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EVIDENCE LAW

(2004 Revision)

Law 13 of 1978 consolidated with Laws 15 of 1984, 34 of 1985, 20 of 2001, 30 of 2001 and 2 of 2004.

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

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Law 13 of 1978-15th June, 1978
Law 15 of 1984-17th August, 1984
Law 34 of 1985-19th December, 1985
Law 20 of 2001-26th July, 2001
Law 30 of 2001-28th September, 2001
Law 2 of 2004-15th March, 2004.

Consolidated and revised this 6th day of July, 2004.

Note (not forming part of the Law): This revision replaces the 2003 Revision which should now be discarded.

EVIDENCE LAW

(2004 Revision)

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**EVIDENCE LAW
(2004 Revision)**

PART I-Introductory

1. This Law may be cited as the Evidence Law (2004 Revision). Short title

2. In this Law- Definitions
 - “account book” includes every book, card or device used for the recording or storing of business records and transactions, whether or not encoded;

 - “bank” has the meaning ascribed to it in the Banks and Trust Companies Law (2003 Revision) and in any law replacing the same; 2003 Revision

 - “banker’s book” means a banker’s account book;

 - “civil proceedings” include, in addition to civil proceedings in any of the ordinary courts of law, civil proceedings before any other tribunal and an arbitration or reference, whether under enactment or not, but does not include civil proceedings in relation to which the strict rules of evidence do not apply;

 - “computer” means any device or combination of devices used together or in succession for the purpose of storing and processing information;

 - “copy”, in relation to a document, means any transcript or reproduction thereof in whatever form;

 - “court” includes, in addition to the ordinary courts and juries of civil and criminal jurisdiction, every tribunal where civil proceedings are conducted and includes the judge or person presiding over or constituting such tribunal and includes also an arbitrator and an umpire;

 - “document” includes any device by means of which information is recorded or stored;

 - “production” and its cognates includes the decoding of any encoded matter and the translation into the English language of any matter recorded in any language other than English; and

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

PART II-Procedure in general

- Power to administer oath 3. Every court is hereby empowered to administer an oath or affirmation to all such witnesses as are lawfully called before it.
- Impeaching credit of a witness 4. (1) A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness, in the opinion of the court, proves adverse, contradict him by other evidence, or by leave of the court, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such statement.
- (2) If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the case, and inconsistent with his present testimony, does not distinctly admit that he has made such a statement, proof may be given that he did make it; but before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such a statement.
- (3) A witness may be cross-examined as to recorded statements previously made by him relative to the subject matter of the cause, without such statement or a copy thereof being produced to him; but if it is intended to contradict such witness by such statement or a copy thereof, his attention must, before such contradictory proof can be given, be called to those parts of the statement or copy thereof which are to be used for the purpose of so contradicting him but the court, at any time during the trial, may require the production of the statement or copy thereof for its inspection and it may thereupon make such use of it for the purpose of the trial as it shall think fit.
- Questions as to whether a witness has been convicted of an offence allowable 5. A witness in any cause may be questioned as to whether he has been convicted of any offence and, upon being so questioned, if he either denies the fact, or refuses to answer, the opposite party may prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment or charge and conviction for such offence, purporting to be signed by the Clerk of the Court, or other officer having custody of the records of the Court where the offender was convicted is, upon proof of the identity of the person, sufficient evidence of the said conviction.
- Proof of instrument in writing 6. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite; and such instrument may be

proved by admission or otherwise, as if there had been no attesting witness thereof.

7. (1) Subject to the Banks and Trust Companies Law (2003 Revision), the Confidential Relationships (Preservation) Law (1995 Revision) and to subsection (2), a copy of an entry in a banker's book certified by an officer of such bank in an affidavit made before a Justice of the Peace or by oral testimony to be a true copy is receivable in every court as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded.

Mode of proof of entries
in banker's books
2003 Revision
1995 Revision

(2) A copy of an entry in a banker's book shall not be received in evidence under this Law unless it be first proved that the book was, at the time of the making of the entry, one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank. Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

(3) No bank or officer of such bank shall, in any proceedings before any court in which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under subsection (1), or appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of a court made for special cause, and any such order shall be without prejudice to, and compliance therewith shall subject to the Confidential Relationships (Preservation) Law (1995 Revision).

8. (1) On the application of any party to a legal proceeding a court may order that such party be at liberty to inspect and take copies of any matter in a banker's book for the purpose of such proceeding, and an order under this section may be made with or without summoning the bank or any other party, and shall be served on the bank three clear working days before the same is to be obeyed unless the court otherwise directs.

Court may order
inspection of banker's
books

(2) Any order made under subsection (1) shall be without prejudice to the Confidential Relationships (Preservation) Law (1995 Revision), and for the purposes of that Law compliance with such an order by a bank or officer thereof shall, for the purposes of this Law, be deemed to be giving in evidence of the matter in the banker's book to be inspected thereunder.

9. Comparison of a disputed writing with any writing proved to the satisfaction of the judge or magistrate to be genuine may be made by witnesses; and such writings, and the evidence of witnesses thereupon, may be submitted as evidence of the genuineness, or otherwise, of the writing in dispute.

Comparison of
handwriting

Official or public documents, etc.

10. Whenever, by any law of the Islands, any certificate, official or public document or proceeding of any corporation, or any certified copy of any document, bye-law, entry in any register or other book, or of any other proceeding, is receivable in evidence in any court or the Legislative Assembly, or any committee thereof or in any judicial proceeding, they shall be so admissible in evidence provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone, as required, or impressed with a stamp and signed, as directed by such law, without any proof of the seal or stamp, where a seal or stamp is necessary, or of the signature, or of the official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original record could have been received in evidence.

