

**ACTS SUPPLEMENT**

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**Act 2**

*Code of Evidence Act*

**2006**

**LAWS OF SOUTHERN SUDAN**

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**SCHEDULE**

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## LAWS OF SOUTHERN SUDAN

### THE CODE OF EVIDENCE ACT, 2006

**In accordance with the provisions of Article 59(2) (b) read with Article (85) (1) of the Interim Constitution of Southern Sudan, 2005; the Southern Sudan Legislative Assembly with the assent of the President of the Government of Southern Sudan hereby makes the following—**

#### CHAPTER I

#### PRELIMINARY PROVISIONS

##### 1. Title and Commencement.

This Act may be cited as the “Code of Evidence Act, *Signed on 2006*” and shall come into force on the date of *20th October, 2006* signature by the President.

##### 2. Repeal and Saving.

The Evidence Act, 2003, is hereby repealed; provided that, all proceedings, orders and regulations taken or made hereunder, except to the extent that they are cancelled by or are otherwise inconsistent with the provisions of this Act, shall remain in full force or effect, until such time as they are lawfully repealed or amended. In no event shall the provisions of this Act affect individual cases in process or already decided.

### 3. Authority and Application.

- (1) This Act is enacted under the powers granted under Schedule (B) of the Interim Constitution of Southern Sudan, and is part of the effort to establish minimum Southern Sudan standards and uniform norms in the areas of civil and criminal laws and judicial institutions.
- (2) The provisions of this Act represent the minimum standards that shall be applied to all the judicial proceedings in or before any court in Southern Sudan, except for civil and criminal proceedings under National Laws, which shall be governed by National Legislation.
- (3) The provisions of this Act shall not apply to proceedings before arbitration, unless otherwise specifically agreed to by the parties to a civil suit.
- (4) Subject to the provisions of any other Act, written law or of any rules of court, this Act shall apply to affidavits presented before any court in Southern Sudan.
- (5) Except as otherwise expressly provided herein, nothing in this Act shall be deemed to derogate from the provisions of any other written law which relate to matters of evidence.

## CHAPTER II

### DEFINITIONS

#### 4. Definitions.

In this Act, unless the context otherwise requires, the following words and expressions shall carry the meanings assigned to them hereunder—

**“Admissible”** means that the evidence presented to a court may be accepted and considered by that court;

“**Advocate**” means a person legally authorised to practise law in Southern Sudan, and any other recognised jurisdiction, and includes any person entitled to act as an advocate, whilst so acting in connection with the duties of his or her office;

“**Affidavit**” means a document that the law allows to be used, in certain situations and proceedings, in lieu of testimony;

“**Business**” means every business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit, including, but not limited to hospitals, churches, and schools;

“**Business records**” includes records of any form that meet the requirements of Chapter VIII of this Act;

“**Court**” includes all judges, magistrates, and all persons legally authorised to take evidence except arbitrators;

“**Evidence**” denotes the means by which an alleged matter of fact, the truth of which is submitted for investigation, is proved or disproved; and without prejudice to the foregoing generality, includes statements by accused persons, admissions and observations by the court in its judicial capacity;

“**Facts**” includes—

- (a) any item of significance, no matter how small it may be which the court considers in reaching its decision;
- (b) any thing, state of things, or relation of things, capable of being perceived by the senses; and
- (c) any mental condition of which any person is conscious.

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

“**Gazette**” means the Southern Sudan *Gazette*, established by the GoSS for publication of laws and any supplements thereto;

“**GoSS**” means the Government of Southern Sudan;

“**Judicial Proceedings**” means any proceedings before a court in the course of which it is lawful to take evidence under oath or custom;

“**Marriage**” means a marriage, which is by law or custom binding during the lifetime of the spouses thereto or as the case may be, unless dissolved according to law or custom and includes customary and traditional marriages;

“**National Laws**” or “**National Legislation**” means those laws and legislation enacted by the Government of National Unity;

“**Offence**” includes the abetment of, or an attempt to commit, the offence;

“**Person**” includes a natural person, firm, association, organisation, partnership, business organisation, corporation, or public entity;

“**President**” means the person serving as the President of GoSS;

“**Privilege**” is a rule of law that is to protect a particular relationship or interest, either permits a witness to refrain from giving testimony he or she otherwise could be compelled to give, or permits someone, usually one of the parties to prevent the witness from revealing certain information;

“**Public Body**” means—

- (a) GoSS, Legislative, Executive, Judiciary or any Ministry, the Bank of Southern Sudan, or any corporation, institution or undertaking thereof;

- (b) any State government, Legislative, Executive, Judiciary, Ministry or department, institution, or undertaking thereof;
- (c) a local authority; or
- (d) any authority, board, commission, committee or other body, whether paid or unpaid, which is invested with or is performing, whether permanently or temporarily, functions of a public nature;

**“Public Servant”** means a person in the service of, or holding office with a public body, whether that service or office is permanent, temporary, paid for or without pay;

**“Spouse”** means either the husband or wife of a marriage which is by law or custom binding during the lifetime of both parties, as the case may be, unless dissolved according to law or custom and includes customary and traditional marriages.

- (2) Terms not specifically defined herein, which are used in the Penal Code or the Code of Criminal Procedure as in force from time to time, shall have the meanings set forth in those Codes, unless the context is inconsistent, and except where it is otherwise expressly provided.

### CHAPTER III

#### PROVISIONS PERTAINING TO FACTS

##### 5. Proving and Disproving a Fact.

- (1) A fact is proved when, after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, in the circumstances of the particular case, to act upon the supposition that it exists.

- (2) A fact is disproved when, after considering the matters before it, the court either believes that it does not exist, or considers its non-existence so probable that a reasonable man ought, in the circumstances of the particular case, to act upon the supposition that it does not exist.
- (3) A fact is not proved when it is neither proved nor disproved.

## **6. Presumption of Fact.**

- (1) Whenever it is provided by law that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of such fact.
- (2) Whenever it is directed by law that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.
- (3) When one fact is declared by law to be conclusive proof of another, the court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving such fact.

## **7. General Restriction on Admissibility of Evidence.**

Subject to the provisions of this Act and of any other relevant law, no evidence shall be given in any suit or proceeding except evidence of the existence or non-existence of a fact in issue, and of any other fact declared by any provision of this Act to be relevant.

## **8. Facts Forming Part of the same Event or Transaction.**

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

**9. Facts Causing or Caused by other Facts.**

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

**10. Facts Relating to Motive, Preparation and Conduct.**

- (1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or a relevant fact.
- (2) The conduct of any party, or of any agent of a party, to any suit or proceeding, in reference to such suit or proceeding or in reference to any fact in issue therein or relevant thereto, and the conduct of any person against whom the subject of any proceeding is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.
- (3) When evidence of the conduct of a person is relevant, any statement made to him or her, or in his or her presence and hearing which affects such conduct, is relevant.
- (4) The word “conduct” in the foregoing subsections 2 and 3 does not include statements accompanying and explaining acts other than statements.

**11. Explanatory and Introductory Facts.**

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

**12. Statements and Actions Referring to Common Intention.**

Where there are reasonable grounds to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well as for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

**13. Facts Inconsistent with or Affecting Probability of other Facts.**

Facts not otherwise relevant are relevant—

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

**14. Facts Affecting Amount of Damages.**

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

**15. Facts Affecting Existence of Right or Custom.**

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

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



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

### **16. Facts Showing State of Mind.**

- (1) Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good will, towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when the existence of any such state of mind, state of body or bodily feeling is in issue or relevant.
- (2) A fact relevant within the meaning of subsection (1) above, as showing the existence of a state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.
- (3) Where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of subsection (1) above, the previous conviction of such person is also relevant.

