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THE EVIDENCE LAW

(1995 Revision)

AND

THE GRAND COURT LAW

(1995 Revision)

THE CIVIL EVIDENCE RULES

(2001 Revision)

Revised under the authority of the Law Revision Law (1999 Revision).

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Revised this 23rd day of January, 2001.

Note: This revision should be filed with both the Evidence Law (1995 Revision) and the Grand Court Law (1995 Revision).

CIVIL EVIDENCE RULES

(2001 Revision)

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CIVIL EVIDENCE RULES
(2001 Revision)

1. These rules may be cited as the Civil Evidence Rules (2001 Revision). Citation

2. In these rules- Definition
“section” means a section of the Evidence Law (1995 Revision). 1995 Revision

3. Subject to these rules and the Evidence Law (1995 Revision) and any other enactments relating to evidence, any fact required to be proved at the trial of any action begun by plaint or writ by the evidence of witnesses shall be proved by the examination of the witnesses orally in open court. General rule

4. (1) The court may, at or before the trial of an action begun by plaint or writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order. Evidence by affidavit

(2) An order under subrule (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the court thinks fit but, subject to any such terms and to any subsequent order of the court, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

(3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application these rules otherwise provides or the court otherwise directs, but the court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the court.

(4) A party to a cause begun by originating summons originating motion or petition desirous of cross-examining any person whose affidavit has been filed in the matter by any other party, may give notice to that other party of such desire and that other party shall thereupon, unless the court orders otherwise, arrange for the attendance of that person to be cross-examined before the court at the next hearing of the matter or at such other time as the court may otherwise direct.

5. (1) Without prejudice to rule 4, or any other law the court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order. Evidence of particular facts

- (2) The power conferred by subrule (1) extends in particular to ordering that evidence of any particular fact may be given at the trial
- (a) by statement on oath of information or belief;
 - (b) by the production of documents or entries in books;
 - (c) by copies of documents or entries in books; or
 - (d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement to that fact.
- Limitation of expert evidence 6. The court may, at or before the trial of any action, order that the Evidence number of medical or other expert witnesses who may be called at the trial shall be limited as specified by the order.
- Limitation of plans, etc., in evidence 7. Unless, at or before the trial, the court for special reasons otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least ten days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.
- Revocation or variation of orders under rules 4 to 7 8. Any order under rules 4 to 7 (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the court made at or before the trial.
- Application to trials of issues, references, etc. 9. These rules apply to trials of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of actions or hearing of any cause or matter.
- Depositions: when receivable in evidence at trial 10. (1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless -
- (a) the deposition was taken in pursuance of an order under Order 70 of the Grand Court Rules, 1995; or
 - (b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the court that the deponent is dead, or beyond the jurisdiction of the court or unable from sickness or other infirmity to attend the trial.
- (2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.
- (3) A deposition purporting to be signed by the person, before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

11. Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter.

Evidence at trial may be used in subsequent proceedings

12. (1) At any stage in a cause or matter the court may order any person to attend any proceedings in the cause or matter and produce any document, to be specified or described in the order, the production of which appears to the court to be necessary for the purpose of that proceeding.

Order to produce document at proceeding other than trial

(2) No person shall be compelled by an order under subrule (1) to produce any document at a proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

13. (1) Subject to subrules (2) to (5), a party to a cause or matter who desires to give in evidence at the trial or hearing of the cause or matter any statement which is admissible in evidence by virtue of section 32, 34 or 35 shall -

Notice of intention to give certain statements in evidence

- (a) in the case of a cause or matter which is required to be set down for trial or hearing or adjourned into court, within twenty-one days after it is set down or so adjourned, or within such other period as the court may specify; and
- (b) in the case of any other cause or matter, within twenty-one days after the date on which an appointment for the first hearing of the cause or matter is obtained, or within such other period as the court may specify,

serve on every other party to the cause or matter notice of his desire to do so, and the notice must comply with rule 14, 15 or 16, as the circumstances of the case require.

(2) Subrule (1) does not apply in relation to any statement which is admissible as evidence of any fact stated therein by virtue not only of section 32, 34 or 35 but by virtue also of any other statutory provision within the meaning of the Evidence Law (1995 Revision).

1995 Revision

(3) Subrule (1) does not apply in relation to any statement which any party to a probate action desires to give in evidence at the trial of that action and which is alleged to have been made by the deceased person whose estate is the subject of the action.