Private laws and minutes of the Legislative Assembly

11. Copies of private Acts of Parliament, if purporting to be printed by the Queen's Printer, and of private laws of the Legislature of the Islands, if purporting to be printed by the Government Printer and all copies of the minutes of the Legislative Assembly, and of Royal Proclamations, purporting to be printed by the Printers of the Crown, or by the Government Printer are admissible in evidence without proof that they were so printed.

Acts of state, etc.

12. Proclamations, treaties and other acts of state or of any foreign state, Commonwealth country or British Colony and judgements, decrees, orders and judicial proceedings of any court of any such foreign state, Commonwealth country or British Colony and affidavits, pleadings and other legal documents filed in any such court may be proved in any court either by examined copies, or by copies authenticated as hereinafter mentioned, that is to say, if the document sought to be proved be a proclamation, treaty or other act of state the authenticated copy, to be admissible in evidence, must purport to be sealed with the seal of the foreign state, Commonwealth country or British Colony to which the original document belongs; and if the document sought to be proved be a judgment, decree, order or other judicial proceeding of any foreign, Commonwealth or colonial court, or an affidavit, pleading or other legal document filed or deposited in any such court, the authenticated copy, to be admissible in evidence, must purport either to be sealed with the seal of the court to which the original document belongs or, in the event of such court having no seal, to be signed by a judge of such court; and such judge shall attach to his signature a statement in writing on the said copy that the court whereof he is a judge has no seal; but if any of the aforesaid copies purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where a seal is necessary or of the signature or of the truth of the statement attached thereto, where such signature or

such statement is necessary, or of the judicial character of the person appearing to have made such signature and statement.

13. Every register of a vessel kept under any of the Acts relating to the registry of British vessels may be proved in any court of justice, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, either by the production of the original or by any examined copy thereof, or by a copy thereof purporting to be certified under the hand of the person having the charge of the original, and which person is hereby required to furnish such certified copy to any person applying at a reasonable time for the same, upon payment of the sum of five dollars; and every such register, or such copy of a register, and also every certificate of registry granted under any of the Acts relating to the registry of British vessels, and purporting to be signed as required by law, shall be received in evidence in any court of justice, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence as *prima facie* proof of all the matters contained or recited in such register when the register or such copy thereof as aforesaid is produced, and of all the matters contained or recited in or endorsed on such certificate of registry, when the said certificate is produced.

Registers of ships

14. Courts shall take judicial notice of the signatures of the judges of the Supreme Courts of Judicature in England as well as of courts having jurisdiction in the Islands provided such signature be attached or appended to any decree order, certificate or other judicial or official document.

Judicial notice to be taken of signatures of certain judges

15. Whenever in any proceedings whatever it may be necessary to prove the trial and conviction of any person charged with any offence it is not necessary to produce the record of the conviction or acquittal of such person, but it is sufficient that a copy of such record be certified, or purport to be certified, under the hand of the Clerk of the Court where such conviction or acquittal took place that the paper produced refers to the accused and is a copy of the record of the charge or indictment, trial, conviction and judgment or acquittal, as the case may be, omitting the formal parts thereof.

Certificate of conviction or acquittal

16. (1) Whenever a document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no law exists which renders its contents provable by means of a copy, a copy thereof or extract therefrom is admissible in evidence if it is 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.

Examined copies of contents of books of a public nature

(2) An officer having custody of such document is hereby required to furnish such certified copy or extract to any person applying for it at a reasonable

time upon payment of a reasonable sum for the same, not exceeding two dollars for every folio of ninety words.

Government Notices

17. (1) Government Notices of any date whatsoever purporting to have been issued by the Governor's office, and purporting to bear the signature of the Governor or other officer for the time being administering the Government are admissible in any court without proof of the signature or official character of the person purporting to have signed the same.

1997 Revision

(2) Gazetted matter is admissible in accordance with section 8 of the Official Gazette Law (1997 Revision).

PART III-Criminal proceedings

Accused persons, etc., as competent witnesses

18. Every person charged with an offence is a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:

Provided that-

- (a) a person so charged shall not be called as a witness under this Law, except upon his own application;
- (b) the failure of a person charged with an offence to give evidence shall not be made the subject of comment by the prosecution but the court or jury may draw any reasonable inference from such failure;
- (c) a person charged and being a witness under this Law may be asked any question in cross-examination notwithstanding that it would tend to incriminate him in the offence charged;
- (d) a person charged and called as a witness under this Law shall not be asked, or required to answer, any question tending to show that he has committed or been convicted or been charged with any offence other than that wherewith he is charged or is of bad character unless-
 - (i) the proof that he has been charged with or committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is charged;
 - (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution to establish his own good character or has given evidence of such good character, or the nature of the conduct of the defence is such as to involve

- imputations on the character of the prosecutor or the witnesses for the prosecution; or
- (iii) he has given evidence against any other person charged with the same offence;
- (e) a person called as a witness in pursuance of this Law shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which the other witnesses give their evidence; and
- (f) nothing in this Law affects section 90 of the Criminal Procedure Code (1995 Revision).

1995 Revision

19. (1) In any criminal proceedings the wife or husband of the accused shall be competent to give evidence-

Competence and compellability of accused's spouse

- (a) subject to subsection (4), for the prosecution; and
- (b) on behalf of the accused or any person jointly charged with the accused.