### **17. Facts Showing System.**

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

### **18. Facts Showing Course of Business.**

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

## CHAPTER IV

**PROVISIONS REGARDING ADMISSIONS,  
CONFESSIONS AND OTHER TYPES OF EVIDENCE***Admissions***19. Admissions Defined Generally.**

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

**20. Statements by Party to a Suit, Agent or Interested Person.**

- (1) Statements made by a party to the proceeding, or by an agent for any such party, whom the court regards in the circumstances of the case as expressly or impliedly authorised by him or her to make them, are admissions.
- (2) Statements made by parties to suits, suing or being sued in a representative character, are not admissions unless they were made while the party making them held such a representative character.
- (3) Statements made by persons who have any proprietary or pecuniary interest in the subject matter of the proceeding, and who make the statement in the character of persons so interested are admissions.
- (4) Statements made by persons from whom the parties to a suit have derived their interest in the subject matter of the suit, are admissions if they are made during the continuance of interest of the persons making the statements.

**21. Statements by Persons whose Position or Liability must be Proved as against a Party to a Suit.**

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

**22. Statements by Persons Expressly Referred to by Party to a Suit.**

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

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

Subject to the provisions of this Act, an admission may be proved as against the person who makes the admission, or his or her representative in interest, but an admission cannot be proved by or on behalf of the person who makes it or by his or her representative in interest, except in the following cases—

- (a) when it is of such a nature that, if the person making it were dead, it would be admissible as between third persons under section 35 of this Act;
- (b) when it consists of a statement of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable; or
- (c) if it is relevant otherwise than as an admission.

**24. Oral Admissions as to Contents of Documents.**

Oral admissions as to the contents of a document may not be proved unless and until the party proposing to prove them shows that he or she is entitled to give secondary evidence of the contents of such document, under this Act or unless the genuineness of a document produced is in question.

**25. Admissions made without Prejudice in Civil Suits.**

- (1) In civil suits no admission may be admitted if it is made either upon an express condition that evidence of it is not to be given or in circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.
- (2) Nothing in subsection (1) above, shall be taken to exempt any advocate from giving evidence of any matter of which he or she may be compelled to give evidence under section 135 of this Act.

**26. Effect of Admissions.**

Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained.

*Confessions***27. Confession Defined.**

A confession is a direct acknowledgment of criminal guilt by an accused, and may be comprised of words or conduct, or a combination of words and conduct.

**28. Confessions and Admissions caused by Inducement, Threat or Promise.**

A confession or any admission of a fact tending to show guilt, made by an accused person is not admissible in a criminal proceeding if, in the opinion of the Court, the confession or admission appears to have been made under any inducement, torture, duress, or threat, or as a result of a promise made in connection with the charge against the accused person, by or from a person in authority, and which is sufficient, in the opinion of the court, to give the accused person grounds which would appear to him or her reasonable for supposing that by making the confession of the admission, he or she would gain an advantage or avoid an evil act of any nature in reference to the proceedings against him or her.

**29. Confessions made after Removal of Impression Caused by Inducement, Threat or Promise.**

If such a confession as is referred to in section 28, above, is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court, been fully removed, it is admissible.

**30. Confession of Accused while in Custody of Police Officer.**

No confession made by any person whilst he or she is in the custody of a police officer shall, be proved as against such person, unless such confession is made in the immediate presence of an attorney, a judge or magistrate.

**31. Confessions to Police Officers.**

No confession made to a police officer shall be proved against a person accused of any offence unless, such confession is confirmed by the accused before an attorney, judge or magistrate.

**32. Confession otherwise Admissible not made Inadmissible due to Promise of Secrecy.**

If a confession made by an accused person is otherwise admissible, it does not cease to be admissible merely because:— it was made under a promise of secrecy; in consequence of a deception practised on him or her for the purpose of obtaining such confession; or the person was drunk provided that the circumstances surrounding his or her confession indicate that the person understood what he or she was saying, or the confession was made in answer to questions which the accused need not have answered, whatever may have been the form of those questions, or he or she was not warned that he or she was not bound to make such confession or, he or she was not warned that such confession might be admissible as evidence against him or her.

**33. Information from Accused Leading to Discovery of Facts.**

Notwithstanding the provisions of sections 28, 30 and 39 of this Act, when any fact is discovered in consequence of information received from a person accused of any offence, such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

**34. Confession Implicating Co-accused.**

- (1) When two or more persons are being tried jointly for the same offence, and a confession made by one of such persons affecting him or herself and some others, of such persons is proved, the court may take the confession only as against the person who made the confession.
- (2) In this section “confession” means any words or conduct, or combination of words and conduct, which has the effect of admission in terms of either of an offence or substantially of all the facts which constitute an offence.

*Statements by Persons who Cannot be Called as Witnesses***35. Statement by Deceased Person.**

Statements, written or oral, of admissible facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case, appears to the court to be unreasonable, are themselves admissible in the following cases—

- (a) relating to cause of death: when the statement is made by a person as to the cause of his or her death, or as to any of the circumstances of the transaction which resulted in his or her death, in cases in which the cause of that person's death comes into question and such statements are admissible whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his or her death comes into question;
- (b) made in the course of business: when the statement was made by such person in the ordinary course of business, and in particular when it consists of an entry or memorandum made by him or her in books or records kept in the ordinary course of business or in the discharge of professional duty; or of an acknowledgment written or signed by him or her of the receipt of money, goods, securities or property of any kind; or of a document used in commerce, written or signed by him or her, or of the date of a letter or other document usually dated, written or signed by him or her;
- (c) against the interest of maker: when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or her or would have exposed him or her to a criminal prosecution or to a suit for damages;

- (d) an opinion as to public right or custom: when the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he or she would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen;
- (e) relating to existence of relationship: when the statement relates to the existence of any relationship by blood, marriage, or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised;
- (f) relation to family affairs: when the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree or upon any tombstone, family portrait or other thing on which such statement was made before the question in dispute was raised; and
- (g) relating to an event or transaction creating or asserting a custom—
  - (i) when the statement is contained in any deed or other document which relates to any such transaction as mentioned in section 15(a) of this Act, made by several persons and expressing feelings;
  - (ii) when the statement was made by a number of persons, expressing feelings or impressions on their part relevant to the matter in question.



**36. Admissibility of Evidence given in Previous Proceedings.**

- (1) Evidence given by a witness in a judicial proceeding is admissible in a subsequent judicial proceeding, or at a later stage in the same proceeding, for the purpose of proving the facts which it states, in the following circumstance—
  - (a) where the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or where his or her presence cannot be obtained without an amount of delay or expense which in the circumstances of the case the court considers unreasonable; and
  - (b) where, in the case of a subsequent proceeding—
    - (i) the proceeding is between the same parties or their representatives in interest;
    - (ii) the adverse party in the first proceeding had the right and opportunity to cross-examine; and
    - (iii) the questions in issue were substantially the same in the first as in the second proceeding.
- (2) For the purposes of this section—
  - (a) the expression “judicial proceeding” shall be deemed to include any proceeding in which evidence is taken by a person authorised by law to take that evidence under oath; and
  - (b) a criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused.

*Statements in Documents Produced in Civil Proceedings***37. Admissibility of Documentary Evidence as to Facts in Issue.**

- (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish such fact shall, on production of the original document, be admissible as evidence of such 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 or her personal knowledge) in the performance of a duty to record information supplied to him or her 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 or she is dead, or cannot be found, or is incapable of giving evidence, or if his or her attendance cannot be procured without an amount of delay or expense which in the circumstances of the case appears to the court unreasonable.
- (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 mentioned in subsection (1), above, shall be admissible 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; and
  - (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 the court may approve, as the case may be.
- (3) Nothing in this section shall render admissible 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 or her with his or her own hand, or was signed or initialed by him or her or otherwise recognised by him or her in writing as one for the accuracy of which he or she is responsible.
- (5) For the purpose of deciding whether or not a statement is admissible under this section, the court may draw any reasonable inference from the form or contents or the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a medical practitioner.

**38. Weight to be Attached to Statement Admissible under Section 37.**

- (1) In estimating the weight, if any, to be attached to a statement rendered admissible by section 37 above, 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 matter in which uncorroborated evidence is to be treated, a statement rendered admissible by section 37 above, shall not be treated as corroboration of evidence given by the maker of such a statement.

*Statements under Special Circumstances*

**39. Entries in Books of Account and Business Records.**

Entries in books of account and business records regularly kept in the course of business are admissible whenever they refer to a matter into which the court has to inquire, and provided they comply with Chapter VIII of this Act, such statements shall not alone be sufficient evidence to charge any person with liability.

