



BERMUDA

EVIDENCE ACT 1905

1905 : 20

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[preamble and words of enactment omitted]

PART I
PRELIMINARY

Division of Act into Parts

1 *[omitted]*

Interpretation

2 In this Act, and in any rules made thereunder, unless the context otherwise requires—

“bank” means any partnership, company, corporation or other authority carrying on the business of banking and any savings bank; and “banker” means any person carrying on such business as aforesaid;

“bankers’ books” includes ledgers, day books, cash books, account books and all other books used in the ordinary business of a bank;

“cause” includes—

- (i) any action, suit or other proceedings between a plaintiff and a defendant; and
- (ii) any criminal proceedings;

“child” means a person under the age of 18 years;

“give evidence” means to give evidence in a proceeding—

- (a) in the ordinary way, as described in section 68B;
- (b) in an alternative way, as provided for in section 68E; or
- (c) in any other way provided for under this Act or any other enactment;

“Her Majesty’s dominions” includes—

- (i) Canada, Australia, New Zealand;
- (ii) *[deleted]*;

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- (iii) the Channel Islands;
- (iv) the Isle of Man;
- (v) any British Colony;
- (vi) any territory in respect of which a mandate from the League of Nations was accepted by Her Majesty, being a territory under the sole administration of Her Majesty's Government in the United Kingdom or of any part of Her Majesty's dominions;
- (vii) any territory administered under the trusteeship system of the United Nations, being a territory under the sole administration of Her Majesty's Government in the United Kingdom or of any part of Her Majesty's dominions;
- (viii) any British protectorate;
- (ix) any British protected state;

but does not include the United Kingdom and shall be deemed to include Western Samoa;

"matter" includes any proceedings before any court, or before a judge or a magistrate, not in a cause;

"officer" includes any person duly authorized to administer an oath;

"prescribed" means prescribed by rules made under this Act.

[Section 2 definition "give evidence" inserted by 2018 : 23 s. 16 effective 12 November 2020; Section 2 definition "child" inserted by 2019 : 36 s. 45 effective 15 July 2022]

Construction of expressions relating to bankers' books

3 Where for the purposes of the business of a bank replicas of particular documents are kept and used in the bank as permanent records of the documents, the replicas either—

(a) being made by mechanical process such as type-writing, printing or other process which simultaneously produces the documents and their replicas;
or

(b) consisting of photographic reproductions of the documents,

then for the purposes of this Act any such replicas shall be treated as though they were bankers' books.

PART II
WITNESSES

Compelling attendance of witness by subpoena

4 In every cause or matter in the Supreme Court, and in every case of an examination held under a commission to examine witnesses, it shall be lawful for any party to compel the appearance of any person as a witness by means of a subpoena in the prescribed form which shall be served in the prescribed manner upon the person whose attendance is required.

5 *[repealed by 1979:17]*

Bringing up prisoner as witness

6 The Supreme Court or a judge, if satisfied that any prisoner, or inmate of a training school established under the Young Offenders Act 1950 [*title 10 item 33*], is required as a witness in any cause or matter, may order him to be brought before the Supreme Court, and in any such case he shall be brought under the same care and custody, and be dealt with in like manner, as a prisoner brought up for the like purpose by a writ of habeas corpus.

Expenses of witnesses in civil cases

7 Any person subpoenaed to attend as a witness in a civil cause or matter may at the time of attendance apply to the Supreme Court for his expenses, and the Court shall direct the same to an amount not exceeding such amount as may be prescribed under the Court Fees and Expenses Act 1971 [*title 8 item 7*] to be paid by the party at whose instance the subpoena issued.

Preparation of voucher for payment of witnesses in criminal causes

8 (1) As soon as practicable after the conclusion of any criminal cause heard in the Supreme Court, the Registrar shall prepare, and certify as correct, a voucher containing the names of all the witnesses who have attended in such cause, and specifying the number of days attendance of, and the amount payable to, each witness.

Provided that—

- (a) any witness who has attended as such in more than one cause on the same day shall receive payment only in respect of one day's attendance; and
- (b) a person attending as a juror who is called as a witness shall not be entitled to receive any payment for any day in respect of which he is entitled to payment as a juror.

(2) In this section "witness" means a person who is subpoenaed, or is bound by a recognizance, to attend the Supreme Court as a witness in any criminal cause.

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Rates of payment in criminal cases

9 (1) Without prejudice to the succeeding provisions of this Act, a witness shall be entitled to receive out of the Consolidated Fund upon the certificate of the Registrar, such sum as may be prescribed under the Court Fees and Expenses Act 1971 [*title 8 item 7*], for each day's attendance in the Supreme Court.

(2) In this section "witness" means a person who is subpoenaed, or is bound by a recognizance, to attend the Supreme Court as a witness in any criminal cause.

Fees payable to medical and other professional witness

10 Where professional evidence is given by any medical practitioner or other specially qualified person before any court or commission of inquiry, or any examination or analysis in respect of any person or thing is carried out in connection with any such evidence or is made in compliance with any order or request duly given or made by any public authority, then in any such case the medical practitioner or other specially qualified person shall be entitled to receive fees at the rates prescribed under the Court Fees and Expenses Act 1971 [*title 8 item 7*].

Power of Supreme Court to restrict payment of witnesses in certain cases

11 (1) The Supreme Court may in any of the following cases order that the name of any witness is to be omitted from the voucher hereinbefore provided for, and that he is to receive no payment in respect of his attendance as a witness—

- (a) if it appears to the Court that the witness has by collusion with the party at whose instance he was subpoenaed, or bound by recognizance to appear, or otherwise, procured himself to be subpoenaed or bound over with the object of obtaining payment as such witness; or
- (b) if the witness, when called to give evidence, does not appear; or
- (c) if the witness, without lawful excuse, neglects or refuses to give evidence, or to answer any question which he is required by the Court to answer; or
- (d) if the witness otherwise so misconducts himself as to render it desirable, in the opinion of the Court, that no payment should be made to him.

(2) In this section "witness" means a person who is subpoenaed, or is bound by a recognizance, to attend the Supreme Court as a witness in any criminal cause.

Interpreters

When person may be summoned as interpreter on a criminal charge

12 (1) Whenever on any criminal charge before a court it is found necessary for the purposes of justice to obtain the services of an interpreter, the court may issue a summons to any person to attend at a time and place to be specified in the summons and then and there to act as an interpreter.

Every person so summoned shall obey such summons and shall act as interpreter to the best of his ability until allowed by the court to depart.

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Every person so summoned who, without sufficient lawful excuse to be allowed by the court, fails to obey such summons or to interpret to the best of his ability commits an offence.

Punishment on conviction by the court or before any court of summary jurisdiction, on an information being laid by the Registrar: \$144 besides costs of prosecution.

(2) In this section—

- (a) “court” means any court in or before which any criminal trial is held, and includes—
 - (i) a magistrate hearing any criminal charge; and
 - (ii) a Coroner holding an inquest on the body of a deceased person; and
 - (iii) any public authority holding an inquiry, under lawful authority, into the death of any person on board any British ship, or into any assault alleged to have been committed on board a British ship;
- (b) “criminal charge” includes—
 - (i) any proceedings or trial in respect of any offence; and
 - (ii) any inquest or other inquiry in respect of any death from violence or accident.

Payment of interpreters

13 (1) Every person attending as an interpreter, and acting as such according to his ability, in any case provided for in section 12, shall be entitled to receive out of the Consolidated Fund for each day’s attendance as an interpreter, until discharged by the court, such sum as may be prescribed under the Court Fees and Expenses Act 1971 [*title 8 item 7*], such payments to be made on the production of a certificate from the court of the number of days on which the interpreter has attended:

Provided that the court may disallow the payment in whole or in part for any misconduct on the part of the interpreter.

(2) In this section “court” means any court in or before which any criminal trial is held, and includes—

- (a) a magistrate hearing any criminal charge; and
- (b) a Coroner holding an inquest on the body of a deceased person; and
- (c) any public authority holding an inquiry, under lawful authority, into the death of any person on board any British ship, or into any assault alleged to have been committed on board a British ship.

Non-exclusion of witnesses for interest or crime

14 No person offered as a witness shall be excluded by reason of interest or crime from giving evidence before any court of justice in Bermuda or person having, by law or consent of parties, authority to hear, receive and examine evidence, but any such witness shall, subject to this Act, be competent and compellable to give evidence:

Provided that—

- (a) the parties to any action for breach of promise of marriage shall be competent to give evidence in any such action, but no plaintiff in an such action shall succeed in the action, unless his or her testimony is corroborated by some other material evidence in support of such promise;
- (b) the parties to any proceeding instituted in consequence of adultery shall be competent to give evidence in such proceeding, but no witness in any proceeding, whether a party to the suit or not, shall be liable to be asked or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness has already given evidence in the same proceeding in disproof of his or her alleged adultery;
- (c) nothing herein contained shall, except as is expressly provided, affect any provision of the Wills Act 1988 [*title 26 item 2*];
- (d) no husband shall be compellable to disclose any communication made to him by his wife during the marriage and no wife shall be compellable to disclose any communication made to her by her husband during the marriage; and
- (e) nothing herein contained shall, save as is hereinafter expressly excepted, render any person compellable to answer any question tending to criminate himself.

Evidence of marital access

15 The evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period:

Provided that a husband or wife shall not be compellable in any proceedings to give evidence of the matters aforesaid.

Competency of persons charged with offences: conditions under which their evidence may be given

16 (1) Every person charged with an offence, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person, subject to the following conditions—

- (a) a person so charged shall not be called as a witness except upon his own application;
- (b) the failure of any person charged with an offence, to give evidence shall not be made the subject of any comment by the prosecution;
- (c) [*repealed*]
- (d) a person charged and called as a witness may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged;

- (e) a person charged and called as a witness 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 is of bad character, unless—
 - (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or
 - (ii) he has personally or by his counsel questioned any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the informant in the proceedings or any witness for the prosecution; or
 - (iii) he has given evidence against any other person charged with the same offence, or with any other offence tried at the same time as the offence with which he is charged.

(2) Every person called as a witness or, as the case may be, giving evidence on his own behalf, in pursuance of subsection (1) shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence.

(3) Nothing herein contained shall affect section 11 of the Indictable Offences Act 1929 [*title 8 item 32*].

[Section 16 heading and subsection (1) amended by 2006:1 s.102 & Sch 4 effective 8 September 2008]

Abolition of right of accused to make an unsworn statement

16A (1) Subject to subsections (2) and (3), in any criminal proceedings the accused shall not be entitled to make a statement without being sworn, and accordingly, if he gives evidence, he shall do so on oath and be liable to cross-examination; but this section shall not affect the right of the accused, if not represented by an attorney, to address the court or jury otherwise than on oath on any matter on which, if he were so represented, an attorney could address the court or jury on his behalf.

(2) Nothing in subsection (1) shall prevent the accused making a statement without being sworn—

- (a) if it is one which he is required by law to make personally; or
- (b) if he makes it by way of mitigation before the Court passes sentence upon him.

(3) *[Transitional provision omitted.]*

17 *[Repealed by 2006:1]*

[Section 17 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

Special provisions relating to indictments for public nuisances etc

18 On the trial of any indictment or other proceeding for the non-repair of a public highway, or bridge, or for a nuisance to any public highway, or bridge, and of any other indictment or proceeding instituted for the purpose of trying or enforcing a civil right only, every defendant to such indictment or proceeding, and the wife or husband of any such defendant, shall be admissible witnesses and compellable to give evidence.

Party discrediting own witnesses

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

Proof of contradictory statements by witness

20 If a witness upon cross-examination as to a former statement made by him relative to the subject matter of the cause or matter, and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but before such proof can be given the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness and he must be asked whether or not he has made such statement.

Cross-examination as to previous statements in writing

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

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

Power to question witness as to previous conviction

22 A witness may be questioned as to whether he has previously been convicted of any offence, and upon being so questioned, if he either denies or does not admit the fact or refuses to answer, it shall be lawful for the cross-examining party to prove such conviction.

Duty to substantiate with evidence suggestion that witness has given false evidence etc

22A (1) If on cross-examination it is suggested to a witness that he has given evidence which he knows to be false or that his conduct in relation to an accused person or another party was unlawful or improper or that the witness is a person who should not be believed

because of his general character then, without prejudice to section 16(1)(e), there shall be a duty on the party making the allegation to call evidence to substantiate it.

(2) If an accused person only gives evidence to substantiate an allegation referred to in subsection (1) then he shall only be cross-examined on that evidence and his right to remain silent shall not be affected by the giving of such evidence.

(3) If a party fails to substantiate with evidence an allegation referred to in subsection (1) the court shall ignore the allegation and if there is a jury the judge shall instruct the jury to ignore it.

Method of administering and taking oaths

23 (1) Any oath may be administered and taken in the manner and form following, that is to say, the person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say, or repeat after the officer administering the oath, the words "I swear by Almighty God that" followed by the words of the prescribed or usual oath.

(2) The officer administering an oath shall, unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath, administer the oath in manner and form aforesaid without question:

Provided that, in the case of a person who is neither a Christian nor a Jew, the oath shall be administered in any lawful manner.

Validity of oath not affected by absence of religious belief

24 Where an oath has been duly administered and taken the fact that the person to whom the oath was administered had, at the time of taking such oath, no religious belief, shall not for any purpose affect the validity of such oath.

