

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

108. Evidence of variation given by third parties

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

109. Saving of provisions of written law as to construction of wills, etc

Nothing in this Part shall be taken to affect the provisions of any other written law as to the construction of wills or other testamentary dispositions.

Chapter IV
Production and effect of evidence

Part I – Burden of proof

110. Burden of proof

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

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

111. On whom burden of proof lies

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

112. Burden of proof of particular fact

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

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

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

114. Extent of burden of proof on accused

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

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

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

(2) Nothing in this section shall—

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

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

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

115. Burden of proving fact especially within knowledge in civil proceedings

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

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

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

117. Burden of proving that person is alive who has not been heard of for five years

When the question is whether a man is alive or dead and it is proved that he has not been heard of within the preceding five years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is on the person who asserts it.

[Cap. 29 Sch.]

117A. Restriction of application of sections 116 and 117

The provisions of sections 116 and 117 shall not apply to any proceeding under the Law of Marriage Act.

[Cap. 29]

118. Burden of proof regarding relationship in the cases of partners, landlord and tenant, principal and agent

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

119. Burden of proof regarding ownership

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

120. Proof of good faith in transactions where one party is in a position of active confidence

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

121. Birth during marriage and rebuttable presumption of legitimacy

The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution the mother remaining unmarried, shall raise a rebuttable presumption that such person is the legitimate son or daughter of that man.

122. Court may presume existence of certain facts

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

Part II – Estoppel

123. Estoppel

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

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

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

125. Estoppel of acceptor of bill of exchange

No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw the bill or to endorse it:

Provided that, the acceptor of a bill of exchange may deny that the bill was actually drawn or endorsed by the person by whom it purports to have been drawn or endorsed.

126. Estoppel of a bailee or licensee

No bailee or licensee shall be permitted to deny that his bailor or licensor had, at the time when bailment or licence commenced, authority to make such bailment or grant such licence:

Provided that, if a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

Chapter V
Witnesses

Part I – Competency, compellability and privilege of witnesses

127. Who may testify

(1) Every person shall be competent to testify unless the court considers that he is incapable of understanding the questions put to him or of giving rational answers to those questions by reason of tender age, extreme old age, disease (whether of body or mind) or any other similar cause.

(2) A child of tender age may give evidence without taking an oath or making an affirmation but shall, before giving evidence, promise to tell the truth to the court and not to tell any lies.

(3) Notwithstanding any rule of law or practice to the contrary, but subject to the provisions of subsection (6), the evidence of a child of tender age received under subsection (2) may be acted upon by the court as material evidence corroborating the evidence of another child of tender age previously given or the evidence given by an adult which is required by law or practice to be corroborated.

(4) For the purposes of subsections (2) and (3), the expression "child of tender age" means a child whose apparent age is not more than fourteen years.

(5) A person of unsound mind shall, unless he is prevented by his condition from understanding the questions put to him and giving rational answers to them, be competent to testify.

(6) Notwithstanding the preceding provisions of this section, where in criminal proceedings involving sexual offence the only independent evidence is that of a child of tender years or of a victim of the sexual offence, the court shall receive the evidence, and may, after assessing the credibility of the evidence of the child of tender years of as the case may be the victim of sexual offence on its own merits, notwithstanding that such evidence is not corroborated, proceed to convict, if for reasons to be recorded in the proceedings, the court is satisfied that the child of tender years or the victim of the sexual offence is telling nothing but the truth.

(7) For the purposes of this section the term "sexual offence" means any of the offences created in Chapter XV of the Penal Code.

[Cap. 16]

[Acts Nos. 19 of 1980 s. 11; 4 of 1998 s. 27; 4 of 2016 s. 26]

128. Dumb witnesses

(1) A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, such as by writing or by signs; but such writing must be written, and the signs made, in open court.

(2) Evidence given in accordance with subsection (1) shall be deemed to be oral evidence.