**40. Entries in Public Records.**

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

**41. Statements etc., in Maps, Charts and Plans.**

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

**42. Statement of Fact Contained in Laws and Official Gazettes.**

When the court has to form an opinion as to the existence of any fact of a public nature, any statement which is made of it shall be admissible—

- (a) in any written national or Southern Sudan law, or in any notice purporting to be made in pursuance of any such written law, where the law or notice (as the case may be) purports to be printed by or under the authority of Southern Sudan; or
- (b) in any written law in force in any country, or in any notice purporting to be made in pursuance of any such written law, where the law or notice (as the case may be) purports to be printed or published by or under the authority of the Government of that country.

**43. Statements as to Law Contained in Books.**

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

*Extent to Which Statement is Admissible*

**44. Extent of Admissibility.**

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

*Judgments***45. Judgments Addressing Jurisdiction.**

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

**46. Judgments Concerning Property.**

- (1) A final judgment, order or decree of a competent court which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any specific thing, not as against any specific person but absolutely, is admissible when the existence of any such thing, is admissible.
- (2) Such judgment, order or decree is conclusive proof that—
  - (a) any legal character which it confers accrued at the time when such judgment, order or decree came into force or effect;
  - (b) any legal character to which it declares any such person to be entitled accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;
  - (c) any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease; and
  - (d) anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his or her property.

**47. Other Judgments of a Public Nature.**

Judgments, orders or decrees, other than those mentioned in section 46 above, are admissible if they relate to matters of a public nature relevant to the inquiry, but such judgments, orders or decrees are not conclusive proof of what they state.

**48. Inadmissible Judgments.**

Judgments, orders or decrees other than those mentioned in section 45, 46 and 47 above, are inadmissible except where the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Act.

**49. Proof that the Court was Incompetent or Judgment was Obtained by Fraud or Collusion.**

Any party to a suit or other proceeding may show that any judgment, order or decree which is admissible under the provisions of this Act and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or that it was otherwise obtained by fraud or collusion.

**50. Proof of Guilt.**

A final judgment of a competent court in any criminal proceedings which declares any person to be guilty of a criminal offence shall, after the expiry of the time limit for an appeal against such judgment or after the date of the decision of any appeal therein, whichever is the latest, be taken as conclusive evidence that the person so convicted was guilty of that offence as charged.

*Opinions***51. Opinions of Experts.**

When the court has to form an opinion upon a point related to a foreign law, or of science or art, or as to identity or genuineness of handwriting or finger print or other impressions, opinions upon that point are admissible if made by an expert specially skilled in such foreign law, science, art, or in questions as to identity or genuineness of handwriting or finger print or other impressions.

**52. Facts Bearing upon Opinions of Experts.**

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

**53. Opinion as to Handwriting.**

- (1) When the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is admissible.
- (2) For the purposes of subsection (1) above, and without prejudice to any other means of determining the question, a person is said to be acquainted with the handwriting of another person when he or she has seen that person write, or when he or she has received documents purporting to be written by that person in an answer to documents written by himself or herself or under his or her authority and addressed to that person, or when in the ordinary course of business documents purporting to be written by that person have been habitually submitted to him or her.



**54. Opinion Relating to Customs and Rights.**

- (1) When the court has to form an opinion as to the existence of any general custom or right, the opinions as to the existence of such custom or right of persons who would be likely to know of its existence if it existed are admissible.
- (2) For the purposes of this subsection (1) the expression “general custom or right” includes customs or rights common to any class of persons.

**55. Opinions of Persons with Special Knowledge.**

The opinions of persons having special knowledge are admissible when the court has to form an opinion as to—

- (a) the usages and tenets of any association, body of men or family;
- (b) the constitution and government of any religious or charitable foundation; or
- (c) the meaning of words or terms used in particular payam, county, state, or by particular classes of people.

**56. Opinion on Relationship.**

When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship of any person who, as a member of the family or otherwise, has special knowledge on the subject, is admissible; provided that, such an opinion shall not be sufficient to prove a marriage in a prosecution for adultery or in proceedings for a divorce, or in any proceedings for damages against an adulterer.

**57. Grounds of Opinion.**

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

*Character.*

**58. Character in Civil Suits.**

- (1) In civil suits, the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him or her is inadmissible except in so far as such character appears from facts otherwise admissible.
- (2) In civil suits, the fact that the character of any person is such as to affect the amount of damages, is admissible.

**59. Good Character in Criminal Cases.**

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

**60. Bad Character in Criminal Cases.**

- (1) In criminal proceedings the fact that the accused person has committed or had been convicted of or charged with any offence other than that with which he or she is being charged, or is of bad character, is inadmissible unless—
  - (a) such evidence is otherwise admissible as evidence of a fact in issue or is directly relevant to a fact in issue; or
  - (b) the proof that he or she has committed or been convicted of such other offence is admissible under section 16 or section 17 of this Act, to show that he or she is guilty of the offence with which he or she is being charged;

- (c) he or she has personally or by his or her advocate asked questions of a witness for the prosecution with a view to establishing his or her own character, or has given evidence of his or her own good character;
- (d) the nature or conduct of the defence is such as to involve imputations on the character of the complainant or of a witness for the prosecution; or
- (e) he or she has given evidence against any other person charged with the same offence,

with respect to the foregoing, the court may, in its discretion, direct that specific evidence on the ground of the exception referred to in subsection (1)(d) above shall not be admissible if, in the opinion of the court, the prejudicial effect of such evidence upon the person accused will so outweigh the damage done by imputations on the character of the complainant or of any witness for the prosecution as to prevent a fair trial.

- (2) Notwithstanding the provisions of subsection (1) above, evidence of previous conviction for an offence may be given in a criminal trial after conviction of the accused person, for the purpose of affecting the sentence to be awarded by the court.

## **61. Definition of “Character”.**

In sections 58, 59, and 60 of this Act, the word “character” includes both reputation and disposition; but, except as provided in section 59 of this Act, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

**CHAPTER V****PROVISIONS REGARDING PROOF***Facts Requiring No Proof.***62. Facts Judicially Noticed.**

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

**63. Facts of which Court shall take Judicial Notice.**

- (1) The courts shall take judicial notice of the following facts—
  - (a) the Constitutions, written laws, decisions, rules and principles, written or unwritten, having the force of law, whether in force or having such force as aforesaid before, at or after the commencement of this Act, at the GoSS or State level in any part of Southern Sudan;
  - (b) GoSS or State level rules of procedure;
  - (c) the general course of proceedings and privileges of the Southern Sudan Legislative Assembly but not the transaction in their journals;
  - (d) any formations or structures of the Sudan People's Liberation Army Forces and the Joint Integrated Units;
  - (e) the public seal of Southern Sudan, the seals of all the courts of Southern Sudan; and all seals which any person is authorised by any written law to use;

- (f) the accession to offices, names, titles, functions and signatures of public officers, if the fact of their appointment is published in the *Gazette*;
- (g) the existence, title and national flag of every Sovereign State recognised by the Republic of Sudan;
- (h) natural and artificial divisions of time, and geographical divisions of the world, and public holidays;
- (i) the physical extent of the territories comprised in all countries;
- (j) the commencement, continuance and termination of hostilities between Southern Sudan and any other state or body of persons;
- (k) the names of the members and officers of the court and of their deputies, subordinate officers and assistants, and all officers acting in execution of its process, and also of all advocates and other persons authorised by law to appear or act before it;
- (l) the regulations of the road on land or at sea or in the air;
- (m) the ordinary course of nature;
- (n) the true meaning and significance of English words;
- (o) all matters of general or local notoriety; and
- (p) all other matters of which it is directed by any written law to take judicial notice.

- (2) In all cases within subsection (1) above, and also on all matters of public history, literature, science or art, the court may resort for its assistance to appropriate books or documents of reference.
- (3) If the court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it considers necessary to enable it to do so.