Solemn affirmation permitted instead of oath in certain cases

25 Every person objecting to be sworn, and stating, as the ground of such objection, either that he has no religious belief or that the taking of an oath is contrary to his religious belief shall be permitted to make his solemn affirmation, instead of taking an oath, in all courts and places, and before all officers and persons authorized to administer oaths, and for all purposes where an oath is or shall be required by law, which affirmation shall be of the same force and effect as if such person had taken the oath; and if any person making such affirmation wilfully, falsely, and corruptly affirms any matter or thing which, if deposed upon oath, would have constituted the offence of perjury, he, or, as the case may be, any other person, may be proceeded against as if he had committed the offence of perjury.

Form of administration of solemn affirmation

26 Every solemn affirmation shall be administered in the following form—

You (*naming the person affirming*) do solemnly, sincerely and truly affirm and declare that (*proceeding with the words of the oath prescribed by law and omitting any words of imprecation or calling to witness*).

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Form of solemn affirmation in writing

27 (1) Every solemn affirmation in writing shall commence as follows—

I (*name of person affirming*) of (*place of residence*) (*occupation or profession*) do solemnly, sincerely and truly affirm and declare

(2) The form in lieu of jurat shall be as follows—

Affirmed at (*place*) this (*day of month*) day of (*month*) 19

Before me etc.

PART IIA

HEARSAY EVIDENCE IN CIVIL PROCEEDINGS

Hearsay evidence to be admissible only by virtue of this Act and other statutory provisions, or by agreement

27A In any civil proceedings a statement other than one made by a person while giving oral evidence in those proceedings shall be admissible as evidence of any fact stated therein to the extent that it is so admissible by virtue of any provision of this or any other Act or by agreement of the parties, but not otherwise.

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

27B (1) In any civil proceedings a statement made, whether orally or in a document or otherwise, by any person, whether called as a witness in those proceedings or not, shall, subject to this section and to the rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

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

- (a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and
- (b) without prejudice to paragraph (a), shall not be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person by whom it was made, except—
 - (i) where before that person is called the court allows evidence of the making of the statement to be given on behalf of that party by some other person; or
 - (ii) in so far as the court allows the person by whom the statement was made to narrate it in the course of his examination-in-chief on the ground that to prevent him from doing so would adversely affect the intelligibility of his evidence.

(3) Where in any civil proceedings a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made shall be admissible for the purpose of proving it:

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

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

27C (1) Where in any civil proceedings—

- (a) a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of section 19, 20 or 21; or
- (b) a previous statement made by a person called as aforesaid is proved for the purpose of rebutting a suggestion that his evidence has been fabricated,

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

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

Admissibility of certain records as evidence of facts stated

27D (1) Without prejudice to section 27E, in any civil proceedings a statement contained in a document shall, subject to this section and to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if the document is, or forms part of, a record compiled by a person acting under a duty from information which was supplied by a person, whether acting under a duty or not, who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information and which, if not supplied by that person to the compiler of the record directly, was supplied by him to the compiler of the record indirectly through one or more intermediaries each acting under a duty.

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

- (a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and

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

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

Admissibility of statements produced by computers

27E (1) In any civil proceedings a statement contained in a document produced by a computer shall, subject to the rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) are satisfied in relation to the statement and computer in question.

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

- (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any body, whether corporate or not, or by any individual;
- (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
- (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
- (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2)(a) was regularly performed by computers, whether—

- (a) by a combination of computers operating over that period; or
- (b) by different computers operating in succession over that period; or
- (c) by different combinations of computers operating in succession over that period; or

- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

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

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

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

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

(5) For the purposes of this section—

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

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

Provisions supplementary to ss.27B to 27E

27F (1) Where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of section 27B, 27C or 27E it may, subject to the rules of court, be proved by the production of that document or whether or not that document is still in existence by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the court may approve.

(2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 27B, 27C or 27E, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including, in the case of a statement contained in a document, the form and contents of that document.

(3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 27B, 27C, 27D or 27E, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular—

- (a) in the case of a statement falling within section 27B(1) or 27C(1) or (2) to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts;
- (b) in the case of a statement falling within section 27D(1), to the question whether or not the person who originally supplied the information from which the record containing the statement was compiled did so contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not that person, or any person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts; and
- (c) in the case of a statement falling within section 27E(1), to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

(4) For the purpose of any enactment or rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated—

- (a) a statement which is admissible in evidence by virtue of section 27B or 27C shall not be capable of corroborating evidence given by the maker of the statement; and

- (b) a statement which is admissible in evidence by virtue of section 27D shall not be capable of corroborating evidence given by the person who originally supplied the information from which the record containing the statement was compiled.

(5) If any person in a certificate tendered in evidence in civil proceedings by virtue of section 27E(4) wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, he commits an offence.

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$5,000 or both such imprisonment and fine.

Admissibility of evidence as to credibility of maker etc. of statement admitted under s.27B or 27D

27G (1) Subject to rules of court, where in any civil proceedings a statement made by a person who is not called as a witness in those proceedings is given in evidence by virtue of section 27B—

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

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

(2) Subsection (1) shall apply in relation to a statement given in evidence by virtue of section 27D as it applies in relation to a statement given in evidence by virtue of section 27B, except that references to the person who made the statement and to his making the statement shall be construed respectively as references to the person who originally supplied the information from which the record containing the statement was compiled and to his supplying that information.

(3) Whenever a person is not called as a witness and evidence is tendered under subsection (1)(b) tending to prove that he has contradicted himself then section 27C(1) shall apply to such evidence which shall be admissible as evidence of any fact stated therein.

Admissibility of certain hearsay evidence admissible at common law

27H (1) In any civil proceedings a statement which, if this Act had not been passed would by virtue of any rule of law mentioned in subsection (2) have been admissible as evidence of any fact stated therein shall be admissible as evidence of that fact by virtue of this subsection.

- (2) The rules of law referred to in subsection (1) are any rules of law—

- (a) whereby in any civil proceedings an admission adverse to a party to the proceedings whether made by that party or by another person, may be given in evidence against that party for the purpose of proving any fact stated in the admission;
- (b) whereby in any civil proceedings evidence of a person's reputation is admissible for the purpose of establishing his good or bad character;
- (c) whereby in any civil proceedings involving a question of pedigree or in which the existence of a marriage is in issue evidence of reputation or family tradition is admissible for the purpose of proving or disproving pedigree or the existence of the marriage, as the case may be; or
- (d) whereby in any civil proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing.

In this subsection "admission" includes any representation of facts, whether made in words or otherwise.

(3) In so far as any statement is admissible in any civil proceedings by virtue of this section it may be given in evidence in those proceedings notwithstanding anything in sections 27B to 27G or in any rules of court and that admissions and statements are only admissible by virtue of this section in so far as they are not capable of being rendered admissible by section 27B or 27D.

(4) The words in which any rule of law mentioned in subsection (2) is there described are intended only to identify the rule in question and shall not be construed as altering it in any way.

Rules of court

27I (1) Provision shall be made by rules of court as to the procedure which, subject to any exceptions provided for in the rules, must be followed and the other conditions which, subject as aforesaid, must be fulfilled before a statement can be given in evidence in civil proceedings by virtue of section 27B, 27D or 27E.

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

- (a) require a party to any civil proceedings who desires to give in evidence any such statement as is mentioned in that subsection to give to every other party to the proceedings such notice of his desire to do so and such particulars of or relating to the statement as may be specified in the rules, including particulars of such one or more of the persons connected with the making or recording of the statement or, in the case of a statement falling within section 27E(1), such one or more of the persons concerned as mentioned in section 27F(3)(c) as the rules may in any case require; and
- (b) enable any party who receives such notice as aforesaid by counter-notice to require any person of whom particulars were given with the notice to be called as a witness in the proceedings unless that person is dead, or beyond

the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he was connected or concerned as aforesaid and to all the circumstances) to have any recollection of matters relevant to the accuracy or otherwise of the statement.

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

- (a) may confer on the court in any civil proceedings a discretion to allow a statement falling within section 27B(1), 27D(1) or 27E(1) to be given in evidence notwithstanding that any requirement of the rules affecting the admissibility of that statement has not been complied with, but except in pursuance of paragraph (b) shall not confer on the court a discretion to exclude such a statement where the requirements of the rules affecting its admissibility have been complied with;
- (b) may confer on the court power, where a party to any civil proceedings has given notice that he desires to give in evidence—
 - (i) a statement falling within section 27B(1) which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal); or
 - (ii) a statement falling within section 27D(1) which is contained in a record of any direct oral evidence given in some other legal proceedings (whether civil or criminal),

to give directions on the application of any party to the proceedings as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved; and

- (c) may make different provision for different circumstances, and in particular may make different provision with respect to statements falling within section 27B(1), 27D(1) or 27E(1) respectively, and any discretion conferred on the court by rules of court made as aforesaid may be either a general discretion or a discretion exercisable only in such circumstances as may be specified in the rules.

(4) Rules of court may make provision for preventing a party to any civil proceedings (subject to any exceptions provided for in the rules) from adducing in relation to a person who is not called as a witness in those proceedings any evidence which could otherwise be adduced by him by virtue of section 27G unless that party has in pursuance of the rules given in respect of that person such a counter-notice as is mentioned in subsection (2)(b).

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

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(6) Nothing in this section shall prejudice the generality of section 62 of the Supreme Court Act 1905 [*title 8 item 1*] or any other Act conferring power to make rules of court.

Interpretation of ss.27A to 27I

27J (1) In this Part, unless the context otherwise requires—

“computer” has the meaning assigned by section 27E;

“document” includes, in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
- (d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom;

“film” includes a microfilm;

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

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

- (a) in the case of a document falling within paragraph (c) but not (d) of the definition of “document” in subsection (1), a transcript of the sounds or other data embodied therein;
- (b) in the case of a document falling within paragraph (d) but not (c) of that definition, a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not;
- (c) in the case of a document falling within both those paragraphs, such a transcript together with such a still reproduction; and
- (d) in the case of a document not falling within the said paragraph (d) of which a visual image is embodied in a document falling within that paragraph, a reproduction of that image, whether enlarged or not,

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

PART IIB

EVIDENCE OF OPINION AND EXPERT EVIDENCE

Application to statements of opinion

27K (1) Subject to the provisions of this section, Part IIA except section 27E, shall apply in relation to statements of opinion as they apply in relation to statements of fact, subject to the necessary modifications and in particular the modification that any reference to a fact stated in a statement shall be construed as a reference to a matter dealt with therein.

(2) Section 27D as applied by subsection (1), shall not render admissible in any civil proceedings a statement of opinion contained in a record unless that statement would be admissible in those proceedings if made in the course of giving oral evidence by the person who originally supplied the information from which the record was compiled; but where a statement of opinion contained in a record deals with a matter on which the person who originally supplied the information from which the record was compiled is (or would if living be) qualified to give oral expert evidence, section 27D, as applied by subsection (1), shall have effect in relation to that statement as if so much of subsection (1) of that section as requires personal knowledge on the part of that person were omitted.

Admissibility of expert opinion and certain expressions of non-expert opinion

27L (1) Subject to any rules of court made in pursuance of Part IIA or this Part, where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence.

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

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

Evidence of foreign law

27M (1) A person who is suitably qualified to do so on account of his knowledge or experience is competent to give, in civil proceedings, expert evidence as to the law of any country or territory outside Bermuda, irrespective of whether he has acted or is entitled to act as a legal practitioner there.

(2) Where any question as to the law of any country or territory outside Bermuda, with respect to any matter has been determined (whether before or after 4 January 1988) in any such proceedings as are mentioned in subsection (4), then in any civil proceedings (not being proceedings before a court which can take judicial notice of the law of that country, territory or part with respect to that matter)—

- (a) any finding made or decision given on that question in the first-mentioned proceedings shall, if reported or recorded in citable form, be admissible in evidence for the purpose of proving the law of that country, territory or part with respect to that matter; and

- (b) if that finding or decision, as so reported or recorded, is adduced for that purpose, the law of that country, territory or part with respect to that matter shall be taken to be in accordance with that finding or decision unless the contrary is proved:

Provided that paragraph (b) shall not apply in the case of a finding or decision which conflicts with another finding or decision on the same question adduced by virtue of this subsection in the same proceedings.

(3) Except with the leave of the court, a party to any civil proceedings shall not be permitted to adduce any such finding or decision as is mentioned in subsection (2) by virtue of that subsection unless he has in accordance with rules of court given to every other party to the proceedings notice that he intends to do so.

(4) The proceedings referred to in subsection (2) are the following, whether civil or criminal, namely—

- (a) proceedings at first instance in the Supreme Court;
- (b) appeals arising out of any such proceedings as are mentioned in paragraph (a);
- (c) proceedings before the Judicial Committee of the Privy Council on appeal (whether to Her Majesty in Council or to the Judicial Committee as such) from any decision of any court outside Bermuda.

(5) For the purposes of this section a finding or decision on any such question as is mentioned in subsection (2) shall be taken to be reported or recorded in citable form, if, but only if, it is reported or recorded in writing in a report, transcript or other document which, if that question had been a question as to the law of Bermuda, could be cited as an authority in legal proceedings in Bermuda.

Rules of court with respect to expert reports and oral expert evidence

27N (1) If and so far as rules of court so provide, section 27B(2) shall not apply to statements (whether of fact or opinion) contained in expert reports.

(2) In so far as they relate to statements (whether of fact or opinion) contained in expert reports, rules of court made in pursuance of section 27I(1) as to the procedure to be followed and the other conditions to be fulfilled before a statement can be given in evidence in civil proceedings by virtue of section 27B shall not be subject to the requirements of section 27I(2).