129. Privilege of court

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

130. Evidence of and by spouses

(1) Where a person charged with an offence is the husband or the wife of another person that other person shall be a competent but not a compellable witness on behalf of the prosecution, subject to the following provisions of this section.

(2) Any wife or husband, whether or not of a monogamous marriage, shall be a competent and compellable witness for the prosecution—

(a) in any case where the person charged is charged with an offence under Chapter XV of the Penal Code or under the Law of Marriage Act;

[Cap. 16; Cap. 29]

(b) in any case where the person charged is charged in respect of an act or omission affecting the person or property of the wife or husband, or any of the wives of a polygamous marriage of that person or the children of either or any of them.

(3) Where a person whom the court has reason to believe is the husband or wife or, in a polygamous marriage, one of the wives of a person charged with an offence is called as a witness for the prosecution the court shall, except in the cases specified in subsection (2), ensure that that person is made aware, before giving evidence, of the provisions of subsection (1) and the evidence of that person shall not be admissible unless the court has recorded in the proceedings that this subsection has been complied with.

(4) Every person charged with an offence and the wife, or in a polygamous marriage, one of the wives, or the 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 where the person charged is charged solely or jointly with

any other person; but a wife or the husband of the person so charged shall not be called as a witness except upon the application of the person charged.

(5) Where any person is charged with an offence and a wife or the husband upon being called as a witness for the defence fails or refuses to give evidence as required, the prosecution as well as the court may, each in its own discretion, comment upon that failure or refusal to give evidence for the other spouse.

[Act No. 19 of 1980 s. 12]

131. General competency of spouses in civil proceedings

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

[Act No. 19 of 1980 s. 13]

132. Privilege relating to official records

Whenever it is stated on oath (whether by affidavit or otherwise) by a Minister, that he has examined the contents of a document forming part of any unpublished official records or communications received by a public officer in the course of his duty, the production of which document has been called for in any proceedings, and that he is of the opinion that the production would be prejudicial to the public interest either by reason of the contents thereof or of the fact that it belongs to a class which, on grounds of public policy, should be withheld from production, the document or a copy of it, shall not be admissible.

[Act No. 19 of 1980 s. 14]

133. Information regarding commission of offences

(1) No judge, magistrate or police officer shall be compelled to disclose the source of any information regarding the commission of an offence, and no revenue officer shall be compelled to disclose the source of any information regarding the commission of any offence against the public revenue.

(2) For the purposes of subsection (1), "revenue officer" means any officer employed in or about the business of any branch of the public revenue and public revenue includes income tax, customs and excise.

134. Professional communication

(1) No advocate shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as an advocate by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client the course and for the purpose of such employment:

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

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

(b) any fact observed by an advocate in the course of his employment as such, showing that criminal offence, has been committed since the commencement of his employment, whether the attention of the advocate was or was not directed to that fact by or on behalf of his client;

(c) proceedings in which the professional conduct of the advocate himself is or might be in issue.

(2) The obligation provided for in this section continues after the employment has ceased.

(3) For the purposes of this section and of sections 135, 136, and 137, the words "advocate" and "professional legal adviser" mean a person authorised by law or reasonably believed by the client to

be authorised by law to practice law in any country, the law of which recognises a privilege against disclosure of confidential communication between client and professional legal adviser or advocate.

[Act No. 19 of 1980 s. 15]

135. Privilege of interpreters and advocates' clerks

The provisions of section 134 shall apply to interpreters, and the clerks or servants of advocates.

136. Privilege not waived by volunteering evidence

(1) If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 134.

(2) If any party to a suit or proceedings calls the advocate as a witness he shall be deemed to have consented to the disclosure only if he questions the advocate on matters which, but for such questioning, he would not be at liberty to disclose.

137. Confidential communication with legal advisers

No person shall be compelled to disclose to a court any confidential communication which has taken place between him and his advocate or professional legal adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communication as may appear to the court necessary to be known in order to explain any evidence which he has given, but no other communication.