(2) In any criminal proceedings the wife or husband of the accused shall, subject to subsection (4), be compellable to give evidence on behalf of the accused.

(3) In any criminal proceedings the wife or husband of the accused shall, subject to subsection (4), be compellable to give evidence for the prosecution or on behalf of any person jointly charged with the accused if-

- (a) the offence charged involves an assault on, or injury or threat of injury to, the wife or husband of the accused or a person who was at the material time under the age of sixteen;
- (b) the offence charged is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or
- (c) the offence charged consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a) or (b).

(4) Where a husband and wife are jointly charged with an offence neither spouse shall, at the trial, be competent or compellable by virtue of subsection (1)(a), (2) or (3) to give evidence in respect of that offence unless that spouse is not, or is no longer, liable to be convicted of that offence at the trial as a result of pleading guilty or for any other reason.

(5) In any criminal proceedings a person who has been but is no longer married to the accused shall be competent and compellable to give evidence as if that person and the accused had never been married.

(6) Where in any criminal proceedings the age of a person at any time is material for the purposes of subsection (3), his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or have been his age at that time.

(7) The failure of the wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

Advance notice of expert evidence

1995 Revision- as amended

20. (1) Following-

- (a) the committal for trial of any person;
- (b) the preferment of an indictment under section 106A of the Criminal Procedure Code (voluntary bill of indictment);
- (c) the making of an order for the re-trial of any person; or
- (d) a hearing in the summary court at which a trial date is set,

if any party to the proceedings proposes to adduce expert evidence (whether of a fact or opinion) in the proceedings (otherwise than in relation to a sentence) he shall as soon as practicable, unless in relation to the evidence in question he has already done so-

- (i) furnish the other party with a statement in writing of any finding or opinion which he proposes to adduce by way of such evidence; and
- (ii) where a request in writing is made to him in that behalf by any other party, provide that party also with a copy of (or if it appears to the party proposing to adduce the evidence to be more practicable, a reasonable opportunity to examine) the record of any observation, test, calculation or other procedure on which such finding or opinion is based and any document or other thing or substance in respect of which any such procedure has been carried out.

(2) A party may, by notice in writing, waive his right to be furnished with any of the matters mentioned in subsection (1) and, in particular, may agree that the statement mentioned in subsection (1)(i) may be furnished to him orally and not in writing.

(3) In subsection (1) -

“document” means anything in which information of any description is recorded.

Exception to provision of advance notice

21. (1) If a party has reasonable grounds for believing that the disclosure of any evidence in compliance with the requirements imposed by section 20 might lead to the intimidation, or attempted intimidation, of any person on whose evidence he intends to rely in the proceedings, or otherwise to the course of

justice being interfered with, he shall not be obliged to comply with those requirements with regard to any evidence in relation to that evidence.

(2) Where in accordance with subsection (1), a party considers that he is not obliged to comply with the requirements imposed by section 20 with regard to any evidence in relation to any other party, he shall give notice in writing to that party to the effect that the evidence is being withheld and the grounds therefor.

22. A party who seeks to adduce evidence in any proceedings and who fails to comply with section 20 shall not adduce evidence in those proceedings without the leave of the court.

Failure to comply with section 20

23. The “Judges’ Rules” whereby in England a suspected person is required to be cautioned in a certain manner before making a statement to the police at the time when he is charged or about to be charged with an offence shall have application in the Islands until replaced by Rules made by the Rules Committee of the Grand Court.

“Judges’ Rules” to have effect *pro tem*

24. When persons charged with an offence give evidence they shall be called as witnesses immediately after the close of the evidence for the prosecution unless they obtain leave of the court to give evidence at a later stage.

Where accused persons give evidence

25. (1) An accused person shall not, without the leave of the court, adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of the particulars of the alibi.

Notice of alibi defence

(2) Without prejudice to subsection (1), on any trial of an accused person, such person shall not without the leave of the court call any other person to give evidence unless-

- (a) the notice under that subsection includes the name and address of the witness or, if the name and address is not known to the accused person at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness;
- (b) if the name or the address is not included in that notice, the court is satisfied that the accused person, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;
- (c) if the name or address is not included in that notice, but the accused person subsequently discovers the name and address or receives other information which might be of material assistance in finding the witness, he forthwith gives notice of the name, address or other information; and

(d) if the accused person is notified by or on behalf of the prosecution that the witness has not been traced by the name or at the address given, he forthwith gives notice of any such information which is then in his possession or, on subsequently receiving any such information, forthwith gives notice of it.

(3) An accused person shall be informed of the requirements of this section in the summary court and the Grand Court shall not refuse leave under this section if it appears to the court that the accused person was not so informed.

(4) Any evidence tendered to disprove an alibi may, subject to any directions by the court as to the time it is to be given, be given before or after evidence is adduced in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the accused person by his counsel shall, unless the contrary is proved, be deemed to be given with the authority of the accused person.

(6) A notice under subsection (1) shall either be given in court during, or at the end of, the preliminary inquiry or be given in writing to the counsel for the prosecution, and a notice under paragraph (c) or (d) of subsection (2) shall be given in writing to that counsel.

(7) A notice required by this section to be given to the prosecution may be given by delivering it to him or by leaving it at the office of the Attorney-General, or by sending it by registered mail addressed to him at his office.