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

- (a) for enabling the court in any civil proceedings to direct, with respect to medical matters or matters of any other class which may be specified in the direction, that the parties or some of them shall each by such date as may be so specified (or such later date as may be permitted or agreed in

accordance with the rules) disclose to the other or others in the form of one or more expert reports the expert evidence on matters of that class which he proposes to adduce as part of his case at the trial; and

- (b) for prohibiting a party who fails to comply with a direction given in any such proceedings under rules of court made by virtue of paragraph (a) from adducing in evidence by virtue of section 27B, except with the leave of the court, any statement (whether of fact or opinion) contained in any expert report whatsoever in so far as that statement deals with matters of any class specified in the direction.

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

(5) Without prejudice to the generality of subsection (4), rules of court made in pursuance of that subsection may make provision for prohibiting a party who fails to comply with a direction given as mentioned in subsection (3)(b) from adducing, except with the leave of the court, any oral expert evidence whatsoever with respect to matters of any class specified in the direction.

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

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

Interpretation and application to arbitration proceedings etc. and savings

27O (1) In this Part, unless the context otherwise requires, "civil proceedings" includes, in addition to civil proceedings in any of the ordinary courts of law—

- (a) civil proceedings before any other tribunal, being proceedings in relation to which the strict rules of evidence apply; and
- (b) an arbitration or reference whether under an enactment or not,

but does not include civil proceedings in relation to which the strict rules of evidence do not apply.

(2) In this Part, unless the context otherwise requires—

"court" in relation to an arbitration or reference, means the arbitrator or umpire and, in relation to proceedings before a tribunal (not being one of the ordinary courts of law), means the tribunal;

"legal proceedings" includes an arbitration or reference, whether under an enactment or not.

(3) Any reference in this Part to any other enactment is a reference thereto as amended, and includes a reference thereto as applied, by or under any other enactment.

(4) Nothing in this Part shall prejudice the operation of any enactment which provides (in whatever words) that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings (however described).

In this subsection the reference to giving evidence is a reference to giving evidence in any manner, whether by furnishing information making discovery, producing documents or otherwise.

(5) Nothing in this Part shall prejudice—

- (a) any power of a court, in any civil proceedings, to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion; or
- (b) the operation of any agreement (whenever made) between the parties to any civil proceedings as to the evidence which is to be admissible (whether generally or for any particular purpose) in those proceedings.

(6) Where, by reason of any defect of speech or hearing from which he is suffering, a person called as a witness in any civil proceedings gives his evidence in writing or by signs, that evidence is to be treated for the purposes of this Act as being given orally.

PART IIC

THE TAKING OF EVIDENCE REQUIRED FOR PROCEEDINGS IN OTHER JURISDICTIONS

Application to Supreme Court for assistance in obtaining evidence for civil proceedings in other court

27P Where an application is made to the Supreme Court (in this Part referred to as “the Court”) for an order for evidence to be obtained in Bermuda, and the Court is satisfied—

- (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal (hereinafter referred to as the “requesting court”) exercising jurisdiction similar to that of the Supreme Court in a country or territory outside Bermuda; and
- (b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which have been instituted before the requesting court,

the Court shall on being further satisfied that there is an intention that the proceedings should continue to trial, have the powers conferred on it by the following provisions of this Part.

Power of Court to give effect to application for assistance

27Q (1) Subject to this section, the Court shall have power, on any such application as is mentioned in section 27P, by order to make such provision for obtaining evidence in Bermuda as may appear to the Court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require

a person specified therein to take such steps as the Court may consider appropriate for that purpose.

(2) Without prejudice to the generality of subsection (1) but subject to this section, an order under this section may in particular, make provision—

- (a) for the examination of witnesses, either orally or in writing;
- (b) for the production of documents;
- (c) for the inspection, photographing, preservation, custody or detention of any property including any land, chattel or other corporeal property of any description;
- (d) for the taking of samples of any such property and the carrying out of any experiments on or with any such property;
- (e) for the medical examination of any person;
- (f) without prejudice to paragraph (e), for the taking and testing of samples of blood from any person.

(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the Court (whether or not the proceedings are of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give testimony, either orally or in writing, otherwise than on oath where this is asked for by the requesting court.

(4) An order under this section shall not require a person—

- (a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in this possession, custody or power; or
- (b) to produce any documents other than particular documents specified in the order as being documents appearing to the Court to be, or to be likely to be, in his possession, custody or power.

(5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in civil proceedings before the Court.

Privilege of witnesses

27R (1) A person shall not be compelled by virtue of an order under section 27Q to give any evidence which he could not be compelled to give—

- (a) in civil proceedings in Bermuda; or
- (b) subject to subsection (2), in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (1)(b) shall not apply unless the claim of the person in question to be exempt from giving the evidence is either—

- (a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or
- (b) conceded by the applicant for the order,

and where such a claim made by any person is not supported or conceded as aforesaid he may, subject to the other provisions of this section, be required to give the evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

(3) Without prejudice to subsection (1), a person shall not be compelled by virtue of an order under section 27Q to give any evidence if his doing so would be prejudicial to the security or national interests of Bermuda or any country in the Commonwealth; and a certificate signed by or on behalf of the Governor to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(4) In this section references to giving evidence include references to answering any question and to producing any document and the reference in subsection (2) to the transmission of evidence given by a person shall be construed accordingly.

Power of court to assist in obtaining evidence for criminal proceedings in overseas courts

27S (1) The provisions of sections 27P to 27R shall have effect in relation to the obtaining of evidence for the purposes of criminal proceedings as they have effect in relation to the obtaining of evidence for the purposes of civil proceedings except that no order under section 27Q shall make provision otherwise than for the examination of witnesses, either orally or in writing, or for the production of documents.

(2) In its application by virtue of subsection (1) section 27R(1)(a) and (b) shall have effect as if for the words "civil proceedings" there were substituted the criminal proceedings".

(3) Nothing in this section applies in the case of criminal proceedings of a political character.

Power of court to assist in obtaining evidence for international proceedings

27T (1) The Governor may by order direct that, subject to such exceptions, adaptations or modifications as may be specified in the order, sections 27P to 27R shall have effect in relation to international proceedings of any description specified in the order.

(2) An order under this section may direct that the provisions of the law relating to perjury shall have effect in relation to international proceedings to which the order applies as if they were proceedings before the Court.

(3) In this section "international proceedings" means proceedings before the International Court of Justice or any other court, tribunal, commission, body or authority, whether consisting of one or more persons, which in pursuance of any international agreements or any resolution of the General Assembly of the United Nations, exercises any jurisdiction or performs any functions of a judicial nature or by way of arbitration,

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conciliation or inquiry or is appointed (whether permanently or temporarily) for the purpose of exercising any jurisdiction or performing ally such functions.

Rules of Court

27U The power to make rules of court under section 62 of the Supreme Court Act 1905 [*title 8 item 1*] shall include power to make rules of court—

- (a) as to the manner, which shall include the parties to be heard, in which any such application as is mentioned in section 27P is to be made;
- (b) subject to this Act, as to the circumstances in which an order can be made under section 27Q; and
- (c) as to the manner in which any such reference as is mentioned in section 27R(2) is to be made,

and any such rules may include such incidental, supplementary and consequential provisions as may be considered necessary or expedient.

False unsworn statement under this Part

27V (1) For the purposes of section 119 of the Criminal Code [*title 8 item 31*] (which relates to the offence of perjury) any person who gives evidence by virtue of this Part shall be deemed to be giving evidence in a judicial proceeding.

(2) If any person, in giving any testimony, either orally or in writing, otherwise than on oath, where required to do so by an order under this Part makes a statement—

- (a) which he knows to be false in a material particular; or
- (b) which is false in a material particular and which he does not believe to be true,

he commits an offence.

Punishment on conviction on indictment: imprisonment for 2 years or a fine of \$10,000 or both such imprisonment and fine.

Effect of subpoena

27W For the purposes of this Part a reference in a subpoena to attendance at a trial shall be construed as if it included a reference to attendance before an examiner or commissioner appointed by the Court or a judge thereof in any cause or matter in that Court.

Transitional

27X [*omitted*]

This Part not to bind Crown

27Y Nothing in this Part shall be construed as enabling any court to make an order that is binding on the Crown or on any person in his capacity as an officer or servant of the Crown.

Interpretation

27Z In this Part, unless the context otherwise requires—

“civil proceedings”, in relation to the requesting court, means proceedings in any civil or commercial matter;

“requesting court” has the meaning assigned in section 27P;

“request” includes any commission, order or other process issued by or on behalf of the requesting court.

PART III

//

EVIDENCE IN CRIMINAL CAUSES

Proof of criminal intent

28 A court or jury, in determining whether an accused person has committed an offence,—

- (a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions; but
- (b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances.

Proof by written statement

29 (1) In any criminal proceedings, other than proceedings under the Indictable Offences Act 1929 [*title 8 item 32*], a written statement by any person shall, if such of the conditions mentioned in subsection (2) as are applicable are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) The conditions are as follows—

- (a) the statement purports to be signed by the person who made it;
- (b) the statement contains a declaration by that person 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 if he wilfully stated in it anything which he knew to be false or did not believe to be true;
- (c) before the hearing at which the statement is 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; and
- (d) none of the other parties or their counsel, within seven days from the service of the copy of the statement, serves a notice on the party so

proposing objecting to the statement being tendered in evidence under this section:

Provided that the conditions mentioned in paragraph (c) and (d) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(3) The following provisions shall have effect in relation to any written statement tendered in evidence under this section—

- (a) if the statement is made by a person under the age of eighteen, it shall give his age;
- (b) if it is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read; and
- (c) if it is made by a person who cannot understand the English language it shall be made in the language of the person making it and there shall be attached thereto a translation by an interpreter and a declaration by that interpreter that he has well and truly interpreted the statement to the best of his ability; and
- (d) if it refers to any other document as an exhibit, the copy served on any other party to the proceedings under subsection (2)(c) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

(4) Notwithstanding that a written statement made by any person may be admissible as evidence by virtue of 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 to give evidence.

(5) An application under subsection (4)(b) to the Supreme Court may be made before the hearing and on any such application the powers of the Court shall be exercisable by a judge.

(6) So much of any statement as is admitted in evidence shall, unless the court otherwise directs, 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.

(7) Any document or object referred to as an exhibit and identified in a written 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.

(8) A document required by this section to be served on any person may be served—

- (a) by delivering it to him or his counsel; or

- (b) by addressing it to him and leaving it at his usual or last known place of abode or place of business or by addressing it to his counsel and leaving it at his counsel's office; or
- (c) by sending it in a registered letter addressed to him at his usual or last known place of abode or place of business or addressed to his counsel at his counsel's office;
- (d) in the case of a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office or sending it in a registered letter addressed to the secretary or clerk of that body at that office.

[Section 29 subsection (3)(a) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]

Proof by formal admission

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

(2) Any admission under this section—

- (a) may be made before or at the proceedings;
- (b) if made otherwise than in open court, shall be in writing;
- (c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk; or some other similar officer of the body corporate;
- (d) if made on behalf of an accused person who is an individual, shall be made by his counsel;
- (e) if made at any stage before the trial by an accused person who is an individual and who is represented at his trial by counsel, must be approved by his counsel (whether at the time it was made or subsequently) before or at the proceedings in question.

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

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

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Notice of alibi

31 *[repealed by 2015 : 37 s. 17]*

[Section 31 subsection (7) amended by 1999:8 s.2 & Sch 1 effective 1 April 1999; repealed by 2015 : 37 s. 17 effective 1 January 2016]

Corroboration of evidence

32 (1) Evidence corroborates other evidence in criminal proceedings if, being admissible in those proceedings, it tends to confirm that other evidence.

(2) Every rule (not being a rule laid down by a statutory provision)—

- (a) requiring any evidence in criminal proceedings to be corroborated by other evidence; or
- (b) requiring the judge in criminal proceedings to instruct the jury whether any evidence is or is not capable of corroborating, or does or does not in fact corroborate, other evidence; or
- (c) requiring the judge in criminal proceedings to warn the jury of the danger of convicting an accused person on uncorroborated evidence,

is abrogated.

(3) Nothing in subsection (2)—

- (a) precludes a judge from advising a jury to consider, in their discretion, whether evidence ought to be corroborated by other evidence; or
- (b) excuses a judge from otherwise assisting a jury in their consideration of any evidence,

where the interests of justice warrant.

[Section 32 substituted by 1994:20 effective 1 August 1994]

Evidence of authority for institution of prosecution

33 The averment in an indictment that the prosecution is instituted by the direction of the Director of Public Prosecutions, or at the request of the Government of any State, is sufficient evidence of the fact, until the contrary is shown.

[Section 33 amended by 1999:8 s.2 & Sch 1 effective 1 April 1999]

Proof of intention to defraud

34 On the trial of a person charged with any offence of which an intent to injure or deceive or defraud, or an intent to enable another person to deceive or defraud, is an element, it is not necessary to prove an intent to injure, or to deceive or defraud, any particular person, or an intent to enable any particular person to deceive or defraud any particular person.

EVIDENCE ACT 1905

Evidence on trials for perjury and cognate offences

35 (1) On the trial of a person charged with an offence of which the giving of false testimony by any person at the trial of a person charged with an offence is an element, a certificate setting out the substance and effect only, without the formal parts, of the indictment, or information, and the proceedings at the trial, and purporting to be signed by the officer having the custody of the records of the court where the indictment or information was tried, or by his deputy, is sufficient evidence of the trial, without proof of the signature or official character of the person who appears to have signed the certificate.

(2) Such fee as may be prescribed under the Court Fees and Expenses Act 1971 [title 8 item 7], may be demanded by the person furnishing the certificate.

Evidence on trial for defamation

36 On the trial of a person charged with the unlawful publication of defamatory matter which is contained in any periodical, after evidence sufficient in the opinion of the court has been given of the publication by the accused person of the number or part of the periodical containing the matter complained of, other writings or prints purporting to be other numbers or parts of the same periodical previously or subsequently published, and containing a printed statement that they were published by or for the accused person, are admissible in evidence on either side, without further proof of publication of them.