138. Production of title-deeds of witness not a party

No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document under which he holds any property as pledgee or mortgagee, unless he has agreed in writing with the person seeking the production of the title-deeds or another person through whom he claims to produce it.

139. Production of incriminating documents

No witness who is not a party to a suit shall be compelled to produce a document, the production of which might tend to incriminate him, unless he has agreed in writing with the person seeking the production of that document or another person through whom he claims to produce it.

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

No person shall be compelled to produce documents in his possession, which any other person would be entitled to refuse to produce if they were in his possession, unless such other person consents to their production.

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

A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceedings, upon the ground that the answer to that question will incriminate, or may tend directly or indirectly to incriminate the witness, or that it will expose, or tend directly or indirectly to expose him to a penalty or forfeiture of any kind, or that it may establish or tend to establish that he owes a debt or is otherwise subject to a civil suit:

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any subsequent criminal proceedings, except to a prosecution for giving false evidence by such answer.

141A.Evidence in offences of receiving

(1) Where any person is charged with the offence of receiving any property while he knew it to have been stolen or for having in his possession any stolen property or property fraudulently or in any other way unlawfully obtained, for the purpose of proving guilty knowledge, there may be given at any stage of the proceedings—

(a) evidence of the fact that the property stolen or fraudulently or in any other way unlawfully obtained was found or had been in his possession within the period of twelve months immediately preceding the date of the commission or discovery of the commission of the offence with which that person is charged;

(b) subject to subsection (2), evidence of the fact that within the period of five years immediately preceding the date of the offence with which he is charged he was convicted of an offence involving fraud or dishonesty.

(2) No evidence of the fact mentioned in paragraph (b) of subsection (1) may be proved unless—

(a) a written notice of the intention to give evidence of the previous conviction has been given to the accused or to his advocate or other representative at least three days before the day when the evidence is intended to be given; and

(b) evidence has been given that the property in respect of which the accused is being tried was found or had been in his possession.

[Act No. 19 of 1980 s. 16]

142. Accomplice's competence as witness

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

143. Number of witnesses

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

Part II – Examination of witnesses

144. Order of production and examination of witnesses

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

145. Court to decide on admissibility of evidence

(1) When either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant.

(2) The court shall admit the evidence of any fact if it thinks that the fact, if proved, would be relevant and not otherwise.

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

(4) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the court may, in its discretion, either permit evidence of the first fact to be given before the second fact is proved or require evidence to be given of the second fact before evidence is given on the first fact.

146. Examination of witnesses

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

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

(3) The examination of a witness, subsequent to the cross examination, by the party who called him is called his reexamination.

147. Order and direction of examinations

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

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

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

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

(5) Notwithstanding the other provisions of this section, the court may, in any case, defer or permit to be deferred any examination or cross-examination of any witness until any other witness or witnesses have been examined-in-chief, cross-examined or, as the case may be, further examined-in-chief or further cross-examined.

[Act No. 19 of 1980 s. 17]

Part III – Questioning of witnesses

148. Cross-examination of person called to produce document

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.

149. Witnesses to character

Witnesses to character may be cross-examined.

150. Meaning of leading question

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

151. Leading questions in examination-in-chief and re-examination

(1) A leading question shall not, if objected to by the adverse part, be asked in an examination-in-chief, or in reexamination, except with the permission of the court.

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

152. Leading questions in cross-examination

Leading questions may be asked in cross-examination.

153. Evidence as to matters in writing

Any witness may be asked, whilst under examination, whether any contract or 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 that evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

154. Cross-examination on previous statements in writing

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

155. Questions lawful in cross-examination

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

(a) to test his veracity;

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

or

(c) to shake his credit, by injuring his character,

although the answer to such questions might tend directly or indirectly to incriminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

156. When witness to be compelled to answer

If any question asked under section 155 relates to a matter relevant to the suit or proceeding, the provisions of section 141 shall apply thereto.

157. Cross-examination of accused person

A person charged with an offence who is called as a witness for the defence may be asked any question in cross-examination, notwithstanding that the answer may tend to incriminate him as to the offence charged.