(8) In this section-

“evidence in support of an alibi” means evidence tending to show that by reason of the presence of the defendant at a particular place or in a particular area at a particular time he was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission; and

“prescribed period” means-

- (i) in the case of a trial before the summary court, seven days from the day on which the trial date is set; and
- (ii) in the case of trial before the Grand Court, the period of seven days from the end of the proceedings before the summary court.

2003 Revision

(9) In computing the prescribed period a Sunday, Christmas Day, Good Friday and a day which is a public holiday under the Public Holidays Law (2003 Revision) shall be disregarded.

26. The accused person or his advocate shall have the right of reply in all criminal trials. Right of reply
27. A court or jury in determining whether a person has committed an offence shall not be bound to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions, but shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence or lack of evidence or failure to give evidence as appear proper in the circumstances. Proof of criminal intent
28. (1) Without prejudice to section 29, in criminal proceedings where direct oral evidence of a fact would be admissible, a statement contained in a document tending to establish that fact shall, on production of the document, be admissible as evidence of that fact if-
- (a) the document is, or forms part of, a record relating to any trade or business and compiled, in the course of that trade or business, from information supplied (whether directly or indirectly) by persons who have, or may reasonably be supposed to have, personal knowledge of the matters dealt with in the information they supply; and
 - (b) the person who supplied the information recorded in the statement in question is dead, beyond the seas, unfit by reason of his bodily or mental condition to attend as a witness, cannot with reasonable diligence be identified or found or cannot reasonably be expected (having regard to the time which has elapsed since he supplied the information and to all the circumstances) to have any recollection of the matter dealt with in the information he supplied.
- (2) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the court may draw any reasonable inference from the form or content of the document in which the statement is contained, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be a certificate of a qualified medical practitioner.
- (3) In estimating the weight, if any, to be attached to a statement admissible as evidence by virtue of this section regard shall be had to all 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 person who supplied the information recorded in the statement did so contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not that person or any person concerned with making or

keeping the record containing the statement, had any incentive to conceal or misrepresent the facts.

Computers

29. (1) In any criminal proceedings, a statement contained in a document produced by a computer is admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown-

- (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store and process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any person;
- (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived; and
- (c) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(2) In any criminal proceedings, where it is desired to give a statement in evidence by virtue of this section, a certificate-

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer; and
- (c) dealing with any of the matters to which the conditions mentioned in subsection (1) relate,

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

(3) In this Part-

- (a) information is taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or

processed for the purposes of those activities by a computer operated otherwise than in the course of those activities; and

- (c) a document is taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

(4) Any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

(5) Any trial or any proceedings which began before the 31st March, 2004 shall be continued and completed as if the trial or proceeding had been commenced on or after the 31st March, 2004.

30. (1) Where, in criminal proceedings, a statement contained in a document is proposed to be given in evidence by virtue of section 29 it may, subject to any rules of court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of a material part thereof, authenticated in such manner as the court may approve.

Provisions
supplementary to section
29

(2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 29, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including in the case of a statement contained in a document, the form and contents of that document.

(3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 29, 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 matter which the information contained in the statement reproduces, or is derived from, was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with therein, and to the question whether or not any person concerned with the supply of information to that computer, or within the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

Proof of previous
conviction by
fingerprints
1998 Revision

31. (1) Subject to the Rehabilitation of Offenders Law (1998 Revision), a previous conviction may be proved against any person in any criminal proceedings by the production of such evidence of the conviction as is mentioned in this

section, and by showing that his finger prints and those of the person convicted are the finger prints of the same person.

(2) A certificate purporting to be signed by or on behalf of the Commissioner of Police or by a person authorised by him, containing particulars relating to a conviction extracted from the criminal records kept-

Law 19 of 1965 (sic)

- (a) by him, whether or not prior to 6th January, 1986; or
- (b) under the repealed Finger Prints Law, 1964, prior to the 6th January, 1986,

and certifying that the copies of the finger prints exhibited to the certificate are copies of the finger prints appearing from those records to have been taken on the occasion of the conviction from the person convicted, shall be admissible as evidence of such conviction and evidence that the copies of the finger prints exhibited to the certificate are copies of the fingerprints of the person convicted and, in the absence of evidence to the contrary, shall be proof of the facts certified therein as to such conviction and finger prints and no evidence shall be required as to the signature or authority of the person purporting to have signed the certificate.

(3) The method of proving a previous conviction authorised by subsection (2) shall be in addition to any other method of proving a conviction.

(4) A certificate purporting to be signed by or on behalf of the Commissioner of Police certifying that the finger prints, copies of which are certified as aforesaid to be copies of the finger prints of a person previously convicted, and the finger prints certified as aforesaid or otherwise shown to be the finger prints of the person against whom the previous conviction is sought to be proved are the finger prints of the same person shall be admissible as evidence of such conviction and evidence that the copies of the finger prints exhibited to the certificate are copies of the finger prints of the person convicted, in the absence of evidence to the contrary, shall be proof of the facts certified therein as to such finger prints and no evidence shall be required as to the signature or authority of the person purporting to have signed the certificate.

Evidence of finger prints

32. (1) In criminal proceedings, a report purporting to be signed by a constable not below the rank of sergeant authorised to do so by the Commissioner of Police and certifying that finger prints are those of the person charged with the offence or of any other person shall, subject to subsection (2), be sufficient evidence of that fact and of the authority of that constable to make the report and, in the absence of evidence to the contrary, shall be proof of the facts contained therein as to finger prints and no evidence shall be required as to the signature or authority of the person purporting to have signed the certificate.