Evidence on certain charges of stealing

37 (1) On the trial of a person charged with stealing, while employed in the public service, money which was the property of Her Majesty, or which came into the possession of such person by virtue of his employment, or charged with stealing, while a clerk or servant, money which was the property of his employer, or which came into his possession on account of his employer, an entry in any book of account kept by the accused person, or kept in, under, or subject to, his charge or supervision, purporting to be an entry of the receipt of any money, is evidence that the money so purporting to have been received was so received by him.

(2) On the trial of a person charged with any such offence, it is not necessary to prove the stealing by the accused person of any specific sum of money, if, on examination of the books of account or entries kept or made by him, or kept or made in, under, or subject to, his charge or supervision, or by any other evidence, there is proof of a general deficiency, and if the jury are satisfied that the accused person stole the deficient money or any part of it.

Evidence on charges of receiving

38 (1) On the trial of a person charged with having received goods knowing them to be stolen, evidence may be given at any stage of the proceedings that there was found in his possession other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that he knew the property to be stolen which forms the subject of the proceedings taken against him.

(2) Where, on the trial of a person charged with having received stolen goods knowing them to be stolen, evidence has been given that they were found in his possession, then, if he has, within five years immediately preceding, been convicted of any offence

involving fraud or dishonesty, evidence of his previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that he knew such goods to be stolen, if not less than seven days' notice in writing has been given to him that proof is intended to be given of such previous conviction; and it shall not be necessary for the purposes of this section to set out in the indictment such previous conviction.

Evidence on charges relating to seals and stamps

39 On the trial of a person charged with any offence relating to any seal or stamp used for the purpose of the public revenue or of the Post Office, in any part of Her Majesty's dominions, or in any foreign state, a despatch from one of Her Majesty's Principal Secretaries of State transmitting to the Governor any stamp, mark, or impression, of a die, plate or other instrument, provided, made, or used by or under the direction of the proper authority of the country in question, for the purpose of expressing or denoting any stamp duty or postal charge, is admissible as evidence of the facts stated in the despatch; and the stamp, mark, or impression, so transmitted, may be used by the court and jury and by witnesses for the purposes of comparison.

Calling of accused person as witness

40 Where the only witness to the facts of the case called by the defence is the person charged, he shall be called as a witness immediately after the close of the evidence for the prosecution.

41 *[Repealed]*

[Section 41 repealed by 2009:5 s.3(2) effective 25 March 2009]

Determining whether child witness to be sworn

42 (1) Any question whether a witness in criminal proceedings who is a child may be sworn for the purpose of giving evidence on oath, whether raised—

- (a) by a party to the proceedings; or
- (b) by the court of its own motion,

shall be determined by the court in accordance with this section.

(2) The witness may not be sworn for that purpose unless—

- (a) he has attained the age of 14 years; and
- (b) he has a sufficient appreciation of the solemnity of the occasion and of the particular responsibility to tell the truth which is involved in taking an oath.

(3) The witness shall, if he is able to give intelligible testimony, be presumed to have a sufficient appreciation of those matters if no evidence tending to show the contrary is adduced (by any party).

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(4) If any such evidence is adduced, it is for the party seeking to have the witness sworn to satisfy the court that, on a balance of probabilities, the witness has attained the age of 14 years and has a sufficient appreciation of the matters mentioned in subsection (2)(b).

(5) Any proceedings held for the determination of the question mentioned in subsection (1) shall take place in the absence of the jury (if there is one).

(6) Expert evidence may be received on the question.

(7) Any questioning of the witness (where the court considers that necessary) shall be conducted by the court in the presence of the parties, provided that the court shall exercise such measures available to it under Part IIIAA for the purposes of this subsection.

(8) For the purposes of this section—

(a) a person is able to give intelligible testimony if he is able to

(i) understand questions put to him as a witness; and

(ii) give answers to them which can be understood;

(b) “in the presence of the parties” includes by means of a video recording or audio visual link as set forth in Part IIIAA.

[Section 42 amended by 1994:20 effective 1 August 1994; Section 42 repealed and replaced by 2019 : 36 s. 46 effective 15 July 2022]

Reception of unsworn evidence of child

42A (1) Subsections (2) and (3) apply to a child who—

(a) is competent to give evidence in criminal proceedings; but

(b) by virtue of section 42(2) is not permitted to be sworn for the purpose of giving evidence on oath in such proceedings.

(2) The evidence in criminal proceedings of a child to whom this section applies shall be given unsworn.

(3) A deposition of unsworn evidence given by a child to whom this subsection applies may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

(4) A court in criminal proceedings shall accordingly receive in evidence any evidence given unsworn in pursuance of subsection (2) or (3).

(5) Where a child (the “witness”) who is competent to give evidence in criminal proceedings gives evidence in such proceedings unsworn, no conviction, verdict or finding in those proceedings shall be taken to be unsafe for the purposes of section 2 of the Criminal Appeal Act 1952 or section 17 of the Court of Appeal Act 1964 (which relate to grounds for allowing appeals) by reason only that it appears to the Court of Appeal that the witness was a child falling within section 42(2) (and should accordingly have given his evidence on oath).

(6) If such a witness wilfully gives false evidence in such circumstances that, had the evidence been given on oath, he would have committed perjury, he commits an offence and is liable on summary conviction to such fine as may be imposed on him under the Young Offenders Act 1950.

[Section 42A inserted by 2019 : 36 s. 46 effective 15 July 2022]

PART IIIAA

SPECIAL MEASURES FOR CHILD WITNESSES IN CRIMINAL CAUSES

Chapter 1

Preliminary

Interpretation of this Part

42B (1) In this Part—

“audio visual link” means facilities that enable audio visual communication whereby a party or a witness, while not present in the courtroom or other place where the proceeding is being held, is able to be seen and heard—

- (a) by a judicial officer and the jury (if there is one);
- (b) by a member of a special court;
- (c) by legal representatives acting in the proceeding;
- (d) by any person appointed by a judicial officer to assist the party or the witness; or
- (e) by parties to the proceedings;

“court” means any court in Bermuda;

“evidence” means evidence-in-chief or evidence given in cross-examination or re-examination;

“judicial officer” means—

- (a) the Chief Justice;
- (b) a Puisne Judge;
- (c) an Assistant Justice;
- (d) a magistrate;
- (e) the Registrar of the Court of Appeal or the Supreme Court;

“preliminary hearing” means a hearing under section 42F or a case management hearing under the Criminal Code Act 1907;

“proceeding” means any criminal proceeding, including a preliminary hearing;

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“Registrar” means the person appointed to hold that office pursuant to section 48 of the Supreme Court Act 1905;

“relevant proceeding” means a criminal proceeding for a relevant offence, whether or not the proceeding also relates to other offences;

“relevant offence” means—

- (a) a sexual offence;
- (b) another offence committed with respect to a child; or
- (c) any other offence where a child is a witness;

“sexual offence ” means an offence as defined in section 329D of the Criminal Code Act 1907, and any attempt to commit such an offence;

“special measure” means the giving of evidence by a child in criminal proceedings by a video recording, or audio visual link;

“video recording” means the recording by the use of any device in animated images of objects, events, organizations and persons, either in a moving or talking form, which can be reproduced and presented by the use of any technical means.

(2) Where it is stated that a person shall be guilty of contempt of court, he shall be deemed to have committed an offence under section 5 of the Administration of Justice (Contempt of Court) Act 1979.

[Section 42B inserted by 2019 : 36 s. 47 effective 15 July 2022]

Principles for dealing with a child witness

42C (1) Because a child tends to be vulnerable in dealings with a person in authority, it is the intention that a child who is a witness in a relevant proceeding be given the benefit of special measures when giving the child’s evidence.

(2) The following general principles apply when dealing with a child witness in a proceeding—

- (a) the child is to be treated with dignity, respect and compassion;
- (b) measures should be taken to limit, to the greatest practical extent, the distress or trauma suffered by the child when giving evidence;
- (c) the child should not be intimidated in cross-examination;
- (d) the proceeding should be resolved as quickly as possible.

(3) The provisions of this Part are subject to the need to ensure that there is a fair trial, and to any other factor that is relevant to the just determination of the matters at issue in the trial.

[Section 42C inserted by 2019 : 36 s. 47 effective 15 July 2022]

Evidence of children

Child witness eligible for special measures

- 42D (1) The purposes of this Part are, in the best interests of a child—
- (a) to preserve, to the greatest extent practicable, the integrity of an child's evidence; and
 - (b) to require, wherever practicable, that a child's evidence be taken in an environment that limits, to the greatest extent practicable, the distress and trauma that might otherwise be experienced by the child when giving evidence.
- (2) For the purposes of this Part, where a child witness is a person other than the accused in criminal proceedings relating to a sexual offence—
- (a) the child's evidence is to be prerecorded by video recording in accordance with this Part in advance of the hearing; and
 - (b) if the measure in paragraph (a) cannot be given effect, the child's evidence is to be given at the proceeding, but with the use of an audio visual link or with the benefit of a screen.

(3) Subsection (2) applies to a proceeding whether or not the proceeding also relates to offences other than the relevant offence.

[Section 42D inserted by 2019 : 36 s. 47 effective 15 July 2022]

Chapter 2

Prerecording of a child's evidence

Presentation of indictment

42E If the child's evidence is to be taken by video recording for a trial on indictment, the indictment shall be presented before the evidence can be taken under this Part.

[Section 42E inserted by 2019 : 36 s. 47 effective 15 July 2022]

Video recording of child's evidence

42F (1) In any criminal proceeding where a child is a witness, the child's evidence shall be taken and video recorded at a hearing under this Part (a preliminary hearing) presided over by a judicial officer.

(2) The video recording shall be presented, if taken for a trial, to the court at the trial.

(3) To facilitate the operation of this section for the taking of the child's evidence in a proceeding, the judicial officer may direct that the preliminary hearing be conducted by audio visual link.

(4) The provisions of chapter 3 relating to the use of an audio visual link in criminal proceedings apply for, and are not limited by, subsection (3).

(5) To facilitate the operation of this section for a trial, the judicial officer shall, if it is not practicable at the place of the trial to take and video record the child's evidence—

- (a) adjourn the trial to an appropriately equipped place to allow the evidence to be taken and video recorded; or
- (b) give such other direction the judicial officer considers appropriate including, for example, an order that the preliminary hearing be conducted by audio visual link.

(6) If the taking and video recording of the child's evidence is done at a place that is not a courtroom, the place is taken to be a courtroom for all purposes for the preliminary hearing.

(7) It does not matter whether or not the judicial officer presiding and the counsel appearing at the preliminary hearing are the same judicial officer presiding and counsel appearing at an adjourned preliminary hearing or at the proceeding in which the video recording is presented to the court.

(8) Also, it does not matter if, while the preliminary hearing is conducted, the judicial officer, counsel, parties and witnesses are at different places.

(9) In this section—

“appropriately equipped place”, for the taking and video recording of a child's evidence, means a court, or another place that is not a court, that—

- (a) is equipped to take and video record the child's evidence; and
- (b) allows the defendant, or his counsel, to see and hear the child while the child is giving evidence, for example, through an audio visual link.

[Section 42F inserted by 2019 : 36 s. 47 effective 15 July 2022]

Court to give directions for taking a child's evidence

42G (1) The judicial officer presiding at the preliminary hearing may make any order the judicial officer considers appropriate in relation to taking and video recording the child's evidence.

(2) Without prejudice to the generality of subsection (1), the judicial officer may give directions, with or without conditions, as to the conduct of the preliminary hearing, including directions as to—

- (a) whether the child is to be in the courtroom or a separate room when the child's evidence is being taken; and
- (b) the persons who may be present in the same room as the child when the child's evidence is being taken.

(3) Subsection (2)(b) is subject to section 42Q.

- (4) At the preliminary hearing—
- (a) the defendant—
 - (i) shall not be in the same room as the child when the child's evidence is being taken;
 - (ii) shall be capable of seeing and hearing the child while the child is giving evidence; and
 - (b) subject to the judicial officer's control, the child is to give his evidence-in-chief and be cross-examined and re-examined; and
 - (c) except as otherwise provided by this Part, the usual rules of evidence apply.

(5) The judicial officer may adjourn the preliminary hearing from time to time until the taking and video recording of the child's evidence is complete.

[Section 42G inserted by 2019 : 36 s. 47 effective 15 July 2022]

Use of prerecorded evidence

42H (1) The court may direct that all or part of a child's evidence contained in a video recording made under this Part for a proceeding, or in a lawfully edited copy of the video recording—

- (a) is as admissible as if the evidence were given orally in the proceeding in accordance with the usual rules and practice of the court; and
- (b) is, unless the relevant court otherwise orders, admissible in—
 - (i) any rehearing or retrial of, or appeal from, the proceeding; or
 - (ii) another proceeding in the same court for the relevant charge or for another charge arising out of the same, or the same set of, circumstances.

(2) The admissibility of the evidence for a proceeding is not affected only because the child turns 18 years before the evidence is presented at the proceeding.

(3) A reference in subsection (1) to a video recording made under this Part for a proceeding includes a reference to a copy of the video recording on a separate data storage medium if—

- (a) the video recording is a digital recording; and
- (b) the copy of the video recording on the separate data storage medium has been made by—
 - (i) the Registrar of a court; or
 - (ii) a person authorised by the Registrar of the court to copy the video recording onto the separate data storage medium.