#### **64. Facts Admitted in Civil Proceedings.**

No fact needs to be proved in any civil proceeding in which the parties thereto or their agents agree to admit at the hearing, or which before the hearing they agreed, by writing under their hands, to admit, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings; provided that, the court may in its discretion require the facts admitted to be proved otherwise than by such admissions.

#### *Oral Evidence*

#### **65. Oral Evidence.**

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

#### **66. Oral Evidence must be Direct.**

- (1) Oral evidence must in all cases be direct evidence.
- (2) For the purposes of subsection (1) above, “**direct evidence**” means—
  - (a) with reference to a fact which could be seen, the evidence of a witness who says he or she saw it;

- (b) with reference to a fact which could be heard, the evidence of a witness who says he or she heard it;
  - (c) with reference to a fact which could be perceived by any other sense or in any other manner, the evidence of a witness who says he or she perceived it by that sense or in that manner;
  - (d) with reference to an opinion or to the grounds on which that opinion is held, the evidence of the person who holds that opinion or, as the case may be, who holds it on those grounds.
- (3) With respect to the foregoing, the opinion of an expert expressed in any treaties commonly offered for sale, and the grounds on which such opinion is held, may be proved by the production of such treaties if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable.
- (4) If oral evidence refers to the existence or condition of any material thing, other than a document, the court may, if it thinks fit, require the production of such material thing for inspection.

*Documentary Evidence.*

**67. Proof of Contents of Documents.**

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

**68. Primary Evidence.**

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

- (2) Where a document is executed in several parts, each part is deemed to be primary evidence of the document.
- (3) Where a document is executed in counterparts, each counterpart being executed by one or some of the parties only, each counterpart is deemed to be a primary evidence as against the parties executing it.
- (4) Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is a primary evidence of the contents of the rest; but where they are all copies of a common original they are not primary evidence of the contents of the original.

#### **69. Secondary Evidence.**

Secondary evidence includes—

- (a) certified copies given under the provisions hereinafter contained;
- (b) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (c) copies made from or compared with the original;
- (d) counterparts of documents as against the parties who did not execute them;
- (e) oral accounts of the contents of a document given by some person who has himself or herself seen it.

#### **70. Proof of Documents by Primary Evidence.**

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



**71. Proof of Documents by Secondary Evidence.**

- (1) Secondary evidence may be given to prove the existence, condition or contents of a document in the following cases—
  - (a) when the original is shown or appears to be in the possession or power of—
    - (i) the person against whom the document is sought to be proved; or
    - (ii) a person out of reach of, or not subject to, the process of the court; or
    - (iii) any person legally bound to produce it, and when, after the notice required by section 72 of this Act has been given, such person refuses or fails to produce it;
  - (b) when the existence, condition or contents of the original are proved to be admitted in writing by the person against whom it is proved, or by his or her representative in interest;
  - (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his or her own default or neglect, produce it in a reasonable time;
  - (d) when the original is of such a nature as not to be easily movable;
  - (e) when the original is a public document within the meaning of section 82 of this Act;
  - (f) when the original is a document of which a certified copy is permitted by this Act or by any written law to be given in evidence; or

- (g) when the original consists of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.
- (2) The admissibility of secondary evidence further qualified as follows—
- (a) in the cases mentioned in paragraphs (a), (c) and (d) of subsection (1), above, any secondary evidence in relation to the contents of the document is admissible;
  - (b) in the case mentioned in subsection (1)(b), above, the written admission is admissible;
  - (c) in the cases mentioned in subsection (1)(e) and (f), above, a certified copy of the document, but no other kind of secondary evidence is admissible;
  - (d) in the case mentioned in subsection (1)(g), evidence may be given as to the general result of the accounts or documents by any person who has examined them, and who is skilled in the examination of such accounts or documents.

## **72. Notice to Produce a Document.**

Secondary evidence of the contents of the documents referred to in section 71(1) (a) above, shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his or her advocate, such notice to produce it as is required by law or such notice as the court considers reasonable in the circumstances of the case; provided that, such notice shall not be required in order to render secondary evidence admissible in any of the following cases—

- (a) when the document to be proved is itself a notice;

- (b) when from the nature of the case, the adverse party must know that he or she will be required to produce it;
- (c) when it appears or is proved that the adverse party has obtained possession of the original document by fraud or force;
- (d) when the adverse party or his or her agent has the original document in court;
- (e) when the adverse party or his or her agent has admitted the loss of the document;
- (f) when the person in possession of the document is out of reach of, or not subject to, the process of the court;
- (g) in any other case in which the court deems fit to dispense with the requirement.

**73. Proof of Allegation that a Person Signed or Wrote a Document.**

When it is alleged that a document is signed by or has been written in whole or in part by a person, then the signature or the handwriting of that part of the document that is alleged to have been written by that person must be proved to be in his or her handwriting.

**74. Proof of Execution of Document Required by Law to be Attested.**

If a document is required by law to be attested, it shall not be admissible in evidence until at least one attesting witness has been called for the purpose of proving its execution; provided that, there is an attesting witness alive and subject to the process of the court and capable of giving evidence. It shall not be

necessary to call an attesting witness to prove the execution of any document which has been registered in accordance with the provisions of any written law, unless its execution by the person by whom it purports to have been executed is specifically denied.

**75. Proof Where no Attesting Witness Found.**

Where evidence is required to support a document which is required by law to be attested, and none of the attesting witnesses can be found, or where such witness is incapable of giving evidence or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable, it must be proved that the attestation of one attesting witness at least is in his or her handwriting, and that the signature of the person executing the document is in the handwriting of that person.

**76. Admission of Execution of Attested Document.**

The admission of a party to an attested document, of its execution by himself or herself, shall be sufficient proof of its execution as against him or her, though it is a document which is required by law to be attested.

**77. Proof where Attesting Witness Denies Execution.**

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

**78. Proof of Document not Required to be Attested.**

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

**79. Comparison of Signatures, Writings and Seals.**

- (1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal, admitted or proved to the satisfaction of the court to have been written or made by that person, may be compared by a witness or by the court with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any purpose.
- (2) The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person.
- (3) This section applies with necessary modifications to finger impressions.

**80. Reports by Government Analysts and Geologists.**

- (1) In criminal proceedings, any document purporting to be a report under the hand of a Government analyst or of any geologist employed in the public service upon any matter or thing submitted to him or her for examination or analysis may be used in evidence.
- (2) The court may presume that the signature to any such document is genuine and that the person signing it held the office and qualifications which he or she professed to hold at the time when he or she signed it.
- (3) When any report is so used the court may, if it thinks fit, summon the analyst or geologist, as the case may be, and examine him or her as to the subject matter thereof.

**81. Photographic Evidence Certificate.**

- (1) In criminal proceedings, a certificate in the form of the Schedule to this Act, given under the hand of an officer appointed by an order from the Minister of Legal Affairs and Constitutional Development for the purpose, who shall have prepared a photographic print or a photographic enlargement from an exposed film submitted to him or her, shall be admissible, together with any photographic prints, photographic enlargements and any other annex referred to therein, and shall be evidence of all facts stated therein.
- (2) The court may presume that the signature to any such certificate is genuine.
- (3) When a certificate is received in evidence under this section, the court may, if it thinks fit, summon and examine the person who submitted it.

*Public Documents.***82. Distinction between Public and Private Documents.**

- (1) The following documents are public documents—
  - (a) documents forming Acts, codes or records of Public Bodies of Southern Sudan, including the GoSS, states, official bodies and tribunals, public servants, the Southern Sudan and State Legislative Assemblies, the executives and the judiciary;
  - (b) documents forming the Acts or records of the Act of the government, sovereign authority, official bodies and tribunals, public servants, the legislative, judicial or executive branches of recognised countries;
  - (c) public records kept in Southern Sudan of private documents.
- (2) All documents other than public documents are private.

**83. Certified Copies of Public Documents.**

- (1) Every public servant having the official custody of a public document, which a person has the right to inspect, shall give that person, on demand, a copy of such document on payment of the legal fees prescribed thereon. The document provided shall be accompanied by a certificate written at the foot of such copy, or such other visible place, certifying that it is a true copy. Such certificate shall be dated and inscribed by such public servant with his or her name and his or her official title, and shall be sealed whenever such officer is authorised by law to make use of a seal, and such copies so certified shall be called certified copies.
- (2) Any public servant who by the ordinary course of official duty is authorised to deliver copies of public documents shall be deemed to have the official custody of such documents within the meaning of this section.

