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Civil Evidence Act, 1902

Act 16 of 1902

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Civil Evidence Act, 1902

Act 16 of 1902

Commenced on 10 April 1902

[This is the version of this document at 1 December 1998.]

An Act to alter, amend and declare in certain respects the law of evidence.

1. Short title

This Act may be cited as the Civil Evidence Act, 1902.

2. No witness to be excluded save under this Act

Any person not expressly excluded by this Act from giving evidence shall be competent and compellable to give evidence in any court in Swaziland.

3. Court to decide on admissibility

It shall only be competent for the court in which any case is pending to decide upon all questions concerning the competency of any witness, or the admissibility of any evidence.

4. Insanity or intoxication

No person appearing or proved to be afflicted with idiocy, lunacy or insanity, or labouring under any imbecility of mind arising from intoxication or otherwise, whereby he is deprived of the proper use of reason, shall in any case be competent to give evidence while under the influence of any such malady or disability.

5. Witnesses to be examined under oath

It shall not be competent to examine any person as a witness other than those mentioned in sections 7 and 8 except upon oath.

6. Form of oath

In all cases the oath to be administered to any person as a witness shall be administered in the form which most clearly conveys to him the meaning of the oath, and which he considers to be binding on his conscience.

7. Affirmation

- (1) In all cases where any person who is or may be required to take an oath objects to do so, he may make an affirmation in the words following: "I do truly affirm and declare that" (here insert the matter to be affirmed or declared), which affirmation or declaration shall be of the same force and effect as if such person had taken such oath.
- (2) Every person authorised, required or qualified by law to take or administer an oath shall accept, in lieu thereof, an affirmation or declaration as aforesaid.
- (3) The same penalties, punishments and disabilities which are respectively in force in regard to any neglect, refusal and false or corrupt taking or subscribing of any such oath, shall apply and attach in like manner to the neglect, refusal and false or corrupt making or subscribing respectively of any such affirmation or declaration mentioned in this section.

8. When unsworn testimony admissible

Persons produced for the purpose of giving evidence, who, from ignorance arising from youth, defective education, or other cause, are found not to understand the nature, or recognise the religious obligations of an oath, may, be admitted to give evidence in any court without being sworn or being upon oath or affirmation:

Provided that before any such person proceeds to give evidence, the judge or other judicial officer before whom he is offered as a witness, shall admonish him to speak the truth, the whole truth, and nothing but the truth, and shall further administer, or cause to be administered to him any form of admonition which either from his own statement, or other source of information, appears to be calculated to impress his mind and bind his conscience and which is not, as being of an inhuman, immoral or irreligious nature, obviously unfit to be administered; and

Provided, further, that any such person who wilfully and falsely states anything which, if sworn, would have amounted to the crime of perjury, shall be deemed to have committed the said crime, and shall, upon conviction, be subject to such punishment as is by law provided for in regard to the said crime.

9. Privilege of spouses

No husband shall be compelled to disclose any communication made to him by his wife during the marriage, and no wife shall be compelled to disclose any communication made to her by her husband during the marriage.

10. Privilege after dissolution of marriage

No husband or wife, after the dissolution of their marriage by a competent court, shall in any civil proceeding be compelled to give evidence as to any matter or thing which occurred during the subsistence of the said marriage, and as to which such husband or wife could not have been compelled to give evidence if their said marriage had still continued to subsist at the time when such proceeding is heard.

11. No witness compellable to answer questions which spouse might decline

No person shall in any civil proceeding be compelled to answer any question, or to give any evidence, which question or evidence the husband or wife of such person, if under examination as a witness in such proceeding, might lawfully refuse, and could not be compelled, to answer or give.

12. Privilege of professional advisers

No legal practitioner, duly qualified to practice in any court within Swaziland or elsewhere, shall in any legal proceeding be competent to give evidence against any person by whom he has been professionally employed or consulted, without the consent of such person, as to any fact, matter or thing, as to which such legal practitioner, by reason of such employment or consultation, and without such consent, would not be competent to give evidence in any similar proceeding depending in the Supreme Court of Judicature in England:

Provided that no legal practitioner shall in any proceeding by reason of such employment or consultation be incompetent or not legally compellable to give evidence as to any fact, matter or thing, relative to or connected with the commission of any crime or offence for which the person by whom such legal practitioner has been so employed or consulted is prosecuted in such case; and

Provided further that such fact, matter or thing has come to the knowledge of such legal practitioner before he was professionally employed or consulted for or with reference to the defence of such person against such prosecution.

13. Irrelevant evidence

No evidence as to any fact, matter or thing shall in any case be admissible which is irrelevant or immaterial and cannot conduce to prove or disprove any point or fact in issue in such case.

14. Evidence of character

No evidence as to the character of a party to any civil case shall be admissible or inadmissible in such case if it would be inadmissible or admissible in any similar case depending in the Supreme Court of Judicature in England.