[Section 42H inserted by 2019 : 36 s. 47 effective 15 July 2022]

Giving of further evidence

42I (1) This section applies if the child has given evidence under this Part for a proceeding and has been excused from further attendance as a witness at the proceeding.

(2) A party to the relevant proceeding may apply to the court for an order that the child—

- (a) give further evidence under this Part at another preliminary hearing; or
- (b) attend at the proceeding to give further evidence, but in such a case, the child's attendance shall be by audio visual link.

(3) The court shall not make the order unless satisfied that—

- (a) if the child were giving evidence before a court in the ordinary way, the child could be recalled to give further evidence; and
- (b) it would be in the interest of justice to make the order.

[Section 42I inserted by 2019 : 36 s. 47 effective 15 July 2022]

Court order that evidence not to be taken and recorded under this Part

42J (1) This section applies if a child is to give evidence in a criminal proceeding for a relevant offence.

(2) A party may apply to the court for an order that the child's evidence not be taken and video recorded under this Part.

(3) The court may make the order for good reason, having regard to the child's wishes and the purposes of this Part.

[Section 42J inserted by 2019 : 36 s. 47 effective 15 July 2022]

Chapter 3

Taking of child's evidence using audio visual link or screen

Audio visual links or screening arrangements shall be used

42K (1) This section applies subject to any direction that a child's evidence be taken by audio visual link.

(2) If there is an audio visual link within the court precincts, the judicial officer presiding at the relevant proceeding for the giving of evidence by the child shall direct that—

- (a) the child give evidence outside the courtroom and the evidence be transmitted to the courtroom by means of the audio visual link; or
- (b) while the child is giving evidence, the defendant be held in a room apart from the courtroom and the evidence be transmitted to that room by means of the audio visual link.

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(3) It is not necessary that the place outside the courtroom at which the child gives evidence under subsection (2)(a) be within the court precincts.

(4) If a direction is given under subsection (2)(a) or (b) and the audio visual link enables video recording, the child's evidence shall be video recorded.

(5) If a direction cannot be given under subsection (2)(a) or (b), a screen, one-way glass or other thing shall be so placed in relation to the child while he is giving evidence that the child cannot see the defendant.

(6) A video recording of the child's evidence made under this section, or a lawfully edited copy of the video recording, is, unless the relevant court otherwise orders, admissible in—

- (a) any rehearing or retrial of, or appeal from, the proceeding; or
- (b) another proceeding in the same court for the relevant charge or for another charge arising out of the same, or the same set of, circumstances.

(7) A reference in subsection (6) to a video recording made under this section includes a reference to a copy of the video recording on a separate data storage medium if—

- (a) the video recording is a digital recording; and
- (b) the copy of the video recording on the separate data storage medium has been made by—
 - (i) the Registrar of the court; or
 - (ii) a person authorised by the Registrar of the court to copy the video recording onto the separate data storage medium.

[Section 42K inserted by 2019 : 36 s. 47 effective 15 July 2022]

General criteria; use of audio visual links

42L (1) When giving a direction to allow the use of audio visual link for the appearance of a party or a witness in any proceeding, a judicial officer shall consider—

- (a) the nature and alleged circumstances to which the proceeding relates;
- (b) the religious beliefs of the party or the witness;
- (c) the absence or likely absence of the party or witness from Bermuda;
- (d) the availability, quality and security of the technology to be used; and
- (e) any other relevant matters, including the effective maintenance of the right of a party to a fair hearing.

(2) The availability, quality and security of technology shall be verified by the Registrar of the Supreme Court on the advice of the appropriate person qualified to advise on such quality and security.

[Section 42L inserted by 2019 : 36 s. 47 effective 15 July 2022]

General

Director of Public Prosecutions or applicant to advise that a child is to give evidence
42M (1) The Director of Public Prosecutions or applicant in a relevant proceeding shall inform the court, before the relevant proceeding starts, that a child may give evidence in the proceeding.

(2) For a trial on indictment, the Director of Public Prosecutions shall inform the court at the time the indictment is presented.

(3) A failure to comply with subsection (1) or (2) does not prevent a child's evidence being taken or video recorded under this Part or affect the admissibility of the evidence.

[Section 42M inserted by 2019 : 36 s. 47 effective 15 July 2022]

Identification of persons or things by child

42N (1) This section applies if a child is required to identify a person, including the defendant, or thing when the child is giving evidence.

(2) The court may make the orders or give such directions it considers appropriate to ensure that the identification is carried out in a way that limits the distress or trauma that might be suffered by the child when making the identification.

(3) The court shall also decide at what point during the giving of the child's evidence the identification is to be made.

[Section 42N inserted by 2019 : 36 s. 47 effective 15 July 2022]

Exclusion of public

42O (1) This section applies if—

- (a) a child is to give evidence under chapter 2 or this chapter in a relevant proceeding; or
- (b) the evidence of a child contained in either of the following is to be presented at a relevant proceeding—
 - (i) a video recording made under chapter 2 or this chapter, or a lawfully edited copy of the video recording;
 - (ii) the usable sound track of a video recording, or a lawfully edited copy of a video recording, mentioned in subparagraph (i), or a lawfully edited copy of the usable sound track.

(2) The court shall make an order excluding from the room in which it is sitting all persons, other than essential persons, while—

- (a) the child is giving the evidence mentioned in subsection (1)(a); or
- (b) the evidence mentioned in subsection (1)(b) is being presented.

(3) However, subsection (2) does not apply if—

- (a) the evidence to be given by the child, or presented at the proceeding, is other than in relation to a sexual offence; and
 - (b) the court is satisfied that the interests of justice require the evidence to be heard in open court.
- (4) In this section—
- “essential person”, for a proceeding, means any of the following persons—
- (a) a party to the proceeding and the party’s counsel;
 - (b) the Director of Public Prosecutions;
 - (c) a person whose presence is, in the court’s opinion, necessary or desirable for the proper conduct of the proceeding;
 - (d) a support person for the child under section 42P;
 - (e) a person who applies to the court to be present and whose presence, in the court’s opinion—
 - (i) would serve a proper interest of the person; and
 - (ii) would not be prejudicial to the best interests of the child.

[Section 42O inserted by 2019 : 36 s. 47 effective 15 July 2022]

Child entitled to support

- 42P (1) A child, while he is giving evidence in a relevant proceeding, is entitled to have near to him a person who may provide the child with support (a “support person”).
- (2) A person may be the child’s support person only if the person is approved by the court on application by the party proposing to call the child.
- (3) The support person shall be permitted to be in close proximity to the child, and within the child’s sight, while the child is giving evidence.
- (4) A child may, with the agreement of the court, waive the entitlement to a support person under subsection (1).
- (5) The court shall not agree to the waiver if the court considers the waiver is not in the child’s best interests.

[Section 42P inserted by 2019 : 36 s. 47 effective 15 July 2022]

Instructions to be given to jury where special measures are used

- 42Q (1) This section applies to a relevant proceeding on indictment if any of the following measures are taken—
- (a) a child’s evidence is taken in a way provided for under chapter 2 or this chapter;

- (b) a person is excluded under section 42O while a child gives evidence or a video recording, or usable sound track of a video recording, containing the evidence of a child is presented;
 - (c) a child has a support person under section 42P while the child gives evidence.
- (2) The judicial officer presiding at the proceeding shall instruct the jury that—
- (a) the special measure is a routine practice of the court and that they should not draw any inference as to the defendant's guilt from it;
 - (b) the probative value of the evidence is not increased or decreased because of the special measure; and
 - (c) the evidence is not to be given any greater or lesser weight because of the special measure.

[Section 42Q inserted by 2019 : 36 s. 47 effective 15 July 2022]

Orders, directions and rulings concerning child witnesses

42R The court may make any orders or give any directions or rulings it considers appropriate for this Part on the court's own initiative or on an application made to the court by a party to the proceeding.

[Section 42R inserted by 2019 : 36 s. 47 effective 15 July 2022]

Chapter 4

Dealing with recordings

Interpretation of Chapter 4

42S In this chapter—

“presiding judicial officer”, in relation to a recording, means the judicial officer presiding at—

- (a) the proceeding in which the recording is made;
- (b) the proceeding in which the recording is presented or to be presented, or case management rulings or directions or pretrial rulings or directions pursuant to this Part;

“recording” means a—

- (a) video recording of a child's evidence made under chapter 2; or
- (b) copy of a video recording mentioned in paragraph (a).

[Section 42S inserted by 2019 : 36 s. 47 effective 15 July 2022]

Approval to edit or otherwise change a recording

42T (1) An original recording shall not be edited or otherwise changed in any way.

(2) The presiding judicial officer may, on application, give approval for a copy of an original recording to be edited or changed in a stated way.

[Section 42T inserted by 2019 : 36 s. 47 effective 15 July 2022]

Court to give directions about the use or safe-keeping of a recording

42U (1) The presiding judicial officer may make any order the judicial officer considers appropriate about the use or safe-keeping of a recording.

(2) Without limiting subsection (1), the presiding judicial officer may give directions, with or without conditions, as to—

- (a) the persons, or classes of persons, who are authorised to have possession of a recording; and
- (b) the giving up of possession of a recording.

(3) The presiding judicial officer shall have regard to the following matters when deciding the persons, or classes of persons, who are authorised to have possession of a recording—

- (a) the need for counsel involved in the proceeding to have access to the recording;
- (b) the need to ensure that persons authorised to have possession of the recording are able to take appropriate special measures to ensure there is no unauthorised access to the recording.

(4) In this section, “use”, of a recording, includes copying of the recording.

[Section 42U inserted by 2019 : 36 s. 47 effective 15 July 2022]

Unauthorised possession of, or dealing with, recording

42V (1) A person commits an offence if he, without authority—

- (a) has a recording in his possession;
- (b) supplies, or offers to supply, a recording to any person other than an authorised person; or
- (c) plays, copies or erases a recording or permits a person to play, copy or erase a recording.

(2) A person has authority for subsection (1) only if the person has the possession or does the thing mentioned in subsection (1)—

- (a) in the case of a public official for a purpose connected with the proceeding for which the recording was made or any rehearing or re-trial of, or appeal from, the proceeding, or civil proceeding in which the recording may be presented in evidence; or
- (b) in any case, as authorised by a judicial officer under section 42U, or the Registrar of the Court.

(3) A person who contravenes this section shall be guilty of contempt of court and shall be proceeded against accordingly.

[Section 42V inserted by 2019 : 36 s. 47 effective 15 July 2022]

Publishing a recording prohibited

42W (1) A person shall not publish all or part of a recording other than with the approval of the relevant court and in accordance with any condition attached to the court's approval.

(2) An approval under subsection (1) may be given only in exceptional circumstances.

(3) In subsection (1)—

“publish” means disseminate to the public by radio or television or otherwise by the transmission of light or sound;

“relevant court” means the court presiding at the proceeding or preliminary hearing at which the recording is made or the court of trial or appeal at which the recording is presented.

[Section 42W inserted by 2019 : 36 s. 47 effective 15 July 2022]

PART IIIAB

SEXUAL ASSAULT COUNSELLING PRIVILEGE

Interpretation of Part IIIAB

42X In this Part—

“counsel a person” means—

- (a) to listen to and give verbal or other support, help or encouragement to the person, whether one-on-one or in a group; or
- (b) to advise, give therapy to or treat the person, whether one-on-one or in a group;

“counselled person” means a person who—

- (a) is being, or has at any time been, counselled by a counsellor; and
- (b) is, or has at any time been, a victim or alleged victim of a sexual offence as defined in section 42B;

“counsellor” means a person who—

- (a) has undertaken training or study, or has experience, that is relevant to the process of counselling other persons; and
- (b) in the course of the person's paid or voluntary employment, other than as a religious representative, counsels another person;

“essential person”, for a proceeding, means any of the following persons—

- (a) the Director of Public Prosecutions;
- (b) a witness giving evidence;
- (c) a person whom a child witness is entitled to have present in court under section 42P;
- (d) a person whose presence is, in the court's opinion, necessary or desirable for the proper conduct of the proceeding;
- (e) a person who applies to the court to be present and whose presence, in the court's opinion—
 - (i) would serve a proper interest of the counselled person; and
 - (ii) would not be prejudicial to a counselled person's interests;

“protected counselling communication” has the meaning given in section 42Y.

[Section 42X inserted by 2019 : 36 s. 48 effective 15 July 2022]

Meaning of protected counselling communication

42Y (1) A protected counselling communication is an oral or written communication made in confidence—

- (a) by a counselled person to a counsellor;
- (b) by a counsellor to or about a counselled person to further the counselling process; or
- (c) about a counselled person by a parent, carer or other support person who is present to facilitate communication between the counselled person and a counsellor or to otherwise further the counselling process.

(2) But, a communication made to or by a medical practitioner about a physical examination of the counselled person conducted in the course of an investigation into an alleged sexual offence is not a protected counselling communication.

(3) For subsection (1), it does not matter whether the communication was made—

- (a) before or after the act or omission constituting the sexual offence committed or allegedly committed against the counselled person occurred; or
- (b) in connection with the sexual offence, or a condition arising from the sexual offence, committed or allegedly committed against the counselled person.

(4) A reference in this Part to a protected counselling communication includes a reference to—

- (a) a document to the extent it contains a protected counselling communication; or
- (b) evidence to the extent it discloses a protected counselling communication.

[Section 42Y inserted by 2019 : 36 s. 48 effective 15 July 2022]

Sexual assault counselling privilege

42Z A person shall not do any of the following things in connection with a proceeding, other than with the leave of the court hearing the proceeding—

- (a) compel, whether by subpoena or otherwise, another person to produce a protected counselling communication to a court;
- (b) produce to a court, adduce evidence of or otherwise use, a protected counselling communication; or
- (c) otherwise disclose, inspect or copy a protected counselling communication,

for the trial or sentencing of a person for a sexual offence.