**84. Proof by Certified Copies.**

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

**85. Proof of Certain Public Documents.**

Without prejudice to any other mode of proof, *prima facie* evidence of the following public documents may be given as follows—

- (a) proceedings of the legislature of any country, as reflected in the official legislative journal, or in copies of such legislative journals provided that they are printed or published by or under the authority of such legislature or the government of such country;

- (b) acts, orders or notifications of any public body of Southern Sudan—
  - (i) by the records of the public body, certified by the head of the public body, or his or her official designee; or
  - (ii) by any document printed or published by or under the authority of GoSS or a Southern Sudan State Government.
- (c) proclamations, treaties and other acts of state of a foreign country, and judgments, decrees, orders and evidence of other judicial proceedings of any court of justice in a foreign country, and all affidavits, pleadings and other legal documents filed or deposited in any such court; or
- (d) public documents of any other class in a foreign country, by the original, or by a copy thereof bearing a certificate under the seal of a notary public or of the Republic of Sudan consular officer or diplomatic representative that the copy is duly certified by the officer having the lawful authority and custody of the original thereof, and upon proof of the character of the document according to the law of that foreign country.

*Presumptions as to Documents.*

**86. Certified Documents.**

- (1) The court shall presume to be genuine every document purporting to be a certificate, certified copy or other document which is—
  - (a) declared by law to be admissible as evidence of any particular fact;
  - (b) substantially in the form and purporting to be executed in the manner, directed by law in that regard; and



- (c) purporting to be duly certified by a public servant with the authority to do so.
- (2) The court shall also presume that any public servant by whom any such document purports to be signed or certified by him or her, when he or she signs it, the official character which he or she claims in such document shall be presumed to have been certified.

### **87. Records of Evidence.**

Whenever any document is produced before any court, purporting to be a record or memorandum of any evidence given in a judicial proceeding or before any officer authorised by law to take such evidence, and purporting to be signed by a judge or magistrate of any such officer as aforesaid, the court shall presume—

- (a) that the document is genuine;
- (b) that any statements as to the circumstances in which it was taken, purporting to be made by the person signing it, are true; and
- (c) that such evidence was duly taken.

### **88. Written Laws, *Gazettes* and Notices to be *Prima Facie* Evidence.**

The production of a copy of any written law, or of a copy of the *Gazette* containing any written law or any notice purporting to be made in pursuance of a written law, where such law or notice, as the case may be, purports to be printed by or under the authority of GoSS, shall be *prima facie* evidence in all courts and for all purposes whatsoever of the due making and tenor of such written law or notice.

**89. Gazettes, Newspapers, and Documents produced from Proper Custody.**

- (1) The court shall presume the genuineness of every document purporting to be—
  - (a) the official *gazette* of any country;
  - (b) a newspaper or journal of any country;
  - (c) a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.
- (2) Documents are said to be in proper custody if they are in the place in which and under the care of the person with whom they would naturally be. Custody is considered proper if it is proved that the document has a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

**90. Publications Generally.**

Where any publication or part thereof indicates or purports to indicate the name of any person by or on behalf or under the sponsorship of whom, or the place at which or date on which, such publication or any part thereof was edited, printed or published or any part thereof was contributed, it shall, in any proceedings for an offence under any written law or for contempt of any court, be presumed, until the contrary is proved, that such publication or part thereof was edited, printed or published, or that such part thereof was contributed, by or on behalf of or under the sponsorship of such person, or at such place or on such date, as the case may be.

**91. Maps or Plans.**

- (1) The court shall presume that maps or plans purporting to be made or published by the authority of the government, or any department of the government, of any country were so made or published and are accurate.
- (2) Maps or plans specially made for the purposes of any cause or other proceeding, civil or criminal, must be proved to be accurate.

**92. Laws and Judicial Reports.**

The court shall presume the genuineness of every publication purporting to be printed or published under the authority of the government of any country, which contains any of the laws of that country or any reports of decisions of the courts of any country.

**93. Power of Attorney.**

The court shall presume that every document purporting to be a power of attorney, which has been executed before and authenticated by a notary public, commissioner for oaths, or any court, judge, magistrate, Republic of Sudan consular officer or diplomatic representative, was so executed and authenticated.

**94. Certified Copies of Foreign Judicial Records.**

The court may presume that any document purporting to be a copy of a judgment or judicial record of any country is genuine and accurate, and that such judgment or record was pronounced or recorded by a court of competent jurisdiction, provided that, the document is certified by a Sudan consular officer or diplomatic representative in or for such country, in the manner commonly in use in that country for the certification of copies of judgments or judicial records.

**95. Books, Maps and Charts.**

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

**96. Telegraphic, Electronic Mail and Fax Messages.**

The court may presume that a message sent or forwarded from a telegraph office, electronic mail or facsimile machine to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; provided that, the court shall not make any presumption as to the person by whom such message was delivered for transmission.

**97. Presumption as to Due Execution.**

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

**98. Documents Twenty Years Old.**

(1) Where any document purporting or proved to be not less than twenty years old, is produced from a custody which the court in the particular case considers proper, the court may presume that the signature and every other part of such document, which purports to be in the handwriting of any particular person, is in fact that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the person by whom it purports to be executed and attested.

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

*Exclusion of Oral Evidence by Documentary Evidence.*

### **99. Written Contracts, Grants and Property Distributions.**

- (1) When the terms of a contract, grant or of any other disposition of property, have been reduced to the form of a document, and in all cases in which the law requires a matter to be reduced to the form of a document, no evidence shall be admissible as proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.
- (2) Notwithstanding the provisions of subsection (1) above—
  - (a) wills admitted into probate in Southern Sudan may be provided by the probate; or
  - (b) when a public servant is required by law to be appointed in writing, and when it is shown that any particular person has acted as such public servant, the writing by which he or she is appointed, need not be proved.
- (3) Subsection (1) above, applies equally to cases in which contracts, grants or dispositions of property are set forth entirely in one document, as well as to cases in which they are set forth in more than one document.

- (4) Where there are more than one original, only one original needs to be proved.
- (5) The statement in any document whatever, of a fact other than the facts referred to in subsection (1) above, shall not preclude the admission by oral evidence as to the same fact.

### **100. Evidence of Oral Agreement.**

When the terms of any contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a written document, have been proved according to section 99 of this Act, no evidence of any oral agreement or statement shall be admitted as between the parties to any such document or their representatives in interest for the purpose of contradicting, varying, adding to or subtracting from its terms, except in the following circumstances—

- (a) any fact may be proven which would invalidate such document, or which would entitle any person to any decree or order relating thereto, including acts for fraud, intimidation, illegality, improper execution, lack of capacity of any contracting party, lack or failure of consideration, or mistake of law or fact;
- (b) the existence of any separate oral agreement as to any matter on which the document is silent, and which is not inconsistent with the terms of the document, may be proven, and in considering whether or not this paragraph applies, the court shall consider the degree of formality of the document;
- (c) the existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under such document may be proved;

- (d) the existence of any separate subsequent oral agreement to rescind or modify any such document may be proved, except in cases in which such document is by law required to be in writing, or has been registered according to the law in force with respect to such document;
- (e) any use or custom by which incidents not expressly mentioned in any contract, are usually annexed to the contract of that type, may be proved, if the annexation of such incident would not be repugnant to, or inconsistent with, the express terms of the contract; or
- (f) any fact may be provided which shows in what manner the language of a document is related to existing facts.

**101. Evidence to Explain a Patent Ambiguity.**

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

**102. Evidence to Show Inapplicability.**

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

**103. Evidence to Explain a Latent Ambiguity.**

When language used in a document is plain, but lacks meaning in the context of the existing facts, evidence may be given to show that it was used in a peculiar sense.