(4) Where by virtue of these Rules or of any order or direction of the court the evidence in any proceedings is to be given by affidavit then, without prejudice to subrule (2), subrule (1) does not apply in relation to any statement which any party to the proceedings desires to have included in any affidavit to be used on his behalf in the proceedings, but nothing in this subrule affects the powers of the court under rule 5.

(5) The court may direct that the notice need not be served on any party who, at the time when service is to be effected, is in default as to entry of appearance or who has no address for service.

Statement admissible by virtue of section 32; contents of notice

14. (1) If the statement is admissible by virtue of section 32 and was made otherwise than in a document, the notice must contain particulars of -

- (a) the time, place and circumstances at or in which the statement was made;
- (b) the person by whom, and the person to whom, the statement was made, and
- (c) the substance of the statement or, if material, the words used.

(2) If the statement is admissible by virtue of section 32 and was made in a document, a copy or transcript of the document, or of the relevant part thereof, shall be annexed to the notice and the notice must contain such, if any, of the particulars mentioned in (a) and (b) of subrule (1) as are not apparent on the face of the document or part.

(3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 17, the notice shall contain a statement to that effect specifying the reason relied on.

Statement admissible by virtue of section 34; contents of notice

15. (1) If the statement is admissible by virtue of section 34 the notice shall have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and shall contain -

- (a) particulars of -
 - (i) the person by whom the record containing the statement was compiled;
 - (ii) the person who originally supplied the information from which the record was compiled; and
 - (iii) any other person through whom that information was supplied to the compiler of that record, and, in the case of any such person as is referred to in subparagraphs (i) and (iii), a description of the duty under which that person was acting when compiling that record or supplying information from which that record was compiled, as the case may be;
- (b) if not apparent on the face of the document annexed to the notice, a description of the nature of the record which, or part of which, contains the statement; and
- (c) particulars of the time, place and circumstances at or in which that record or part was compiled.

(2) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 17, the notice shall contain a statement to that effect specifying the reason relied on.

16. (1) If the statement is contained in a document produced by a computer and is admissible by virtue of section 35, the notice shall have annexed to it a copy or transcript of the document containing the statement, or of the relevant part thereof, and shall contain particulars of a person who -

Statement admissible by virtue of section 35; contents of notice.

- (a) occupied a responsible position in relation to the management of the relevant activities for the purpose of which the computer was used regularly during the material period to store or process information;
- (b) at the material time occupied such a position in relation to the supply of information to the computer, being information which is reproduced in the statement or information from which the information contained in the statement is derived; or
- (c) occupied such a position in relation to the operation of the computer during the material period,

and where there are two or more persons who fall within any of the foregoing paragraphs and some only of those persons are at the date of service of the notice capable of being called as witnesses at the trial or hearing, the person particulars of whom are to be contained in the notice must be such one of those persons as is at that date so capable.

(2) The notice shall also state whether the computer was operating properly throughout the material period and, if not, whether any respect in which it was not operating properly or was out of operation during any part of that period was such as to affect the production of the document in which the statement is contained or the accuracy of its contents.

(3) If the party giving the notice alleges that any person, particulars of whom are contained in the notice, cannot or should not be called as a witness at the trial or hearing for any of the reasons specified in rule 17, the notice must contain a statement to that effect specifying the reason relied on.

17. The reason referred to in rules 14(3), 15(2) and 16(3) are that the person in question is dead, or beyond the seas or unfit by reason of his bodily or mental condition to attend as a witness or that despite the exercise of reasonable diligence it has not been possible to identify or find him or that he cannot reasonably be expected to have any recollection of matters relevant to the accuracy or otherwise of the statement to which the notice relates.

Reasons for not calling a person as witness

Counter-notice requiring person to be called as a witness

18. (1) Subject to subrules (2) and (3), any party to a cause or matter on whom a notice under rule 13 is served may within twenty one days after service of the notice on him serve on the party who gave the notice, a counter-notice requiring that party to call a witness at the trial or hearing of the cause or matter any person (naming him) particulars of whom are contained in the notice.