[Section 42Z inserted by 2019 : 36 s. 48 effective 15 July 2022]

Application for leave

42Z.1 (1) A party to the proceeding may apply for leave of the court under this subsection.

(2) As soon as reasonably practicable after the application is made, the applicant shall give the following persons a notice complying with subsection (3)—

- (a) each other party to the proceeding;
- (b) if the counsellor to whom the protected counselling communication relates is not a party to the proceeding, the counsellor.

(3) For the purposes of subsection (2), the notice is a written notice—

- (a) stating that an application for leave under this Part has been made in relation to a protected counselling communication; and
- (b) providing a description of the nature and particulars of the protected counselling communication (other than particulars disclosing the content of the communication).

(4) If the counselled person to whom the protected counselling communication relates is not a party to the proceeding, the Director of Public Prosecutions shall, as soon as practicable after a notice is given under subsection (2), give the counselled person a copy of the notice.

(5) But, the court may waive the requirement to comply with subsection (2) if, in relation to the proceeding—

- (a) notice has been given of a previous application for leave under this Part relating to the same protected counselling communication;
- (b) the counselled person to whom the protected counselling communication relates has consented to the waiver of the requirement; or
- (c) the court is satisfied that—

- (i) exceptional circumstances exist that require the waiver of the requirement; and
 - (ii) it is in the public interest to waive the requirement.
- (6) For the purposes of subsection (5)(b), the consent shall be given—
- (a) in writing; or
 - (b) if the counselled person cannot give written consent because of a disability, orally.

[Section 42Z.1 inserted by 2019 : 36 s. 48 effective 15 July 2022]

Deciding whether to grant leave

42Z.2 (1) The court may grant an application for leave under this Part if the court is satisfied that—

- (a) the protected counselling communication the subject of the application will, by itself or having regard to other documents or evidence produced or adduced by the applicant, have substantial probative value;
- (b) other documents or evidence concerning the matters to which the protected counselling communication relates are not available; and
- (c) the public interest in admitting the protected counselling communication into evidence substantially outweighs the public interest in—
 - (i) preserving the confidentiality of the protected counselling communication; and
 - (ii) protecting the counselled person from harm.

(2) In deciding the matter mentioned in subsection (1)(c), the court shall have regard to the following matters—

- (a) the need to encourage victims of sexual offences to seek counselling;
- (b) that the effectiveness of counselling is likely to be dependent on maintaining the confidentiality of the counselling relationship;
- (c) the public interest in ensuring victims of sexual offences receive effective counselling;
- (d) that disclosure of the protected counselling communication is likely to damage the relationship between the counsellor and the counselled person;
- (e) that the disclosure of the communication is likely to infringe a reasonable expectation of privacy;
- (f) the extent to which the communication is necessary to enable the accused person to make a full defence;
- (g) any other matter the court considers relevant.

(3) When deciding the application, the court may consider a written or oral statement made to the court by the counselled person outlining the harm the person is likely to suffer if the application is granted.

(4) If an oral statement is made by the counselled person under subsection (3), while the statement is being made the court shall exclude from the room in which the court is sitting—

- (a) anyone who is not an essential person; and
- (b) an essential person, if—
 - (i) the counselled person asks that the essential person be excluded; and
 - (ii) the court considers excluding the essential person would serve a proper interest of the counselled person.

(5) The court shall not disclose, or make available to a party to the proceeding, a statement made to the court under subsection (3).

(6) The court shall state its reasons for granting or refusing to grant the application.

(7) If the proceeding is a trial by jury, the court shall hear and decide the application in the absence of the jury.

[Section 42Z.2 inserted by 2019 : 36 s. 48 effective 15 July 2022]

43 *[Repealed by 2006:1]*

[Section 43 repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

PART IIIA

DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

43A *[Repealed by 2006:1]*

[Section 43A repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

43B *[Repealed by 2006:1]*

[Section 43B repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

43C *[Repealed by 2006:1]*

[Section 43C repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

43D *[Repealed by 2006:1]*

[Section 43D repealed by 2006:1 s.102 & Sch 4 effective 8 September 2008]

PART IV
PROOF OF DOCUMENTS

Public and official documents

Proof of proclamations, orders, or other statutory instruments

44 (1) Evidence, *prima facie*, of any proclamation, order or other statutory instrument issued before or after the passing of this Act by Her Majesty, or by the Privy Council, also of any proclamation, order, or other statutory instrument issued before or after the passing of this Act by or under the authority of any such Department of the Government of the United Kingdom or officer as is mentioned in the first column of the Third Schedule, may be given in all courts, and in all legal proceedings whatsoever, in all or any of the following modes—

- (a) by the production of the London or Edinburgh Gazette, purporting to contain such proclamation, order, or other statutory instrument; or
- (b) by the production of a copy of such proclamation, order, or other statutory instrument purporting to be printed under the authority of the Legislature, or under any official authority in Bermuda; or
- (c) by the production, in the case of any proclamation, order, or other statutory instrument issued by Her Majesty or by the Privy Council, of a copy or extract purporting to be certified to be true by the Clerk of the Privy Council or by any of the Lords or others of the Privy Council, and in the case of any proclamation, order, or other statutory instrument issued by or under the authority of any of the said Departments or officers, by the production of a copy or extract purporting to be certified to be true by the person or persons specified in the second column of the Third Schedule in connection with such Department or officer.

(2) Any copy or extract made in pursuance of this section may be in print or in writing, or partly in print and partly in writing.

Proof of statutory instrument

44A (1) Evidence, *prima facie*, of any statutory instrument made before or after the passing of this Act in Bermuda, by any person, Government Board or authority, may be given in all courts, and in all legal proceedings whatsoever—

- (a) by the production of the Gazette purporting to contain such statutory instrument; or
- (b) by the production of a copy of such statutory instrument purporting to be printed under the authority of the Legislature, or under any official authority in Bermuda.

(2) The method of proving a statutory instrument authorized by this section shall be in addition to any other method of proving such instrument.

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Proof of location of the baselines of the territorial waters

44B In any legal proceedings a certificate issued by or under the authority of the Deputy Governor stating the location of any baseline established by Her Majesty by the Bermuda (Territorial Sea) Order in Council 1988 shall be conclusive evidence of what is stated in the certificate.

Punishment of certain offences relating to forgery etc. of statutory instruments

45 Any person—

- (a) who prints any copy of any proclamation, order, or other statutory instrument, which falsely purports to be printed under the authority of the Legislature, or under any official authority in Bermuda, or tenders in evidence any copy of any proclamation, order or other statutory instrument which falsely purports to have been printed as aforesaid, knowing that the proclamation, order or other statutory instrument was not so printed; or
- (b) who forges or tenders in evidence, knowing the same to have been forged, any certificate under the provisions of section 44A authorized to be annexed to a copy of, or extract from, any proclamation, order, or other statutory instrument, commits an offence against this Act:

Punishment on conviction on indictment: imprisonment for 2 years.

Proof of acts of state etc.

46 Any proclamation, treaty, or other act of state of any part of Her Majesty's dominions or of any Foreign State may be proved in any court or before any person having by law, or consent of parties, authority to hear, receive and examine evidence, either by an examined copy, or by a copy purporting to be sealed with the seal of that part of Her Majesty's dominions or of the Foreign State to which the original document belongs.

Judicial notice of Judge's signatures

47 All courts, and every person having by law or by consent of parties, authority to hear, receive and examine evidence, shall take judicial notice of the signature of any of the Judges of the Supreme Court, or of the Supreme Court of Judicature in England, if such signature is attached or appended to any decree, order, certificate, or other judicial or official document.

Proof of judgments and judicial proceedings in courts out of Bermuda

48 Any judgment, decree, order, or other judicial proceeding of, and any affidavit, pleading or other document filed or deposited in, any court of justice in the United Kingdom or in any part of Her Majesty's dominions, or in any Foreign State, may be proved in any court or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence either by an examined copy or by a copy purporting to be sealed with the seal of the court to which the original document belongs, or in the event of the court having no seal, to be signed by the judge, or if there is more than one judge, by any one of the judges of the said court, if such judge attaches to his signature a statement in writing on the said copy that the court whereof he is a judge has no seal.

Proof of wills in causes and matters

49 (1) Subject to the right of any person to invalidate, disprove, or set aside, any will by lawful and equitable causes, any of the following documents shall be allowed and taken *prima facie* as good proof of such will in all causes and matters—

- (a) the probate of a will granted in Bermuda in accordance with law;
- (b) the probate of a will in the usual form, or an original will with the probate thereof, or an official copy of such will and a probate under the seal of the Prerogative Court of Canterbury, or under the seal of any other court or officer authorized to grant probate of wills in the United Kingdom or any other part of Her Majesty's dominions;
- (c) a will with the probate thereof, or any official copy of a will and probate heretofore granted in the United Kingdom or in any other part of Her Majesty's dominions under the seal of the appropriate authority in the United Kingdom or in that other part of Her Majesty's dominions where such original will has been proved, and is deposited and recorded;
- (d) an official copy of a will and probate certified under the seal of any part of Her Majesty's dominions where such will has been proved and recorded;
- (e) the probate of a will granted in any Islands of the West Indies (not being any part of Her Majesty's dominions) or in any part of the United States of America under the seal of the court or officer authorized to grant probate of wills in those places respectively, or an original will with the probate thereof under such seal, or any official copy of such will and probate under the seal of any such court or officer as aforesaid.

(2) The documents mentioned in subsection (1) shall be recorded in the Registry and copies thereof attested by the Registrar or by the Assistant Registrar shall be admitted in evidence in as full a manner as the documents themselves so directed to be recorded would have been.

Proof of registers of British ships

50 (1) The register of any vessel kept under Part IV of the Merchant Shipping Act 2002 may be proved either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original; and every such register or copy of a register, and every certificate of registry, granted under Part IV of the Merchant Shipping Act 2002, and purporting to be signed as required by law, shall be received in any court in Bermuda or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence, as proof, *prima facie*, of all the matters contained or recited in such register, when the register or such copy thereof as aforesaid is produced, and of all the matters contained or recited in, or endorsed on, such certificate of registry when such certificate is produced.

(2) Every person having charge of a register of British ships as mentioned subsection (1) shall furnish such certified copy to any person applying at a reasonable time

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for the same, upon payment of such sum as may be prescribed under the Court Fees and Expenses Act 1971 [title 8 item 7].

[Section 50 subsection (1) amended by 2002:35 s.255(2) & Sch 10 para 1 effective 7 April 2003]

Prints from films of Government documents etc.

50A (1) A print, whether enlarged or not, purporting to be made from a film of a document in the possession of the Government or any other person shall be admitted in evidence in any criminal or civil proceedings before any court on its production, upon proof that—

- (a) while the document was in the custody or control of the Government or the person concerned the film was taken in order to keep a permanent record thereof; and
- (b) the document photographed—
 - (i) was subsequently destroyed, whether deliberately or otherwise;
 - (ii) was so damaged as to be wholly or partly indecipherable;
 - (iii) was lost; or
 - (iv) had passed out of the custody or control of the Government or the person concerned.

(2) Proof—

- (a) that a print is made from a film of a document in the possession of the Government or any person; and
- (b) of compliance with the conditions in subsection (1),

may be given in respect of any document or groups of documents by a public officer, by an employee of the person concerned or by the person concerned himself, orally or by a certificate purporting to be signed by such public officer, employee or person.

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

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

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

(5) In this section—

“film” includes a photographic plate, microfilm and machine-copy;

“machine-copy” means a copy made of a document by any machine whereby an image of the contents of the document is reproduced from surface contact with the document or by the use of photo-sensitive material other than transparent photographic film;

“photograph” and “photographic copy” include a machine-copy.

Proof of conviction or acquittal of offences

51 (1) The trial and conviction or acquittal of any person for any offence may, upon proof of the identity of the person named therein, be proved by a certificate containing the substance and effect only (omitting the formal part) of the indictment, verdict and judgment, or of the information and conviction or acquittal, for such an offence purporting to be signed by the clerk of the court or other officer having the custody of the records where the person was convicted, or by the magistrate who convicted the offender.

(2) If the conviction was a conviction by a court of summary jurisdiction, it is presumed not to have been appealed against until the contrary is shown.

(3) Such fee as may be prescribed under the Court Fees and Expenses Act 1971 [title 8 item 7], shall be paid for any such certificate as is mentioned in subsection (1).

(4) Any person—

- (a) who, being authorized to sign a certificate of a conviction or acquittal, utters a false certificate; or
- (b) who, not being a person so authorized, signs such a certificate or utters a certificate with a false signature thereto,

commits an offence against this Act:

Punishment on conviction on indictment: imprisonment for 2 years.

Proof previous conviction by fingerprint

51A (1) A previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this section, and by showing that his finger-prints and those of the person convicted are the finger-prints of the same person.

(2) A certificate, purporting to be signed by or on behalf of the Commissioner of Police, containing particulars relating to a conviction extracted from the criminal records kept by him, and certifying that the copies of the finger-prints exhibited to the certificate are copies of the finger-prints appearing from the said records to have been taken from the person convicted on the occasion of the conviction, shall be evidence of the conviction and evidence that, the copies of the finger-prints exhibited to the certificate are copies of the finger-prints of the person convicted.

(3) A certificate, purporting to be signed by or on behalf of the Commissioner of Prisons or by or on behalf of the Commissioner of Police, and certifying that the finger-prints exhibited thereto were taken from any person while he was detained in any prison in connection with any criminal proceedings, certifying that the finger-prints exhibited thereto

were taken from him while he was so detained, shall be evidence in those proceedings that the finger-prints exhibited to the certificate are the finger-prints of that person.