**104. Evidence of Application to One of Several Subjects.**

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

**105. Evidence of Application to one of Several Sets of Facts.**

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

**106. Evidence to Explain Special Words.**

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

**107. Evidence of Variation given by Third Parties.**

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

**108. Wills.**

Nothing in this Chapter shall affect the law and the customs relating to the interpretation and construction of wills or other testamentary dispositions.



**CHAPTER VI****PROVISIONS REGARDING BURDEN OF PROOF AND  
EFFECT OF EVIDENCE***Burden of Proof.***109. Burden of Proof.**

- (1) A person seeking a judgment from a court regarding a legal right or liability which depends on the existence of facts which he or she asserts must prove, to the satisfaction of the court, that those facts exist.
- (2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies with that person.

**110. Incidence of Burden.**

The burden of proof in a suit or proceedings lies on that person whose argument would fail if no evidence were given by either party.

**111. Proof of Particular Fact.**

The burden of proof as to any particular fact lies with the person who wishes the court to believe in its existence, unless a law provides that the proof of that fact shall lie with another particular person.

**112. Proof of Admissibility.**

The burden of proof as to any fact necessary to be proved in order to enable a person to give evidence regarding any additional fact, is on the person who wishes to give such evidence.

**113. Burden on Accused in Certain Cases.**

- (1) Once the omissions or intentions which are legally necessary to constitute an offence have been established with respect to the person accused, the burden of proving the existence of any circumstances bringing the case within an exception or exemption from, or qualification to, the operation of the law creating the offence, and the burden of proving any fact especially within the knowledge of such person is upon him or her.
- (2) The person accused shall be entitled to be acquitted of the offence with which he or she is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence.
- (3) Nothing in this section shall—
  - (a) prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the person accused is charged;
  - (b) impose on the prosecution the burden of proving that the circumstances of facts described in subsection (1) above, do not exist; or
  - (c) affect the burden placed upon an accused person to prove a defence of intoxication or insanity.

**114. Proof of Special Knowledge in Civil Proceedings.**

In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him or her.

**115. Disproving Apparent Special Relationship.**

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

**118. Disproving Ownership.**

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

**119. Proof of Good Faith.**

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

**120. Conclusive Proof of Legitimacy.**

The fact that a person was born during the continuance of a valid marriage between his or her mother and father or any other customary practice, or within nine months after its dissolution, during which time the mother remains unmarried, shall be conclusive proof that he or she is the legitimate child of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he or she could have been begotten.

**119. Presumption of Death.**

Where it is proved that a person has not been heard of, for seven years by those who might be expected to have heard of him or her if he or she were alive, there shall be a refutable presumption that he or she is dead.

**120. Presumption of Likely Facts.**

The court may presume the existence of any fact which it thinks likely to have happened, giving due consideration to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

*Estoppel.***121. General Estoppel.**

When one person has, by his or her declaration, act or omission, intentionally caused another person to believe a thing to be true and to act upon such belief, and under the circumstances the belief was reasonable, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and such person or his or her representative, to deny the truth of that thing.

**122. Estoppel of Tenant or Licensee.**

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

**123. Estoppel of Acceptor of an Act of Exchange.**

No acceptor of an act of exchange shall be permitted to deny that the drawer had authority to draw such act or to endorse it; provided that, the acceptor of a act of exchange may deny that the act was in fact drawn or endorsed by the person by whom it purports to have been drawn or endorsed.

**124. Estoppel of Bailee, Licensee or Agent.**

No bailee, agent or licensee shall be permitted to deny that the bailor, principal or licensor, by whom any goods were entrusted to any of them respectively, was entitled to those goods at the time when they were so entrusted; provided that, any such bailee, agent or licensee may show that he or she was compelled to deliver up any such goods to some person who had a right to them as against his or her bailor, principal or licensor, or that his or her bailor, principal or licensor, wrongfully, and without notice to the bailee, agent or licensee, obtained the goods from a third person who has claimed them from such bailee, agent or licensee.

**CHAPTER VII****PROVISIONS REGARDING WITNESSES***Competency and Witnesses.***125. Competence of Witnesses.**

- (1) All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind or any similar cause.

- (2) A mentally disordered person or a lunatic is not incompetent to testify unless he or she is prevented by his or her condition from understanding the questions put to him or her and giving rational answers to them.

**126. Evidence of Children and Corroboration Required in Criminal Cases.**

Evidence of a child of seven years or younger is inadmissible on behalf of the prosecution in proceedings against an accused and shall not be convicted on such evidence unless it is corroborated by other material evidence implicating him or her thereof.

**127. Mute Witnesses.**

- (1) A witness who is unable to speak may give his or her evidence in any other manner in which he or she can make it intelligible, for example, by writing or by sign. All writings must be written, and the signs made in an open court.
- (2) Evidence so given shall be deemed to be oral evidence.

**128. Competence of Parties and Spouses.**

- (1) In civil proceedings, the parties to the suit, and the spouse of any party to the suit, shall be competent witnesses.
- (2) In criminal proceedings every person charged with an offence, the spouse of the person charged, shall be a competent witness for the defence at every stage of the proceedings, whether such person is charged alone or jointly with any other person.
- (3) The person charged shall not be called as a witness except upon his or her own motion or by way of an application.

- (4) Except as provided in subsection (3) above, the spouse of the person charged shall not be called as a witness except upon the application of the person charged.
- (5) The failure of the person charged or of the spouse of that person to give evidence shall not be made the subject of any comment by the prosecution.
- (6) In criminal proceedings, the spouse of the person charged shall be a competent but not compellable witness for the person, in any case where such person is charged—
  - (a) with the offence of adultery;
  - (b) with certain offences against morality under the Penal Code; or
  - (c) in respect of an act or omission affecting the person or property of the spouse of such person or the children of either of them, and not otherwise.

*Compellability.*

**129. Compellability of a Witness.**

A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will incriminate, or may tend directly or indirectly to incriminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind, but no such answer which a witness is compelled to give shall subject him or her to any arrest or prosecution, or be proved against him or her in any criminal proceeding, except a prosecution for giving false evidence by such answer.

*Privilege of the Court and Witnesses.***130. Privilege of Court.**

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

**131. Communications during Marriage.**

No person shall be compelled to disclose any communication made to him or her during marriage, by the other spouse; nor shall a person be permitted to disclose such communication without the consent of the person who made it, or of his or her representative in interest, except in suits between the parties to the marriage or in any of the cases referred to in paragraphs (a), (b) and (c) of section 128 (6) of this Act.

**132. Privilege Relating to Official Records.**

Subject to the laws on public disclosure and production of government records and information, whenever it is stated under oath, whether by affidavit or otherwise, by a minister, public servant, or local authority, that he or she has examined the contents of any document forming part of any unpublished official records, the production of which document has been called for in any proceedings, and that he or she is of the opinion that such production would be prejudicial to the public interest, public security or the right to privacy of others, either by reason of the content thereof or of the fact that it is of the type which, on grounds of policy, should be withheld from such production, provided that—



- (a) the document shall not be admissible if the court, after due consideration, determines, in a closed hearing on the issue, that such production would, in fact, be prejudicial to the public interest, public security or the right to privacy of others, service and that the prejudice outweighs the evidentiary need of the court for the production and admissibility of the document; or
- (b) the privilege shall be denied and the document shall be produced, and shall be admissible if the finding of the court in the hearing is to the contrary.

### **133. Privilege of Official Communications.**

Subject to the laws on public disclosure and production of government records and information, no public servant shall be compelled to disclose communications made by any person to him or her in the course of his or her duty, that public interest, public security or the right to privacy of others would suffer harm by the disclosure unless—

- (a) if the court, after due consideration, determines in a closed hearing on the issue, that public interest, public security or the right to privacy of others would suffer harm by such a disclosure and that harm outweighs the evidentiary need of the court for the disclosure of the statement, then the public servant shall not be compelled to disclose the communication; or
- (b) the privilege shall be denied and the communication shall be disclosed, and be admissible if the finding of the court in the hearing is to the contrary.