15. Evidence of admitted facts

It shall not be necessary for a party in a case to give evidence to prove, nor shall it be competent for any such party to give evidence to disprove, any fact or facts admitted on the record of such case.

16. Best evidence to be produced

- (1) Every party on whom in any case it is incumbent to prove any fact, matter or thing shall be bound to give the best evidence of which from its nature such fact, matter or thing is capable.
- (2) No evidence as to any such fact, matter or thing shall be admissible in any case in which it is in the power of the party who proposes to give such evidence to produce, or cause to be produced, better evidence as to such fact, matter or thing, except by consent of the adverse party to the suit, or when such adverse party is by law precluded from disputing any such fact, matter or thing by reason of any admission proved to have been made by such party.

17. Proof of appointment to public office

Any evidence which would be admissible, and if credible would be deemed in any case depending in the Supreme Court of Judicature in England to be in law sufficient proof of the appointment of a person to any public office, or of the authority of a person to act as a public officer, shall be admissible, and, if credible, shall be deemed to be in law sufficient proof of such appointment or authority.

18. Certified copies or extracts of public documents admissible

- (1) Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from proper custody, any copy thereof or extract therefrom shall be admissible in evidence in any court or before any person having by law or by consent of parties authority to hear evidence:

Provided it be proved to be an examined copy or extract, or purports to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted.

- (2) Such officer is hereby required to furnish any person applying with such certified copy or extract at a reasonable sum not exceeding ten cents for every hundred words.

19. Production of official documents

Any original document in the custody or under the control of a government officer by virtue of his office shall be produced in any proceeding before any court only upon an order of the court or judicial officer before whom the case is pending.

20. Copies of official documents

- (1) Except when the original is ordered to be produced as provided in [section 19](#), it shall be sufficient to produce a copy of or extract from such document, certified as a true copy by the head of the department in whose custody or under whose control such document is.
- (2) Such certified copy or extract shall be receivable in evidence before any court, and shall be of like value and effect as the original document.

21. Charges for copying and certifying

- (1) There shall be payable by the party applying for any such copy or extract a stamp duty of fifty cents, together with a further duty of ten cents in respect of each hundred words or any part thereof contained in such copy or extract.
- (2) The stamps shall be affixed to the copy or extract, and shall be cancelled by the officer certifying the same.

22. Head of department not required to produce

- (1) It shall not be necessary for any head of a government department or office to appear in person to produce any original document in his custody or under his control as such officer, but it shall be sufficient if such document is produced by some person authorised by him to do so.
- (2) A certified copy or extract may be handed in to the court by the party who desires to avail himself thereof.

23. Penalty for false certificate

If an officer authorised or required by this Act to furnish any certified copy or extract wilfully certifies any document as being a true copy or extract, knowing that it is not a true copy or extract, as the case may be, he shall be guilty of an offence and liable upon conviction to imprisonment for a period not exceeding eighteen months.

24. Entries in bankers' books admissible

Any entry in a ledger, day-book, cash-book and other account book of any bank shall be admissible in all legal proceedings as *prima facie* evidence of the matters, transactions and accounts therein recorded, on proof being given by the affidavit of one of the directors, managers or officers of such bank or by other evidence, that such ledger, day-book, cash-book or other account book is, or has been one of the ordinary books of such bank, and that the said entry has been made in the usual and ordinary course of business, and that such book is in, or comes immediately from, the custody or control of such bank.

25. Examined copy admissible on notice

- (1) A copy of any entry in any ledger, day-book, cash-book or other account book used by a bank may be proved in legal proceedings as evidence of such entry without production of the original by means of the affidavit of a person who has examined it, stating the facts of the said examination, and that the copy sought to be put in evidence is correct.
- (2) Notwithstanding subsection (1) no ledger, day-book, cash-book or other account book of such bank nor a copy of an entry therein shall be adduced or received in evidence under this Act unless—
 - (a) ten days' written notice containing a copy of the entry proposed to be adduced and of the intention to adduce it in evidence is given by the party proposing so to adduce it to the other party to such legal proceedings:

Provided that the court may order such other notice to be given as it may deem fit; and

- (b) the other party is at liberty to inspect the original entry and account of which any such entry forms a part.

26. Application for order to inspect

On the application of any party to any legal proceedings who has received such notice, the court may by order allow such party to inspect and take a copy of any entry or entries in the ledger, day-book, cash-book or other account book of any such bank relating to the matters in question in such legal proceedings, and such order may be made by such court or member thereof at its or his discretion, either with or without summoning before it or him such bank or the other party to such legal proceedings, and shall be intimated to such bank at least three days before such copy is required.

27. Order that entries and copies not admissible

On the application of any party to any legal proceedings who has received notice, the court may order that such entry and copy mentioned therein shall not be admissible in evidence of the matters, transactions and accounts recorded in such ledger, day-book, cash-book and other account book.