(4) A certificate, purporting to be signed by or on behalf of the Commissioner of Police, and certifying that the finger-prints, copies of which are certified in accordance with subsection (2) to be copies of the finger-prints of a person previously convicted and the finger-prints certified in accordance with subsection (3) to be those of a person detained in any prison, or otherwise shown to be the finger-prints of the person against whom the previous conviction is sought to be proved are the finger-prints of the same person shall be evidence of the matter so certified.

(5) The method of proving a previous conviction authorized by this section shall be in addition to any other method of proving a conviction.

(6) References in this section and the preceding section to a conviction shall be deemed to refer also to the penalty imposed in respect thereof.

(7) For the purposes of this section "finger-prints" includes palm prints.

Proof of births, marriages or deaths registered outside Bermuda

52 (1) A copy of any entry in any register of births, marriages or deaths kept in any place outside Bermuda shall, subject as hereinafter in this section provided, if the copy purports to be certified as a true copy, be received in any court in Bermuda as *prima facie* evidence of the fact of the birth or death, or of the lawful solemnization of the marriage, to which the copy of the entry relates.

(2) For the purposes of this section—

(a) such certificate as aforesaid shall purport to be under the seal of the office or officer issuing the certificate; or

(b) such certificate shall be authenticated—

(i) where the register is kept in the United Kingdom or in any part of Her Majesty's dominions, then by a certificate purporting to be under the hand and seal of a Notary Public in the United Kingdom or (as the case may be) in that part of Her Majesty's dominions; or by a certificate purporting to be under the hand, and under the seal of the court of which he is a member, of any judge or magistrate of that part of Her Majesty's dominions, or by a certificate purporting to be under the seal of that part of Her Majesty's dominions or of any province or island thereof, and under the hand of any person authorized to affix such seal; or

(ii) where the register is kept in any city, town or borough in the United Kingdom or in any part of Her Majesty's dominions, then by a certificate purporting to be under the hand of the Mayor or Chief Clerk, and under the seal of the city, town or borough; or

(iii) where the register is kept in a place out of the United Kingdom or Her Majesty's dominions, then by a certificate purporting to be under the

hand, and under the seal of the court of which he is a member, of any judge of a court exercising jurisdiction in such place; or by a certificate under the hand and seal of a Notary Public in that place; or by a certificate under the hand and seal of a British diplomatic officer or of a British consular officer.

(3) In this section—

- (a) “British consular officer” means any British consul-general, consul or vice-consul;
- (b) “British diplomatic officer” means any British ambassador, minister or envoy, and the first or principal secretary of any British embassy or legation.

Proof of deeds etc. executed in Her Majesty’s dominions

53 Any conveyance, deed, letter of attorney or other power in writing executed in the United Kingdom signed by and sealed with the official seal of any person specified in the Third Schedule, any conveyance, deed, letter of attorney or other power in writing heretofore executed or hereafter to be executed out of Bermuda in the United Kingdom or in any part of Her Majesty’s dominions the execution of which is proved by the acknowledgment of the party so executing the same or by the affidavit or declaration in writing of one of the attesting witnesses made before the Mayor or other principal civic officer of any city or town or borough corporate in the United Kingdom or in any part of Her Majesty’s dominions, or before the Governor or Officer Administering the Government or Chief Justice of any part of Her Majesty’s dominions, or before the chief or senior judge of any court of justice in any part of Her Majesty’s dominions, or before any notary public in the United Kingdom or in any part of Her Majesty’s dominions and attested by a certificate under the hand of such officer or person before whom such acknowledgment, affidavit or declaration was made, and the seal of such part of Her Majesty’s dominions or of such city or town or borough corporate, or of such court, or the seal of office of such officer or person, or the notarial seal of such notary public endorsed on or annexed to the document proved, shall be received in any court in Bermuda as sufficiently proved as if the same acknowledgement were made by the party in court, or as if the same witness were personally present in court and gave evidence of the due execution thereof.

Proof of deeds executed abroad out of Her Majesty’s dominions

54 Any conveyance, deed, letter of attorney or other power in writing heretofore executed or hereafter to be executed out of Bermuda in any place out of the United Kingdom or Her Majesty’s dominions the execution of which is proved by the acknowledgment of the party so executing the same or by the affidavit or declaration in writing of one of the attesting witnesses made before any British ambassador, minister or consular officer, or before the chief or senior judge of any court of justice, or before any notary public, and attested by a certificate under the hand of such officer, judge or notary public before whom such acknowledgment, affidavit or declaration was made and the official seal of such British ambassador, minister or consular officer or the seal of such court, or the notarial seal of such notary public, and endorsed on or annexed to the document proved, shall be received in any court in Bermuda as sufficiently proved as if the same acknowledgment were made

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by the party in court or as if the same witness were personally present in court and gave evidence of the due execution thereof.

Admissibility of examined or certified copies of books or documents of public character

55 (1) Whenever in the opinion of a court any book or other document is of such a public character as to be admissible in evidence on its mere production from the proper custody, and no Act or Act of the Parliament of the United Kingdom exists which renders its contents provable by means of a copy, any copy thereof, or extract therefrom, shall be admissible in evidence—

- (a) if it is proved to be an examined copy or extract; or
- (b) if it purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

(2) Without prejudice to anything in the Supreme Court (Records) Act 1955, the Registrar-General (Recording of Documents) Act 1955, the Land Title Registration Act 2011, or the Land Title Registrar (Recording of Documents) Act 2017, such officer shall furnish such certified copy or extract to any person applying at a reasonable time for the same upon payment of such sum as may be prescribed under the Court Fees and Expenses Act 1971.

[Section 55 subsection (2) amended by 2017 : 9 s. 11 effective 20 February 2017; Section 55 subsection (2) amended by 2017 : 47 s. 20 effective 2 July 2018]

Copies of entries in bankers' books receivable in evidence

56 Subject to the provisions hereinafter appearing a copy of any entry in a banker's book shall in all causes, arbitrations or proceedings in which evidence may be given be received as *prima facie* evidence of such entry, and of the matters, transactions and accounts therein recorded.

Proof that a book is a banker's book

57 (1) A copy of an entry in a banker's book shall not be received in evidence unless it is first proved that the book was, at the time of making 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 may be given by the banker or by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorized to take affidavits in the Supreme Court.

Verification of copy of entry in banker's book

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

(2) Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner or person authorized to take affidavits in the Supreme Court.

Case in which banker not compellable to produce banker's book

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

Power of court or Judge to order inspection; costs, enforcement, etc.

60 (1) On the application of any party to a cause, arbitration or proceeding in which evidence may be given, a court or judge 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.

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

(3) The costs of any application to a court or judge and the costs of anything done or to be done under an order of a court or judge, shall be in the discretion of the court or Judge, who may order the costs or any part thereof to be paid to any party by the bank where the costs have been occasioned by any default or delay on the part of the bank.

(4) Any such order against a bank may be enforced as if the bank were a party to the proceeding, or otherwise as the court or Judge may allow or direct.

Powers of magistrates, coroners, etc. with respect to bankers' books

61 Any magistrate or court of summary jurisdiction, coroner or marine court of enquiry, may, with respect to any proceeding before such officer or court in or over which such officer or court has lawful jurisdiction, exercise the powers of a Judge under section 59, and shall, in all such proceedings, receive in evidence any copy of an entry in a banker's book for the purposes mentioned in section 56 on receiving such proof on oath by *viva voce* testimony, as is required by section 57 and section 58.

Documents receivable without proof of seal, signature etc.

62 In the case of any document which, under this Act, or any other Act, or any Act of the Parliament of the United Kingdom, is receivable in evidence if it purports to be sealed or impressed with a stamp, or sealed and signed or signed and having a statement attached thereto, or signed alone, or impressed with a stamp and signed, in the manner directed in this or any such Act or Act of the Parliament of the United Kingdom, it shall not be necessary to prove such seal or stamp, where a seal or stamp is necessary, or such signature, or the truth of any statement directed to be attached thereto, or the official character of the person appearing to have signed the same, but every such document shall be admitted in evidence in every case in which the original record would have been admissible.

Comparison of disputed handwriting

63 Comparison of a disputed handwriting with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses, and such writings

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and the evidence of witnesses respecting the same may be submitted to the court and jury (if any) as evidence of the genuineness or otherwise of the writing in dispute.

Proof by other than attesting witnesses

64 (1) It shall not be necessary to prove by the attesting witness any document to the validity of which attestation is not requisite, and any such document may be proved as if there had been no attesting witness thereto.

(2) In all causes and matters any such document may be proved by admission.

Proof of instrument to validity of which attestation is necessary

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

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

Certifying false document an offence

66 Any person authorized or required by this Act to furnish any certified copies or extracts who wilfully certifies any document as being a true copy or extract, knowing that the document is not a true copy or extract (as the case may be) commits an offence against this Act:

Punishment on conviction on indictment: imprisonment for 18 months or a fine of \$480 or both such imprisonment and fine.

Forging seal, etc. of documents; supplemental powers of court

67 (1) Any person who forges the seal, stamp, or signature of any document mentioned or referred to in the foregoing provisions of this Act, or who tenders in evidence any such document with a false or counterfeit seal, stamp or signature thereto, knowing the seal, stamp or signature to be false or counterfeit, commits an offence against this Act.

Punishment on conviction on indictment: imprisonment for 3 years.

(2) Whenever any such document is as mentioned in subsection (1) has been admitted in evidence, the court or the person who admitted the document may direct it to be impounded and kept in the custody of some officer of such court, or other proper person, until further order by such court or person or by a Judge.

Provisions of Part IV to be cumulative

68 The provisions of this Part shall be deemed to be in addition to, and not in derogation to any powers of proving documents given by any Act or Act of the Parliament of the United Kingdom, or existing at common law.

PART IVA
WAYS OF GIVING EVIDENCE IN PROCEEDINGS

Interpretation of Part IVA

68A In this Part—

- (a) “court” means the Court of Appeal, the Supreme Court or the Magistrates’ Court;
- (b) “judicial officer” means—
 - (i) the Chief Justice;
 - (ii) a Puisne Judge;
 - (iii) an Assistant Justice;
 - (iv) a magistrate;
 - (v) a Registrar of the Court of Appeal or the Supreme Court; or
- (c) “party” means a party to a proceeding;
- (d) “witness” means a person who is obliged to give or has agreed to give a statement or evidence or both in any proceeding.

[Section 68A inserted by 2018 : 23 s. 16 effective 12 November 2020]

Ordinary way of giving evidence

68B (1) The ordinary way for a party or a witness to give evidence is—

- (a) in a criminal or civil proceeding, orally in a courtroom or place where the proceeding is being held, in the presence of—
 - (i) the judicial officer or, if there is a jury, the judicial officer and jury;
 - (ii) the parties to the proceedings and their counsel;
 - (iii) any member of the public who wants to be present, unless excluded by order of the judicial officer;
- (b) in a criminal proceeding, in an affidavit filed in the court or by reading a statement in a courtroom, if both the prosecution and the defendant consent to the giving of evidence in this form;
- (c) in a civil proceeding, in an affidavit filed in the court by reading a written statement in a courtroom or—
 - (i) if the rules of court permit or require the giving of evidence in this form; or
 - (ii) if both parties consent to the giving of evidence in this form.

(2) An affidavit or written statement referred to in subsection (1)(b) or (c) may be given in evidence only—

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- (a) if it is the affidavit or personal statement of the deponent or maker; and
- (b) if it does not contain a statement that is otherwise inadmissible under this Act.

[Section 68B inserted by 2018 : 23 s. 16 effective 12 November 2020]

Directions about alternative ways of giving evidence

68C (1) In any proceeding, the judicial officer may, either on the application of a party or a witness, or on the judicial officer's own initiative, direct that a party or a witness is to give evidence-in-chief and be cross-examined in an alternative way as provided in section 68E.

(2) An application for a direction under subsection (1) must be made to the judicial officer as soon as practicable before the proceeding is to be heard, or at any later time permitted by the court.

(3) A direction under subsection (1) that a party or witness is to give evidence in an alternative way may be made on the grounds of—

- (a) the nature and alleged circumstances to which the proceeding relates;
- (b) the age or maturity of the party or the witness;
- (c) any physical, intellectual, psychological or psychiatric impairment of the party or the witness;
- (d) any trauma suffered by the party or the witness;
- (e) the party's or witness's fear of intimidation;
- (f) the linguistic or cultural background or religious beliefs of the party or the witness;
- (g) the nature of the evidence that the party or the witness is expected to give;
- (h) the relationship of the party or the witness to any party to the proceeding;
- (i) the absence or likely absence of the party or witness from Bermuda;
- (j) the availability, quality and security of the technology to be used;
- (k) any other relevant matters, including the effective maintenance of the right of a party to a fair hearing.

(4) The availability, quality and security of technology in subsection (3)(j) shall be verified by the Registrar of the Supreme Court on the advice of the appropriate person qualified to advise on such quality and security.

(5) In giving directions under subsection (1), the judicial officer shall have regard to the nature of the proceeding and the need to ensure—

- (a) that there is a fair trial;
- (b) the comfort or views of the party or the witness and—

- (i) the need to minimise the stress on the party or the witness; and
- (ii) in a criminal proceeding, the need to promote the recovery of a complainant from the alleged offence; and
- (c) any other factor that is relevant to the just determination of the proceeding.