(2) Where any notice under rule 13 contains a statement that any person particulars of whom are contained in the notice cannot or should not be called as a witness for the reason specified therein, a party shall not be entitled to serve a counter-notice under this rule requiring that person to be called as a witness at the trial or hearing of the cause or matter unless he contends that that person can or, as the case may be, should be called, and in that case he must include in his counter-notice a statement to that effect.

(3) Where a statement to which a notice under rule 13 relates is one to which rule 20 applies, no party on whom the notice is served shall be entitled to serve a counter-notice under this rule in relation to that statement, but the foregoing provision is without prejudice to the right of any party to apply to the court under rule 20 for directions with respect to the admissibility of that statement.

(4) If any party to a cause or matter by whom a notice under rule 13 is served fails to comply with a counter-notice duly served on him under this rule, then, unless any of the reasons specified in rule 17 applies in relation to the person named in the counter-notice, and without prejudice to the powers of the court under rule 21, the statement to which the notice under rule 13 relates shall not be admissible at the trial or hearing of the cause or matter as evidence of any fact stated therein by virtue of section 33, 34 or 35.

Determination or question whether person can or should be called as a witness

19. (1) Where in any cause or matter a question arises whether any of the reasons specified in rule 17 applies in relation to a person particulars of whom are contained in a notice under rule 13, the court may on the application of any party to the cause or matter, determine that question before the trial or hearing of the cause or matter or give directions for it to be determined before the trial or hearing and for the manner in which it is to be so determined.

(2) Unless the court otherwise directs, the summons by which an application under subrule (1) is made shall be served by the party making the application on every other party to the cause or matter.

(3) Where any such question as is referred to in subrule (1) has been determined under or by virtue of that subrule, no application to have it determined afresh at the trial or hearing of the cause or matter may be made unless the evidence which it is sought to adduce in support of the application could not with

reasonable diligence have been adduced at the hearing which resulted in the determination.

20. Where a party to a cause or matter has given notice in accordance with rule 13 that he desires to give in evidence at the trial or hearing of the cause or matter -

Directions with respect to statement made in previous proceedings

- (a) a statement falling within section 32(1) which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal); or
- (b) a statement falling within section 34(1) which is contained in a record or direct oral evidence given in some other legal proceedings (whether civil or criminal),

any party to the cause or matter may apply to the court for directions under this rule, and the court hearing such an application may give directions as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved.

21. (1) Without prejudice to paragraph (a) of sections 32(2) and paragraph (a) of section 34(2) and rule 20, the court may, if it thinks it just to do so, allow a statement falling within section 32(1), 34(1) or 35(1) to be given in evidence at the trial or hearing of a cause or matter notwithstanding -

Power of court to allow statement to be given in evidence

- (a) that the statement is one in relation to which rule 13(1) applies and that the party desiring to give the statement in evidence has failed to comply with that rule; or
- (b) that that party has failed to comply with any requirement of a counter-notice relating to that statement which was served on under rule 18.

(2) Without prejudice to the generality of subrule (1), the court may exercise its power under that subrule to allow a statement to be given in evidence at the trial or hearing of a cause or matter if a refusal to exercise that power might oblige the party desiring to give the statement in evidence to call as a witness at the trial or hearing an opposite party or a person who is or was at the material time the servant or agent of an opposite party.

22. Where -

Restriction on adducing evidence as to credibility of maker, etc., of certain statements

- (a) a notice given under rule 13 in a cause or matter relates to a statement which is admissible by virtue of section 32 or 34;
- (b) the person who made the statement, or as the case may be the person who originally supplied the information from which the record containing the statement was compiled, is not called as a witness at the trial or hearing of the cause or matter, and

- (c) none of the reasons mentioned in rule 17 applies so as to prevent the party who gave the notice from calling that person as a witness, no other party to the cause or matter shall be entitled, except with the leave of the court, to adduce in relation to that person any evidence which could otherwise be adduced by him by virtue of section 36 unless he gave a counter-notice under rule 18 in respect of that person or applied under rule 20 for a direction that that person be called as a witness at the trial or hearing of the cause or matter.

Notice required of
intention to give
evidence of certain
inconsistent statements

23. (1) Where a person, particulars of whom were contained in a notice given under rule 13 in a cause or matter, is not to be called as a witness at the trial or hearing of the cause or matter, any party to the cause or matter who is entitled and intends to adduce in relation to that person any evidence which is admissible for the purpose mentioned in paragraph (b) of section 37(1) must, not more than twenty-one days after service of that notice on him, serve on the party who gave that notice, notice of his intention to do so.