**134. Privilege Relating to Information of Commission of Offences.**

- (1) No judge, magistrate, attorney or police officer shall be compelled to say when and where he or she got any information as to the commission of any offence, and no revenue officer shall be compelled to say where he or she got any information as to the commission of any offence against the law relating to the public revenue or to income tax, customs or excise.
- (2) For the purposes of this section, “revenue officer” means any officer employed in or about the business of any branch of the public revenue, including any branch of the income tax, customs or excise departments.

**135. Advocate and Client Privilege.**

- (1) No advocate shall at any time be permitted, unless with his or her client’s express consent, to disclose any communication made to him or her in the course and for the purpose of his or her employment as such advocate, by or on behalf of his or her client, or to state the contents or condition of any document with which he or she has become acquainted in the course of and for the purpose of his or her professional employment, or to disclose any advice given by him or her to his or her client in the course of and for the purpose of such employment; provided that, nothing in this section shall protect from disclosure—
  - (a) any communication made in furtherance of any illegal purpose;
  - (b) that a crime is about to be committed by or on behalf of the client; or

- (c) any fact observed by any advocate in the course of his or her employment as such, showing that any crime or fraud has been committed since the commencement of his or her employment, whether the attention of such advocate was or was not directed to the fact by or on behalf of his or her client.
- (2) The protection given by subsection (1) above, shall continue after the employment of the advocate has ceased.
- (3) For the purposes of this section the term “advocate” includes attorneys who are duly qualified to practice law in jurisdictions other than Southern Sudan.
- (4) The provisions of this section shall apply to interpreters, and the clerks or employees of advocates.

**136. Waiving of Privilege of Advocates.**

- (1) If any party to a suit or proceedings gives evidence therein at his or her own instance or otherwise, he or she shall not be deemed to have consented thereby to such disclosure as is mentioned in section 135 (1) of this Act.
- (2) If any party to a suit or proceedings calls any advocate, interpreter, clerk or employee servant as a witness, he or she shall be deemed to have consented to such disclosure as is mentioned in section 135 (1) of this Act, only if he or she questions such witness on matters which, but for such question, the witness would not be at liberty to disclose.

**137. Communications with an Advocate.**

No one shall be compelled to disclose to the court any confidential communications which have taken place between him or her and his or her advocate.

**138. Privilege of Physician and Patient.**

- (1) Except as otherwise provided by the laws governing the medical profession, no physician shall at any time be permitted, unless with his or her patient's express consent, to disclose any communication made to him or her in the course and for the purpose of his or her employment as such physician, by or on behalf of his or her patient, or to state the contents or condition of any test, report or result, with which he or she has become acquainted in the course of and for the purpose of his or her professional services, or to disclose any advice given by him or her to his or her patient in the course of and for the purpose of such services.
- (2) The protection given by subsection (1) above, shall continue even after the rendering of services by the physician has ceased.

**139. Title Deeds and Incriminating Documents in the Hands of a Third Party.**

No witness who is not a party to the suit shall be compelled to produce his or her title deeds to any property, or any document by virtue of which he or she holds any property as pledgee or mortgagee, or any document the production of which might tend to incriminate him or her, unless he or she has agreed in writing with the person seeking the production of such deeds or document, or with some person through whom he or she claims, to produce them.

**140. Privileged Document in Possession of Another.**

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

**141. Business Records.**

- (1) A business, or officer of a business, shall not, in any legal proceedings to which the business is not a party, be compelled to produce any business records the contents of which can be proved under the provisions of Chapter V of this Act.
- (2) No business or officer of a business shall be summoned or called as a witness to prove any matters, transactions or accounts recorded in business records except by order of a judge or magistrate made for special cause.

**142. Accomplices.**

An accomplice shall be a competent witness against an accused person. A conviction shall not be illegal merely because it proceeds upon the uncorroborated evidence of an accomplice.

**143. Privileges to Exclude Oral Evidence of Documents.**

No person who is entitled to refuse to produce a document shall be compelled to give oral evidence of its contents.

**144. Number of Witnesses.**

No particular number of witnesses shall, in the absence of any provision of law to the contrary, be required for the proof of any fact.

*Examination of Witnesses***145. Court to decide as to the Admissibility of Evidence.**

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

- (2) The court shall admit the evidence of any fact if it thinks that the fact, if proved, would be admissible and not otherwise.
- (3) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact and the court is satisfied with such undertaking.
- (4) If the admissibility of one alleged fact depends upon another alleged fact being first proved, the court may, in its discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

**146. Types of Examination of Witnesses.**

- (1) The examination of a witness by the party who calls him or her shall be called his or her examination-in-chief.
- (2) The examination of a witness by the adverse party shall be called his or her cross-examination.
- (3) Where a witness has been cross-examined and is then examined by the party who called him or her, such examination shall be called his or her re-examination.

**147. Order and Direction of Examinations.**

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

- (2) Subject to the provisions of this Act, the examination-in-chief and cross-examination must be related to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified in his or her examination-in-chief.
- (3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.
- (4) The court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination respectively.

**148. Person Called to Produce a Document.**

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

**149. Witness to Character.**

A witness to character may be cross-examined and re-examined.

**150. Meaning of Leading Question.**

Any question suggesting the answer which the person putting it wishes or expects to receive, or suggesting a disputed fact as to which the witness is to testify, is a leading question.

**151. Leading Questions in Examination-in-chief and Re-examination.**

- (1) Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief or in a re-examination, except with the permission of the court.
- (2) The court shall permit leading questions as to matters which are introductory or undisputed, or which have in its opinion been already sufficiently proved.

**152. Leading Questions in Cross-examination.**

Leading questions may be asked in cross-examination.

**153. Examination as to whether certain formal matters are contained in a written document.**

Any witness may be asked, whilst under examination, whether any contract or grant of other disposition of property as to which he or she is giving evidence was not contained in a document, but if he or she says that it was, or if he or she is about to make any statement as to the contents of any document which in the opinion of the court, ought to be produced, the adverse party may object to such evidence being given until such document is produced, or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

**154. Cross-examination as to Previous Written Statements.**

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



**155. Cross-examination as to Credibility.**

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

- (a) to test his or her accuracy, veracity or credibility;
- (b) to discover who he or she is and what is his or her position in life; or
- (c) to shake his or her credibility, by questioning his or her character, although the answer to such questions might tend directly or indirectly to incriminate him or her or might expose or tend directly or indirectly to expose him or her to a penalty or forfeiture.

**156. Compulsion to Answer Questions as to Credibility.**

If any question asked, under section 155(c) above, for the purpose of affecting the credibility of the witness, relates to a matter relevant to the suit or proceeding, the provisions of section 129 of this Act, shall apply thereto.

**157. Cross-examination of Accused Person.**

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

**158. Discretion of Court to Compel Witness to Answer Questions as to Credibility.**

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

- (2) In exercising its discretion under this section, the court shall have regard to the following considerations—
- (a) such questions are proper if they are of such a nature that the truth or the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he or she testifies;
  - (b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he or she testifies; and
  - (c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his or her evidence.
- (3) The court may, if it deems fit, draw from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable to the witness.

### **159. Necessity for Grounds before Attacking Character.**

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

### **160. Indecent or Scandalous Questions.**

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

**161. Insulting or Annoying Questions.**

The court shall not allow any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

**162. Discretion to Allow Cross-examination of one's own Witness.**

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

**163. Exclusion of Evidence which Contradicts a Witness.**

When a witness has been asked and has answered any question which is relevant to the proceedings only in so far as it tends to shake his or her credibility by injuring his or her character, no evidence shall be given to contradict him or her. If he or she answers falsely, however, he or she may afterwards be charged with giving false evidence; provided that—

- (a) if a witness is asked whether he or she has been previously convicted of any crime and denies it, evidence may be given of his or her previous conviction; or
- (b) if a witness is asked any question tending to impeach his or her impartiality and answer by denying the facts suggested, evidence may be given of the facts.