[Section 68C inserted by 2018 : 23 s. 16 effective 12 November 2020]

Chambers hearing before directions for alternative ways of giving evidence

68D If an application for directions is made under section 68C, before giving any directions about the way in which a party or a witness is to give evidence-in-chief and be cross-examined, the judicial officer—

- (a) shall give each party an opportunity to be heard in Chambers; and
- (b) may call for and receive a report from any person considered by the judicial officer to be qualified to advise on the effect on the party or the witness of giving evidence in the alternative way.

[Section 68D inserted by 2018 : 23 s. 16 effective 12 November 2020]

Alternative ways of giving evidence

68E (1) A judicial officer may direct, under section 68C, that the evidence of a party or a witness is to be given in an alternative way so that—

- (a) the party or the witness gives evidence—
 - (i) while in the courtroom but is unable to see or be seen by the defendant or witness; or
 - (ii) from an appropriate place outside the courtroom, either in Bermuda or elsewhere;
- (b) any appropriate practical and technical means may be used to enable the judicial officer, the jury (if any) and any counsel to see and hear the party or the witness giving evidence, in accordance with any rules made under section 75;
- (c) in a criminal proceeding, the defendant is able to see and hear the witness, except where the judicial officer directs otherwise.

(2) The judicial officer may admit evidence that is given substantially in accordance with the terms of a direction under section 68C, despite a failure to observe strictly all of those terms.

[Section 68E inserted by 2018 : 23 s. 16 effective 12 November 2020]

PART V

MISCELLANEOUS AND SUPPLEMENTAL PROVISIONS

Admissibility of documentary evidence as to facts in issue

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

- (a) if the maker of the statement either—
 - (i) had personal knowledge of the matters dealt with by the statement; or
 - (ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and
- (b) if the maker of the statement is called as a witness in the proceedings:

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

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

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

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

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

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the foregoing provisions of this section, the court may draw any reasonable inference from the form or contents of the documents 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 medical practitioner; and where the proceedings are with a jury, the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

(6) In this section—

- (a) “document” includes books, plans, drawings and photographs;
- (b) “statement” includes any representation of fact, whether made in words or otherwise.

Onus of proving exceptions, etc.

69A (1) Where the defendant to an information, an indictment or a complaint relies for his defence on any exception, exemption, proviso, excuse or qualification, whether or not it accompanies the description of the offence in the enactment creating the offence or on which the complaint is founded, the burden of proving the exception, exemption, proviso, excuse or qualification shall be on him.

(2) Subsection (1) is notwithstanding that the information or indictment contains an allegation negating the exception, exemption, proviso, excuse or qualification.

[Section 69A inserted by 2015 : 38 s. 90 effective 6 November 2015]

Weight to be attached to evidence

70 (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by virtue of section 69 regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent facts.

(2) For the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible by virtue of section 69 shall not be treated as corroboration of evidence given by the maker of the statement.

(3) In this section, “statement” has the meaning assigned to it in section 69(6).

Convictions as evidence in civil proceedings

70A (1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in Bermuda shall, subject to subsection (3), be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise

and whether or not he is a party to the civil proceedings; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.

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

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

(3) Nothing in this section shall prejudice the operation of section 70C or any other enactment whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

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

(5) Evidence that a person has been convicted of an offence, although in respect of that offence he has been rehabilitated under the Rehabilitation of Offenders Act 1977 [*title 8 item 40*], shall not be admissible under this section unless the court is satisfied that such conviction is relevant to an issue being tried.

Findings of adultery and paternity as evidence in civil proceedings

70B (1) In any civil proceedings—

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

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

(2) In any civil proceedings in which by virtue of this section evidence has been admitted that a person has been found to have committed adultery or to have been adjudged to be the father of a child—

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

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

(4) Section 70A(4) shall apply for the purposes of this section as if the reference to subsection (2) were a reference to subsection (2) of this section.

Conclusiveness of convictions for purposes of defamation actions

70C (1) In an action for libel or slander in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in the action, proof that, at the time when the issue falls to be determined, that person stands convicted of that offence shall be conclusive evidence that he committed that offence; and his conviction thereof shall be admissible in evidence accordingly.

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

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

(4) Section 70A(4) and (5) shall apply for the purposes of this section as they apply for the purposes of that section, but as if in section 70A(4) the reference to subsection (2) were a reference to subsection (2) of this section.

Proof of absence from Bermuda

71 (1) In any proceedings, whether civil or criminal, evidence that a person is or has been absent from Bermuda may, without prejudice to any other method of proving such absence, be given in the manner hereinafter specified in this subsection—

- (a) as respects any person, by production of a certificate setting out that that person left Bermuda on a certain day and has not returned, or has returned on a certain day (as may be applicable) and purporting to be signed by the Chief Immigration Officer; or

- (b) as respects a person who is or was at the time when he last left Bermuda a member of any part of the armed forces, being a person whose presence in Bermuda was occasioned solely by reason of his being a member of the armed forces, by the production of a certificate setting out that that person left Bermuda on a certain day and has not returned on a certain day (as may be applicable) and purporting to be signed by the officer for the time being in command in Bermuda of that part of the armed forces of which that person is, or was at the time he has left Bermuda, a member; or
- (c) as respects a person who is, or was at the time when he last left Bermuda,—
 - (i) a civilian employee serving with any part of the armed forces, being a person whose presence in Bermuda was occasioned solely by such employment; or
 - (ii) the wife or dependent child of a member of any part of the armed forces, being a wife or child whose presence in Bermuda was occasioned solely by the presence of the member of whom she or the child is a dependent, by the production of a certificate setting out that that person left Bermuda on a certain day and has not returned, or has returned on a certain day (as may be applicable) and purporting to be signed by the officer for the time being in command in Bermuda of that part of the armed forces with which that person was serving, or, as the case may be, of that part of the armed forces of which the person upon whom the absent person is dependent was a member;

and any such certificate as aforesaid shall, until the contrary is proved, be taken as proof of the facts set out therein.

(2) In this section “the armed forces” means any of the naval, military or air forces of Her Majesty or of the United States of America.

Examination of witness under commission

72 Every judge, or commissioner or other person appointed to take the examination of witnesses under a commission to take evidence, shall take all such examinations upon oath, or affirmation in cases where under this Act affirmation is allowed, which may be administered either by such commissioner or person or by any Judge.

Costs of commission to examine witnesses

73 The costs attendant upon any commission to examine witnesses shall be costs in the cause unless otherwise directed by the judge making the order for the commission to issue, or by the court before which the cause is tried.

Administration of oaths by Justices

74 It shall not be lawful for any Justice of the Peace in Bermuda to administer or receive or cause or allow to be administered, or received, any oath, affidavit, or solemn

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affirmation, touching any matter whereof such Justice has not jurisdiction or cognizance by virtue of any Act or any Act of the Parliament of the United Kingdom:

Provided that nothing herein contained shall extend to any oath, affidavit, or solemn affirmation, before any justice, in any matter or thing touching the preservation of the peace, or the prosecution, trial, or punishment, of offences, or touching any proceedings before the Senate or the House of Assembly in Bermuda, or any Committee thereof, respectively, nor to any proceedings before any court of justice in Bermuda, nor to any oath, affidavit, or affirmation which may be required by the laws of the United Kingdom, or any part thereof, or of any part of Her Majesty's dominions, or of any Foreign State, to give validity to instruments of writing designed to be used in any such place.

Power of Supreme Court to make rules with respect to matters contained in Act

75 The provisions relating to the making of Rules of Court contained in the Supreme Court Act 1905 [*title 8 item 1*] shall, subject to the provisions of this Act, be deemed to extend and apply to the matters contained in this Act.

FIRST SCHEDULE
[deleted by 1971:111]

SECOND SCHEDULE

PROVISIONS OF LAW CONSTITUTING OFFENCES IN RESPECT OF WHICH THE
HUSBAND OR WIFE OF THE PERSON CHARGED MAY BE CALLED AS A WITNESS
WITHOUT THE CONSENT OF THE PERSON CHARGED

PART 1

Criminal Code [*title 8 item 31*]:

- section 177 (unlawful anal intercourse);
- section 178 (unnatural offences with animals and attempts to commit such offences);
- section 194 (administering drugs etc. with intent to procure miscarriage);
- section 225 (causing bodily injury by explosion);
- section 226 (placing an explosive substance in any place with intent to do harm);
- section 289 (attempted murder);
- section 290 (threatening to murder);
- section 291 (conspiracy to murder);
- section 303 (disabling in order to commit an indictable offence);
- section 304 (stupefying in order to commit an indictable offence);
- section 305 (wounding etc. with intent to do grievous bodily harm etc.);
- section 306 (doing grievous bodily harm etc.);
- section 307 (preventing escape from shipwreck);
- section 308 (administering poison with intent to harm);
- section 309 (assault occasioning bodily harm);
- section 311 (serious assaults);
- section 316 (failure to supply necessities whereby life is endangered);
- section 319 (setting man traps and spring-guns);
- section 323 (sexual assault);
- section 324 (sexual assault by person with AIDS, etc.);
- section 325 (serious sexual assault);
- section 326 (aggravated sexual assault);
- section 427 (arson of a building, a person being therein);
- section 430 (arson of a vessel with intent to cause death);

section 431 (casting away a vessel with intent to cause death).

PART II

Criminal Code [*title 8 item 31*]:

section 154 (keeping brothels);

section 177 (unlawful anal intercourse);

section 178 (unnatural offences against animals and attempts to commit such offences);

section 180 (unlawful carnal knowledge of girl under the age of fourteen years and attempts to commit such offences);

section 181 (unlawful carnal knowledge of girl between the ages of fourteen and sixteen years, and attempts to commit such offences);

section 182 (a householder permitting the unlawful carnal knowledge of a child on his premises);

section 182FA (Procuring children to participate in pornographic performances);

section 182HA (Attendance at pornographic performance involving a child);

section 183 (unlawful sexual intercourse with a person with severe mental impairment, and attempts to commit such offence);

section 184 (the procurement and attempted procurement of a person for immoral purposes);

section 185 (the procurement or attempted procurement of a person for immoral purposes by threats or drugs);

section 185A (Obtaining prostitution from person who is a child);

section 186 (living on the earnings of prostitution);

section 187 (exercising control over person with a view to his prostitution);

section 188 (abduction of child with intent to have unlawful carnal knowledge);

section 189 (conspiracy to induce person to permit unlawful carnal knowledge);

section 191 (incest);

section 201 (bigamy);

section 301 (child destruction);

section 317 (endangering the life of a servant or apprentice);

section 318 (endangering the life of a child by exposure);

section 323 (sexual assault);
section 324 (sexual assault by person with AIDS, etc.);
section 325 (serious sexual assault);
section 326 (aggravated sexual assault).

Summary Offences Act 1926 [*title 8 item 33*]:

Paragraphs (a) and (b) of section 2 (which relate to failure to maintain dependents).

PART III

Criminal Code [*title 8 item 31*]:

section 203 (taking away a child under the age of fourteen years from parental etc. care);

section 204 (deserting a child under the age of fourteen years);

section 286 (offences constituted by unlawful homicide);

section 303 (disabling with intent to commit an indictable offence);

section 304 (stupefying with intent to commit an indictable offence);

section 305 (wounding etc. with intent to do grievous bodily harm etc.);

section 306 (doing grievous bodily harm wounding etc.);

section 308 (administering poison with intent to do harm);

section 309 (assaults occasioning bodily harm);

section 311 (serious assaults);

section 316 (failure to supply necessities whereby life is endangered);

section 323 (sexual assault);

section 324 (sexual assault by person with AIDS, etc.);

section 325 (serious sexual assault);

section 326 (aggravated sexual assault).

Children Act 1998 [*title 27 item 26*]

EVIDENCE ACT 1905

any offence

[Second Schedule consequentially amended by 1993 : 2 effective 1 June 1993 and by 1998 : 38 effective 1 January 2000; Second Schedule amended by 2019 : 36 s. 49 effective 15 July 2022]

THIRD SCHEDULE
CERTIFICATION OF DEEDS ETC. BY OFFICERS
OF DEPARTMENTS OF THE GOVERNMENT OF THE UNITED KINGDOM

Department The Treasury	Certifying Officer Any Commissioner, Secretary or Assistant Secretary of the Treasury.
The Commissioners for executing the office of Lord High Admiral.	Any of the Commissioners for executing the office of Lord High Admiral, or either of the Secretaries of the said Commissioners.
Any Department in respect of which a Secretary of State may be appointed. The Defence Council.	Any Secretary or Under Secretary of State. Two members of the Defence Council, or the Secretary of the Defence Council or any person authorized by the Defence Council to act on their behalf.
The Committee of Privy Council for Trade.	Any member of the Committee of Privy Council for Trade, or any Secretary or Assistant Secretary of the said Committee.
The Post Office.	The Postmaster-General or a secretary or assistant secretary of the Post Office.
Any Department in respect of which a Minister may be appointed.	The Minister or a secretary of the Minister or any person authorized by the Minister to act in his behalf.

[Assent Date: 26 August 1905]

[the Act, as printed, incorporates the former Part XXVIII of the Criminal Code, relating to Evidence in Criminal Causes]

EVIDENCE ACT 1905

[Amended by:

1907 : 13
1916 : 2
1928 : 21
1942 : 43
1945 : 32
1948 : 15
1948 : 25
1949 : 39
1949 : 40
1950 : 29
1950 : 76
1951 : 93
1952 : 3
1952 : 11
1954 : 28
1955 : 35
1955 : 36
1962 : 111
1970 : 271
1971 : 83
1971 : 111
1976 : 12
1979 : 17
1984 : 27
1988 : 57
1993 : 2
1994 : 20
1998 : 38
1999 : 8
2001 : 20
2002 : 35
2006 : 1
2009 : 5
2015 : 38
2015 : 37
2017 : 9
2017 : 47
2018 : 23
2019 : 36]