(2) Rule 14(1) and (2) apply to a notice under this rule as if the notice were a notice under rule 13 and the statement to which the notice relates were a statement admissible by virtue of section 32.

(3) The court may, if it thinks it just to do so, allow a party to give in evidence at the trial or hearing of a cause or matter any evidence which is admissible for the purpose mentioned in paragraph (b) of section 37(1) notwithstanding that that party has failed to comply with subrule (1).

Costs

24. If-

- (a) a party to a cause or matter serves a counter-notice under rule 18 in respect of any person who is called as a witness at the trial of the cause or matter in compliance with a requirement of the counter-notice; and
- (b) it appears to the court that it was unreasonable to require that person to be called as a witness,

then the court may direct that any costs to that party in respect of the preparation and service of the counter-notice shall not be allowed to him and that any costs occasioned by the counter-notice to any other party shall be paid by him to that other party.

Certain powers
exercisable in chambers

25. The jurisdiction of the court under paragraph (a) of section 32(2), and 32(3), paragraph (a) of section 34(2) and 36(1) may, when exercised under Grand Court procedure, be exercised in chambers.

26. Rules 27 to 32 apply only to matters dealt with under the procedure of the Grand Court. Application of rules 27 to 32
27. (1) Except with the leave of the court or where all parties agree, no expert evidence may be adduced at the trial or hearing of any cause or matter unless the party seeking to adduce the evidence has applied to the court to determine whether a direction should be given under rule 5 or 29 and has complied with any direction given on the application. Restrictions on adducing expert evidence
- (2) Nothing in subrule (1) shall apply to evidence which is otherwise permitted to be given by affidavit.
28. (1) Where in an action for personal injuries an application is made under rule 27(1) in respect of oral expert evidence relating to medical matters, then, unless the court considers that there is sufficient reason for not doing so, it shall direct that the substance of the evidence be disclosed in the form of a written report or reports to such other parties and within such period as the court may specify. Medical evidence in actions for personal injuries
- (2) The court may, if it thinks fit, treat any of the following circumstances as a sufficient reason for not giving a direction under subrule (1) -
- (a) that the pleadings contain an allegation of a negligent act or omission in the course of medical treatment, or
 - (b) that the expert evidence may contain an expression of opinion-
 - (i) as to the manner in which the personal injuries were sustained; or
 - (ii) as to the genuineness of the symptoms of which complaint is made.
29. (1) Where an application is made under rule 27(1) in respect of expert evidence to which rule 28 does not apply, the court may, if satisfied that it is desirable to do so, direct that the substance of any expert evidence which is to be adduced by any party be disclosed in the form of a written report or reports to such other parties and within such period as the court may specify. Other expert evidence
- (2) In deciding whether to give a direction under subrule (1) the court shall have regard to all the circumstances and may, to such extent as it thinks fit, treat any of the following circumstances as affording a sufficient reason for not giving such a direction -
- (a) that the expert evidence is or will be based to any material extent upon a version of the facts in dispute between the parties; or
 - (b) that the expert evidence is or will be based to any material extent upon facts which are neither-

- (i) ascertainable by the expert by the exercise of his own powers of observation, nor
- (ii) within his general professional knowledge and experience.

Disclosure of part of expert evidence

30. Where the court considers that any circumstances rendering it undesirable to give a direction under rule 28 or 29 relate to part only of the evidence sought to be adduced, the court may, if it thinks fit, direct disclosure of the remainder.

Expert evidence of engineers in accident cases

31. In an action arising out of an accident on land due to a collision or apprehended collision a party who intends to apply to the court under rule 27 in respect of the expert evidence of an engineer sought to be called on account of his skill and knowledge as respects motor vehicles shall before the hearing of the s commons for directions make available to all parties for their inspection a report by the engineer containing the substance of his evidence.

Putting in evidence expert report disclosed by another party

32. A party to any cause or matter may put in evidence any report disclosed to him by any other party in accordance with this part of these rules.

Application of section 18(2) of Grand Court Law (1995 Revision)

33. Section 18(2) of the Grand Court Law (1995 Revision) has no application to any rule under Order 38 of the Practice of the Supreme Court in England in respect of which these rules provide an equivalent rule.

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Carmena Watler
Clerk of Executive Council