(2) Subsection (1) shall not apply to a report tendered on behalf of the prosecution-

- (a) unless a copy has been served on the person charged with the offence not less than fourteen days before the hearing;
- (b) where the person charged with the offence, not less than six days before the hearing or by such later time before the hearing or by such later time before his trial as the court may in special circumstances allow, has served a notice on the prosecutor challenging the fact or authority mentioned in subsection (1); or
- (c) in any case where the judge or magistrate so determines:

Provided that paragraphs (a) and (b) shall not apply if the parties agree before or during the hearing that the report shall be so tendered.

(3) The method of proving finger prints authorised by this section shall be in addition to any other method of proving finger prints.

33. (1) A statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if-

Proof in criminal proceedings by written statement

- (a) the requirements of one of the paragraphs of subsection (2) are satisfied; or
- (b) the requirements of subsection (3) are satisfied; and
- (c) the requirements of subsection (4) are satisfied.

(2) The requirements mentioned in paragraph (a) of subsection (1) are-

- (a) that the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness;
- (b) that-
 - (i) the person who made the statement is outside the Islands; and
 - (ii) it is not reasonably practicable to secure his attendance; or
- (c) that all reasonable steps have been taken to find the person who made the statement, but that he cannot be found.

(3) The requirements mentioned in paragraph (b) of subsection (1) are-

- (a) that the statement was made to a constable or some other person charged with the duty of investigating offences or charging offenders; and
- (b) that the person who made it does not give oral evidence through fear or because he is kept out of the way.

(4) The requirements mentioned in paragraph (c) of subsection (1) are-

- (a) the statement purports to be signed by the person who made it, and it contains a declaration by that person to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;
- (b) not less than seven days before the hearing at which the statement is to be tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings; and
- (c) none of the other parties or their advocates, within four days from the service of the copy of the statement, serves a notice on the party so proposing objecting to the statement being tendered in evidence under this section.

(5) Paragraphs (b) and (c) of subsection (4) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(6) Notwithstanding subsection (1), in criminal proceedings a written statement by any person is admissible as evidence to the like extent as oral evidence to the like effect by that person if the court determines that it is in the interest of justice to admit such written statement.

(7) In relation to a written statement tendered in evidence under subsection (1), if the statement-

- (a) is made by a person under the age of eighteen years, it shall give his age;
- (b) is made by a person who cannot read it, it shall be read to him before he signs it or attests it by his mark and shall be accompanied by a declaration by the person who read the statement to him to the effect that it was so read; and
- (c) refers to any other document as an exhibit, the copy served on any other party to the proceedings under paragraph (c) of subsection (1) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect the document or a copy thereof.

(8) Notwithstanding that a written statement by any person may be admissible as evidence by virtue of this section-

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

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

(9) An application under paragraph (b) of subsection (8) to a court other than a summary court may be made before the hearing.

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

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

(12) A document required by this section to be served on any person may be served-

- (a) by delivering it to him or his advocate;
- (b) by addressing it to him and leaving it at his usual or last known place of abode or place of business; or
- (c) in the case of a body corporate, by delivering it to the secretary or a clerk of the body at its registered or principal office in the Islands.

(13) Whoever, in a written statement tendered in evidence in criminal proceedings under subsection (1), wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true is guilty of an offence and liable on conviction to imprisonment for seven years.

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

Proof by formal admission

(2) An admission under this section-

- (a) may be made before or at the proceedings;
- (b) if made otherwise than in court, shall be in writing;
- (c) if made in writing by an individual, shall purport to be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;

- (d) if made on behalf of a defendant who is an individual, shall be made by his advocate; and
- (e) if made at any stage before the trial by a defendant who is an individual, must be approved by his advocate (whether at the time it was made or subsequently) before or at the proceeding in question.

(3) An admission under this section for the purposes of proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to the same matter.

Conviction as evidence
of commission of
offence

35. (1) In any criminal proceedings, the fact that a person other than the accused has been convicted of an offence by or before any court in the Islands or by a competent court of a designated country shall be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that that person committed that offence whether or not any other evidence of his having committed that offence is given.

(2) In any criminal proceedings in which, by virtue of this section, a person other than the accused is proved to have been convicted of an offence by or before any court in the Islands or by a competent court of a designated country, he shall be taken to have committed that offence unless the contrary is proved.

(3) In any criminal proceedings where evidence is admissible of the fact that the accused has committed an offence, insofar as that evidence is relevant to any matter in issue in the proceedings for a reason other than a tendency to show in the accused a disposition to commit the kind of offence with which he is charged, if the accused is proved to have been convicted of the offence-

- (a) by or before any court in the Islands; or
- (b) by a competent court of any designated country,

he shall be taken to have committed that offence unless the contrary is proved.

(4) Nothing in this section shall prejudice-

- (a) the admissibility in evidence of any conviction which would be admissible apart from this section; or
- (b) the operation of any enactment whereby a conviction or a finding of fact in, any proceedings is, for the purposes of any other proceedings, made conclusive evidence of any fact.

(5) In this section -

“designated country” means a country designated for the purposes of this section by order of the Governor in Cabinet.

36. (1) Where evidence that a person has been convicted of an offence is admissible by virtue of section 35 alone, without prejudice to the reception of other admissible evidence for the purpose of identifying the facts on which the conviction was based-

Provisions
supplementary to
section 35

- (a) the contents of any document which is admissible as evidence of the conviction; and
- (b) the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted,

shall be admissible in evidence for that purpose.