**164. Evidence to Impeach the Credibility of a Witness.**

- (1) The credibility of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him or her—
  - (a) by the evidence of persons who testify that, from their personal knowledge of the witness, they do not believe him or her to be credible;

- (b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his or her evidence;
  - (c) by proof of former statements, whether written or oral, inconsistent with any part of his or her evidence which is liable to be contradicted; or
  - (d) when a man is prosecuted for rape or an attempt to commit rape, it may be shown that the alleged victim was of generally immoral character.
- (2) Any person, called as a witness pursuant to subsection (1)(a) above, who declares that another witness is not credible, may not, upon his or her examination-in-chief, give reasons for his or her belief, but he or she may be asked his or her reasons in cross-examination and the answers which he or she gives cannot be contradicted, though, if they are false, he or she may afterwards be charged with giving false evidence.

### **165. Circumstantial Questions to Confirm Evidence.**

When a witness testifies to a set of facts, he or she may be questioned as to any other circumstances which he or she observed at or near the time or place at which the fact occurred, if the court is of opinion that such circumstances, if proved, would tend to confirm the testimony of the witness as to the fact to which he or she testifies.

### **166. Proof of Consistency by Former Statements.**

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

**167. Evidence to Test Statement of Person not Available as Witness.**

Whenever any statement admissible under section 34 or section 35 of this Act is proved, all matters which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested, may be proved either to contradict or to show consistency, or in order to impeach or confirm the credibility of the person by whom it was made.

*Refreshment of Memory***168. Refreshing Memory by Reference to Contemporaneous Writing.**

- (1) A witness may, while under examination, refresh his or her memory by referring to any writing made by himself or herself at the time of the event or transaction of which he or she is questioned, or made so soon afterwards that the court considers it likely that the event or transaction was at that time fresh in his or her memory.
- (2) A witness may, while under examination, refresh his or her memory by referring to any writing made by any other person and read by the witness within the time mentioned in subsection (1) above, if when he or she read it, he or she knew it to be correct.
- (3) Whenever a witness may refresh his or her memory by reference to any writing, he or she may, with the permission of the court, refer to a copy of such writing, if the court is satisfied that there is sufficient reason for the non-production of the original.

- (4) An expert may refresh his or her memory by reference to professional reports.

### **169. Reference to Accurate Contemporaneous Record though facts themselves not Specifically Recalled.**

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

### **170. Rights of Adverse Party as to Contemporaneous Writing.**

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

### *Production of Documents*

### **171. Production of Documents of Doubtful Admissibility.**

- (1) A witness summoned to produce a document shall, if it is in his or her possession or power, bring it to court notwithstanding any objection which may be to its production or to its admissibility, but the validity of any such objection shall be determined by the court.
- (2) The court, if it thinks fit, may inspect the document, unless it is the type of document subject to section 132 of this Act, or take other evidence to enable it to determine on its admissibility.
- (3) If for such purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence.

**172. Document Produced in Answer to Notice to be given as Evidence if Required.**

When a party requests a document which he or she has given the other party notice to produce, and such document is produced and inspected by the party requesting its production, the requesting party is bound to give it as evidence, if the party producing it requires him or her to do so; provided that the document is admissible.

**173. Consequence of Refusal to Produce Document in an Answer to a Notice.**

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

**174. Extended Powers of Court for Purpose of Obtaining Proper Evidence.**

- (1) A judge or magistrate may, in order to discover or obtain proper evidence, ask any question, in any form, at any time, of any witness, or of the parties, about the facts or issues presented by the case; provided that, judgment shall be based only upon facts which are otherwise admissible and which have been duly proved.
- (2) Subsection (1) above, shall not authorise a judge or magistrate—
  - (a) to compel a witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under the provisions of this Chapter, if the question was asked or the document was requested by the adverse party;

- (b) to ask any question which would be improper for any other person to ask under section 158 or 159 of this Act; or
- (c) to dispense with the primary evidence of any document, except in the cases provided for in this Act.

*Examination by Experts*

**175. Examination by Assessors.**

Whenever a judge or magistrate shall try a case in which the opinion or judgment of experts is needed, the judge or magistrate may give leave to the expert to question and examine the witness, and the court shall give the order for the witness to cooperate and answer those questions of the expert that the court deems fit and proper.

*Improper Admission and Rejection of Evidence*

**176. Effect of Improper Admission or Rejection.**

The improper admission or rejection of evidence shall not be of itself a ground for a new trial or for reversal of any decision in a case if it shall appear to the court before which the objection is taken that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, and that if the rejected evidence has been received it would not, after examining all of the other facts, have varied the decision.

## CHAPTER VIII

### PROVISIONS RELATING TO BUSINESS RECORDS

**177. Mode of Proof of Entries in Business Records.**

Subject to the provisions of this Chapter, a copy of any entry in a business record shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions and accounts therein recorded.



**178. Proof and Verification of Copy.**

- (1) A copy of an entry in a business record shall not be admissible in evidence under section 177 above, unless it is first proved that—
  - (a) the business record was, at the time of making the entry, one of the ordinary records customarily kept by the business; (b) the business record is in the custody and control of the business;
  - (c) the entry was made in the usual and ordinary course of the business;
  - (d) the entry was made by a person with personal knowledge of the entry or transmitted to the person making the entry by someone under a business duty to report such matters; and
  - (e) the copy has been examined with the original entry, and is found to be accurate.
- (2) Such proof may be given by an officer of the business, or, in the case of the proof required under subsection (1)(e) above, by the person who has performed the examination, and may be given either orally or by an affidavit sworn in before a commissioner for oaths or a person authorised to take affidavits.
- (3) The reasonable costs incurred by the business in the production of such records shall be paid by the requesting party.

**179. Restriction on Compelling Production of Business Records.**

An officer of the business, shall not, in any proceedings to which the business is not a party, be compelled to produce any business record the content of which can be proved under this Chapter, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the court.

**180. Inspection of Business Records.**

- (1) On the application of any party to proceedings, a court may order that such party is at liberty to inspect and take copies of any entries in a business records for any of the purposes of such proceedings.
- (2) An order made under this section may be made either with or without summoning the officer of the business or any other party, and shall be served on the business at least three working days before it is to be executed, unless the court otherwise directs.

**181. Warrant to Investigate.**

- (1) Where it is proved on oath to a judge, magistrate, or an attorney that in fact, or according to reasonable suspicion, the inspection of any business record is necessary or desirable for the purpose of any investigation into the commission of an offence, the judge, magistrate, or attorney may by warrant authorise a police officer or other person named therein to investigate the account of any specified person in any business record, and such warrant shall be sufficient authority for the production of any such business record as may be required for scrutiny by the officer or person named in the warrant, and such officer or person may take copies of any relevant entry or matter in such business record.
- (2) Any person who fails to produce any such business record to the police officer or other person executing a warrant issued under this section or to permit such officer or person to scrutinize the business record or to take copies of any relevant entry or matter therein commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine or with both.

**182. Costs of Applications.**

- (1) The costs of any application to a court under or for the purposes of this Chapter and the costs of anything done or to be done under an order of a court made under or for the purposes of this Chapter, shall be in the discretion of the court, which may order them, or any part thereof, to be paid to any party by the business where the costs were occasioned by any default or delay on the part of the business.
- (2) An order under subsection (1) above, may be enforced as if the business was a party to the proceedings.

SCHEDULE

CERTIFICATE AS TO PHOTOGRAPHIC PRINT OR ENLARGEMENT

I, .....of .....being an officer appointed by the .....under..... (Gazette Notice No. .... of.....) hereby certify as follows-

- (1) On the ..... Day of .....20.... at ..... I received in a sealed packet numbered..... purporting to be signed by..... exposed photographic film(s) under cover of a letter, No. .... dated.....purporting to be sent by ....., requesting that I should process the said film(s) and prepare from them photographic print(s) and, or enlargement(s).
(2) The said letter and packet were each signed and dated by me and are attached hereto as annexes 1 and 2, respectively.
(3) In pursuance of the said request, I processed the said..... film(s) under my supervision and prepared from them ....photographic print(s) and, or enlargement(s) of each of them which were prepared and which, I have signed and now attach hereto as annex (es).....
(4) The photographic print(s) and,or enlargement(s) attached hereto as annex(s) ..... is or are as nearly as may be (an) exact reproduction(s) from the exposed film(s) submitted to me as aforesaid and have in no way been retouched, altered or otherwise interfered with in the process of their preparation.