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

(1) If any question asked relates to a matter not relevant to the suit or proceedings, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may if it does not so compel him, warn the witness that he is not obliged to answer it.

(2) In exercising its discretion under subsection (1), the court shall have regard to the following considerations—

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

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

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

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

159. Question not to be asked without reasonable grounds

No such question as is referred to in section 158 shall be asked, unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

160. Indecent and scandalous questions

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

161. Questions intended to insult or annoy

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

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

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

Provided that—

(a) if a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous convictions; and

(b) if a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, evidence may be given of the facts.

163. Discretion to allow cross-examination of own witness

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

164. Impeaching the credit of witness

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

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

(b) by proof that the witness has received or received the offer of a corrupt inducement to give his evidence;

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

(d) when a man is prosecuted for rape or an attempt to commit rape, it may be shown that the complainant was of generally immoral character.

(2) A person who, called as a witness pursuant to paragraph (a) of subsection (1), declares another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief but he may be asked his reasons in cross-examination and the answers which he gives cannot be contradicted though, if they are false, he may afterwards be charged with giving false evidence.

165. Evidence tending to corroborate evidence of relevant fact admissible

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

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

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

167. What matters may be proved in connection with proved statement relevant under section 34 or 35

Whenever any statement, relevant under section 34 or 35 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.

Part IV – Refreshing memory and production of documents

168. Refreshing memory

(1) 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 likely that the transaction was at that time fresh in his memory.

(2) A witness may, while under examination, refresh his memory by referring to any writing made by any other person and read by the witness within the time referred to in subsection (1), if when he read it he knew it to be correct.

169. When witness may use copy of document to refresh memory

Whenever a witness may refresh his memory by reference to any writing he may, if the court is satisfied that there is sufficient reason for the non-production of the original and with the permission of the court, refer to a copy of such writing.

170. Expert may refresh his memory

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

171. Testimony to facts stated in document although facts themselves not specifically recalled

A witness may also testify to facts mentioned in any document referred to in section 168 or 169, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

172. Right of adverse party relating to writing used to refresh memory

Any writing referred to in section 168 or 169 shall be produced and shown to the adverse party if he requires it and that party may, if he so desires, cross-examine the witness thereupon.

173. Production of documents

(1) 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, but the validity of any such objection shall be decided on by the court.

(2) The court may, if it sees fit, inspect the document unless it is a document to which section 132 applies, or may take other evidence to enable it to determine its admissibility.

(3) If for the purpose of subsection (2) it is necessary to cause any document to be translated the court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence; and if the translator disobeys such direction he shall be held to have committed an offence under section 96 of the Penal Code (which relates to abuse of office) whether or not he holds office in the public service.

174. Giving, as evidence, of document called for and produced on notice

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, the other party is bound to give it as evidence if the party producing it requires him to do so.

175. Using as evidence of document production of which was refused

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

176. Power of court to put questions or order production

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

Provided that, judgement shall be based upon facts declared by this Act to be relevant and duly proved.

(2) Subsection (1) shall not authorise a court—

(a) to compel any witness to answer any question or to produce any document which the witness would be entitled to refuse to answer or produce under Part II of this Chapter, if the question were asked or the document were called for by the adverse party;

(b) to ask any question which it would be improper for any other person to ask under section 158 or 159; or

(c) to dispense with primary evidence of any document except in the cases provided for in this Act.

Part V – Questions by assessors

177. Power of assessors to put questions

In cases tried with assessors, the assessors may put any questions to the witness, through or by leave of the court, which the court itself might put and which it considers proper.

Chapter VI
Improper admission and rejection of evidence

178. No new trial for improper rejection of evidence

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

Chapter VII
Miscellaneous provisions

179. Construction of other laws

Save as otherwise expressly provided in this Act, nothing in this Act shall be deemed to derogate from the provisions of any other written law which relate to matters of evidence.

180. Repeal and savings

Repeal and saving of laws.