(2) Where, in any criminal proceedings, the contents of any document are admissible in evidence by virtue of subsection (1), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of the document shall be admissible in evidence and shall be taken to be a true copy of that document unless the contrary is shown.

(3) Nothing in section 35 shall be construed as rendering admissible, in any proceedings, evidence of any conviction other than a subsisting one.

(4) Nothing in section 35 prejudices any power of a court under section 39 or otherwise in any proceedings to exclude evidence (whether preventing questions being put or otherwise) at its discretion.

37. (1) A person other than an accused person may give evidence through a live television link in proceedings to which subsection (2) applies if-

Evidence through
television links

- (a) the witness is outside the Islands; or
- (b) if the witness is a child, or is to be cross examined following the admission under section 38 of a video recording of testimony from him and the offence is one to which 38 (2) applies,

but such evidence may not be given without the leave of the court.

(2) This section applies to-

- (a) trials on indictment;
- (b) appeals to the Court of Appeal;
- (c) summary trials of Category B offences; and
- (d) proceedings in any youth court.

(3) A statement made on oath by a witness outside of the Islands and given in evidence through a live television link by virtue of this section shall be treated for the purpose of section 99 of the Penal Code (1995 Revision) as having been made in the proceedings in which it is given in evidence.

(4) Where the court gives leave for a person to give evidence through a live television link then, subject to subsection (5), the person concerned may not give evidence otherwise than through a live television link.

(5) A court may give permission for a person to give evidence otherwise than through a live television link if it appears to the court to be in the interests of justice to give such permission.

(6) Permission may be given under subsection (5)-

- (a) on an application by a party to the case; or
- (b) of the court's own motion,

but no application may be made under paragraph (a) unless there has been a material change of circumstances since the leave was given by virtue of subsection (1).

(7) The Governor in Cabinet may make such rules as appears to him to be necessary for the purposes of this section.

Video recordings of
testimony from child
witnesses

38. (1) This section applies in relation to-

- (a) trials on indictment;
- (b) appeals to the Court of Appeal;
- (c) summary trials of Category B offences; and
- (d) proceedings in any youth court.

(2) In any such proceedings, a video recording of an interview which-

- (a) is conducted between an adult and a child who is not the accused or one of the accused ("the child witness"); and
- (b) relates to any matter in issue in the proceedings,

may, with the leave of the court, be given in evidence insofar as it is not excluded by the court by subsection (3).

(3) Where a video recording is tendered in evidence under this section, the court shall (subject to the exercise of any power of the court to exclude evidence which, is otherwise admissible) give leave under subsection (2) unless-

- (a) it appears that the child witness will not be available for cross-examination;
- (b) any rules of court requiring disclosure of the circumstances in which the recording was made have not been complied with to the satisfaction of the court; or

- (c) the court is of the opinion, having regard to all of the circumstances of the case, that in the interests of justice the recording ought not to be admitted,

and where the court gives such leave it may, if it is of the opinion that in the interests of justice any part of the recording ought not to be admitted, direct that that part shall be excluded.

(4) In considering whether any part of the recording ought to be excluded under subsection (3), the court shall consider whether any prejudice to the accused, or one of the accused, which might result from the admission of that part is outweighed by the desirability of showing the whole, or substantially the whole, of the recorded interview.

(5) Where a video recording is admitted under this section-

- (a) the child witness shall be called by the party who tendered it in evidence; and
- (b) that witness shall not be examined in chief on any matter which, in the opinion of the court, has been dealt with adequately in his recorded testimony.

(6) Where a video recording is given in evidence under this section, any statement made by the child witness which is disclosed by the recording shall be treated as if given by that witness in direct oral testimony; and accordingly -

- (a) any such statement shall be admissible evidence of any fact of which such testimony from him would be admissible; and
- (b) no such statement shall be capable of corroborating any other evidence given by him,

and, in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn (as to its accuracy or otherwise).

(7) Where the court gives leave under subsection (2), the child witness shall not give relevant evidence (within the meaning of subsection (10)) otherwise than by means of the video recording; but this is subject to subsection (8).

(8) In a case falling within subsection (7), the court may give permission for the child witness to give relevant evidence (within the meaning of subsection (10)) otherwise than by means of the video recording if it appears to the court to be in the interests of justice to give such permission.

(9) Permission may be given under subsection (8) on an application by a party to the case or of the court's own motion.

(10) For the purpose of subsections (7) and (8), evidence shall be relevant evidence if-

- (a) it is evidence in chief on behalf of the party who tendered the video recording, and
- (b) it relates to matter which, in the opinion of the court, is dealt with in the recording and which the court has not directed to be excluded under subsection (3).

(11) In this section-

“child” means a person who is under seventeen years of age;

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

“video recording” means any recording, on any medium, from which a moving image may, by any means, be produced and includes the accompanying sound track.

Discretion of court to disallow evidence in criminal proceedings

39. Nothing in this Law derogates from the power of a court in any criminal proceeding to disallow evidence otherwise admissible which, in the opinion of such court, would, if allowed, operate unfairly against an accused person.

Abolition of corroboration rules

40. (1) Any requirement whereby, at a trial on indictment, it is obligatory for the court to give a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is-

- (a) an alleged accomplice of the accused;
- (b) a child; or
- (c) where the offence charged is a sexual offence, the person in respect of whom it is alleged to have been committed,

is hereby abrogated.