28. Bank not compelled to produce without order

No bank shall be compelled to produce any of its ledgers, day-books, cash-books or other account books in any legal proceedings unless the court specially orders that such ledger, day-book, cash-book or other account book should be produced.

29. Provisions not applicable where bank is party

Sections 24 to 28 inclusive shall not apply to any legal proceedings to which any bank whose ledger, day-book, cash-book or other account book may be required to be produced in evidence is a party.

30. Examination of witnesses *de bene esse*

Nothing herein shall extend or be construed to prevent any court from allowing the deposition of any witness, who, by virtue of any rule or order of such court, has been examined *de bene esse*, to be admitted as evidence at the trial of any civil case in which such rule or order shall have been made.

31. Absent or deceased witnesses

The testimony of a deceased or absent witness who has been examined on oath at the trial of any former action between the same parties shall be admissible in every case, and may be proved and given in evidence in the same manner in which the testimony of such deceased or absent witness would be admissible and might be proved and given in evidence in any similar case depending in the Supreme Court of Judicature in England*.

32. Hearsay evidence

No evidence which is of the nature of hearsay evidence shall be admissible in any case in which such evidence would be inadmissible in any similar case depending in the Supreme Court of Judicature in England.

33. Privilege of witness

Except as provided in this Act, no witness shall be compellable to answer any question which such witness, if he were under examination in any similar case depending in the Supreme Court of Judicature

* This Act applies to civil proceedings only.

in England, would not be compellable to answer by reason that the answer of such witness might have a tendency to expose him to any pains, penalty, punishment or forfeiture, or to a criminal charge, or to degrade the character of such witness.

34. Witness not excused by reason that answer would establish a civil claim

A witness may not refuse to answer a question relevant to the issue, the answering of which has no tendency to accuse himself or to expose him to penalty or forfeiture of any nature whatsoever, by reason only or on the sole ground that the answering of such question may establish, or tend to establish, that he owes a debt, or is otherwise subject to a civil suit.

35. Privilege on ground of public policy or public interest

Except as in this Act provided, no witness shall be compellable or permitted to give evidence as to any fact, matter or thing, or as to any communication made to or by such witness, as to which, if the case were depending in the Supreme Court of Judicature in England, such witness would not be compellable or permitted to give evidence by reason that such fact, matter or thing, or communication, on grounds of public policy and from regard to public interest, ought not to be disclosed, and is privileged from disclosure.

36. Impeachment and support of witness' credibility

A party may impeach or support the credibility of any witness produced for or against him in any manner and by any evidence in and by which, if the case were depending in the Supreme Court of Judicature in England, the credibility of such witness might be impeached or supported by such person, and in no other manner and by no other evidence whatever.

37. Party not entitled to expenses

No person, who is a party to any suit, action or proceeding, and who is adduced as a witness therein in his own behalf, shall be entitled in the taxation of any costs which may be awarded against the opposite party to any expenses as a witness:

Provided that the court may, upon the application of any such party so adduced as a witness direct that such party be allowed his expenses if it is of opinion that he was a necessary witness.

38. When adduced by opposite party expenses receivable

Any party to any suit, action or proceeding who is adduced as a witness by the opposite party shall be entitled to his expenses as a witness in like manner as any other witness.

39. Evidence of disputed writings

Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses; and such writing and the evidence of witnesses respecting it may be submitted to the court in any case as evidence of the genuineness or otherwise of the writing in dispute.

40. Certificate of conviction or acquittal

If in any proceedings it is necessary to prove the trial and conviction or acquittal of any person charged with any offence, it shall be sufficient if a copy of the record of the trial, conviction, and judgment or acquittal, as the case may be, omitting the formal parts thereof, is produced, certified or purporting to be certified under the hand of the clerk of the court or other officer having the custody of the record of the court where such conviction or acquittal took place, or by his deputy; and it shall not be necessary to produce the record of the conviction or acquittal of such person or a copy thereof.

41. *Gazette* evidence in certain cases

- (1) If proof is required of the contents of any law, or of any other matter which has been published in the *Gazette*, judicial notice shall be taken of such law, or other matter.
- (2) A copy of the *Gazette*, or a copy of such law, or other matter purporting to be printed under the superintendence or authority of the government printer of Swaziland or of the Republic of South Africa, shall, on its mere production, be evidence of the contents of such law, or other matter, as the case may be.

42. Who empowered to administer oaths

Every court, judge, commissioner, arbitrator and other person having authority to hear evidence by law or by the consent of the parties may administer an oath, affirmation or admonition to all such witnesses as are legally called before them.

43. Where not otherwise provided law of England to be followed

In any case not provided for in this Act, the law as to admissibility of evidence and the competency, examination and cross-examination of witnesses in force in the Supreme Court of judicature in England shall be followed in like cases by the courts of Swaziland.