(2) Any requirement that-

- (a) is applicable at the summary trial of a person for an offence; and
- (b) corresponds to the requirement mentioned in subsection (1),

is hereby abrogated.

(3) Nothing in this section applies in relation to any trial or any proceedings which began before the 31st March, 2004.

PART IV—Civil proceedings

41. The parties in civil proceedings in or before any court and their spouses are both competent and compellable to give evidence on behalf of either or any of the parties thereto unless specifically excepted by this or any other law. Parties as witnesses in civil cases
42. No plaintiff in any action for breach of promise of marriage may recover a verdict or judgment unless such plaintiff's testimony is corroborated by some other material evidence in support of such promise. Evidence in cases arising from breach of promise of marriage
43. In civil proceedings a statement other than one made by a person while giving oral evidence in those proceedings shall be admissible as evidence of any fact stated therein to the extent that it is so admissible by virtue of this or any other law or by agreement of the parties, but not otherwise. Admissibility of hearsay evidence in civil cases
44. (1) In civil proceedings a statement made, whether orally or in a document or otherwise, by any person, whether called as a witness in those proceedings or not, is, subject to this section and to rules of court, admissible as evidence of any fact stated therein of which oral evidence by him would be admissible. Admissibility of out of court statements
- (2) Where, in any civil proceedings, a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person by whom the statement was made, the statement-
- (a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and
 - (b) without prejudice to paragraph (a), shall not be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person by whom it was made, except-
 - (i) where, before that person is called, the court allows evidence of the making of the statement to be given on behalf of that party by some other person; or
 - (ii) insofar as the court allows the person by whom the statement was made to narrate it in the course of his examination-in-chief on the ground that to prevent him from doing so would adversely affect the intelligibility of his evidence.
- (3) Where, in civil proceedings, a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made is admissible for the purpose of proving it:

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

When witness's
previous statement may
be evidence

45. (1) Where in a civil proceeding-
- (a) a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of section 4, 5 or 6; or
 - (b) a previous statement made by a person called as aforesaid is proved for the purpose of rebutting a suggestion that his evidence has been fabricated,

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

(2) Nothing in this Law affects any rule of law whereby, when a person called as a witness in any civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in that proceeding or where a document or any part of it is received in evidence in such proceeding by virtue of any such rule, a statement made therein by the person using it to refresh his memory is, by virtue of this subsection, admissible as evidence of any fact therein of which direct oral evidence by him would be admissible.

Admissibility of certain
records

46. (1) Without prejudice to section 47, in a civil proceeding, a statement contained in a document is, subject to this section and to Rules of Court, admissible as evidence of any fact therein stated to which direct oral evidence would be admissible, if the document is, or forms part of, a record compiled by a person acting under a duty from information which was supplied by a person (whether acting under a duty or not) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information and which, if not supplied by that person to the compiler of the record directly, was supplied by him to the compiler of the record indirectly through one or more intermediaries each acting under a duty.

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

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

of that party before the conclusion of the examination-in-chief of the person who originally supplied the said information.

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

47. (1) In any civil proceedings a statement contained in a document produced by a computer is, subject to Rules of Court, admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown-

Computers

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

(2) In any civil proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate-

- (a) identifying the document containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer; and
- (c) dealing with any of the matters to which the conditions mentioned in subsection (1) relate,

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

(3) For the purposes of this Law-

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

(4) Any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

Provisions
supplementary to section
44, 46 or 47

48. (1) Where, in civil proceedings, a statement contained in a document is proposed to be given in evidence by virtue of section 44, 46 or 47 it may, subject to any rules of court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of a material part thereof, authenticated in such manner as the court may approve.

(2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 44, 46 or 47 the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including in the case of a statement contained in a document, the form and contents of that document.

(3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 44, 45, 46 or 47, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular-

- (a) in the case of a statement falling within section 44(1), 45(1) or 46(2), to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts;
- (b) in the case of statement falling within section 46(1), to the question whether or not the person who originally supplied the information from which the record containing the statement was compiled did so contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not that person or any person concerned with

compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts; and

- (c) in the case of a statement falling within section 47(1), to the question whether or not the matter which the information contained in the statement reproduces, or is derived from, was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with therein, and to the question whether or not any person concerned with the supply of information to that computer, or within the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

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

- (a) a statement which is admissible in evidence by virtue of section 44 or 45 is not capable of corroborating evidence given by the maker of the statement; and
- (b) a statement which is admissible in evidence by virtue of section 46 is not capable of corroborating evidence given by the person who originally supplied the information from which the record containing the statement was compiled.

(5) Whoever, in a certificate tendered in evidence in civil proceedings by virtue of section 47(2), wilfully makes a statement material to such proceedings in the truth of which he does not believe is liable on conviction on indictment to a fine and to imprisonment for two years.

49. Subject to rules of court, where, in any civil proceedings, a statement made by a person who is not called as a witness in those proceedings is given in evidence by virtue of section 44-

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

Admissibility of evidence as to credibility of maker, etc., of certain statements

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

Admissibility of certain
hearsay evidence
formerly admissible at
common law

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

(2) The rules of law referred to in subsection (1) include any rule of law whereby in a civil proceeding-

- (a) an admission adverse to a party to the proceedings, whether made by that party or by another person, may be given in evidence against that party for the purpose of proving any fact stated in the admission;
- (b) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated therein;
- (c) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated therein; and
- (d) records (for example, the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated therein.

(3) In a civil proceeding, a statement which tends to establish reputation or family tradition with respect to any matter and which, if this Law had not been passed, would have been admissible in evidence by virtue of any rule of law mentioned in subsection (4)-

- (a) shall be admissible in evidence by virtue of this paragraph insofar as it is not capable of being rendered admissible under section 44 or 46; and
- (b) if given in evidence under this Part (whether by virtue of paragraph (a) or otherwise) is, by virtue of this paragraph, admissible as evidence of the matter reputed or handed down,

and, without prejudice to paragraph (b), reputation is for the purposes of this Part treated as a fact and not as a statement or multiplicity of statements dealing with the matter reputed.

(4) The rules of law referred to in subsection (3) include any rule of law whereby in a civil proceeding-

- (a) evidence of a person's reputation is admissible for the purpose of establishing his good or bad character;
- (b) involving a question of pedigree or of the existence of a marriage is in issue, evidence of reputation or family tradition is admissible for the purpose of proving or disproving pedigree or the existence of the marriage, as the case may be; or
- (c) evidence of reputation or family tradition is admissible for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing.

(5) It is hereby declared that insofar as any statement is admissible in a civil proceeding by virtue of subsection (1) or (3)(a), it may be given in evidence in those proceedings notwithstanding anything in sections 44 to 49 or in any rules of court made under section 55.

(6) The words in which any rule of law mentioned in section 44 or 46 is there described are intended only to identify the rule in question and shall not be construed as altering that rule in any way.

(7) In subsection (2)-

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

51. (1) In civil proceedings, the fact that a person has been convicted of an offence before any court in the Islands is, subject to subsection (3), admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed the offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceeding; but no conviction other than a subsisting one is admissible in evidence by virtue of this section.

Conviction as evidence
in civil proceedings

(2) In civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by any court in the Islands-

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

(3) Nothing in this section prejudices the operation of section 48 or of any other law whereby a conviction or a finding of fact in criminal proceedings is, for the purpose of any other proceedings, made conclusive evidence of any fact.

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

(5) Nothing in any law under which a conviction leading to probation or discharge is to be disregarded, except as therein mentioned, affects the operation of this section.

Findings of adultery and paternity as evidence in civil proceedings

52. (1) In civil proceedings, the fact that a person has been-

- (a) found guilty of adultery in a matrimonial proceeding before any court in the Islands; or
- (b) adjudged to be the father of a child in affiliation proceedings before any court in the Islands,

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

(2) In civil proceedings in which by virtue of this section a person is proved to have been found guilty of adultery as mentioned in paragraph (a) of subsection (1) or to have been adjudged to be the father of a child as mentioned in paragraph (b) of subsection (1)-

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

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

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

Conclusiveness of evidence for purposes of defamation actions

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

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

(4) Section 51(4) and (5) applies for the purposes of any action begun after the 12th December, 1978, whenever the cause of action arose, but shall not apply for the purposes of any action begun before the 12th December, 1978 or any appeal or other proceedings arising out of such action.

54. (1) The right of a person in any legal proceedings other than criminal proceedings to refuse to answer any question or produce any document or thing if to do so would tend to expose that person to proceedings for an offence or for the recovery of a penalty-

Privilege against incrimination of self or spouse, etc.

- (a) shall apply only as regards criminal offences under the law of the Islands and penalties provided for by such law; and
- (b) shall include a like right to refuse to answer any question or produce any document or thing if to do so would tend to expose the husband or wife of that person to proceedings for any such criminal offence or for the recovery of any such penalty.

(2) Insofar as any existing enactment conferring (in whatever words) powers of inspection or investigation confers on a person (in whatever words) any right otherwise than in criminal proceedings to refuse to answer any question or give any evidence tending to incriminate that person, subsection (1) applies to

that right as it applies to the right described in that subsection; and every such existing enactment is to be construed accordingly.

(3) Insofar as any existing enactment provides (in whatever words) that in any proceedings other than criminal proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate that person, that enactment shall be construed as providing also that in such proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate the husband or wife of that person.

(4) Where any existing enactment (however worded) that-

- (a) confers powers of inspection or investigation; or
- (b) provides as mentioned in subsection (3),

further provides (in whatever words) that any answer or evidence given by a person is not admissible in evidence against that person in any proceedings or class of proceedings (however described, and whether criminal or not), that enactment is to be construed as providing also that any answer or evidence given by that person is not admissible in evidence against the husband or wife of that person in the proceedings or class of proceedings in question.

(5) In this section-

“existing enactment” means any enactment passed before 12th December, 1978;

and the references to giving evidence are references to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(6) A party other than a party to the proceedings cannot be compelled to produce any deed or document relating to the title of his land.

(7) A party to the proceedings cannot be compelled to produce any document relating solely to his own case and in no way tending to impeach that case or support the case of any opposing party.

Rules

55. (1) Without prejudice to the powers to make Rules of Court conferred upon him by any other law, the Chief Justice may make Rules of Court as to the procedure which, subject to any exceptions provided for in the rules, must be followed and the other conditions which, subject as aforesaid, must be fulfilled before a statement can be given in civil proceedings by virtue of section 44, 46 or 47.

(2) Rules of Court made under subsection (1) may, subject to such exceptions, if any, as may be provided for therein-

- (a) require a party to any civil proceedings who desires to give in evidence any such statement as is mentioned in that subsection to give every other party to the proceedings such notice of his desire so to do and such particulars of or relating to the statement as may be specified in the rules, including particulars of such one or more of the persons connected with the making or recording of the statement or, in the case of a statement falling within section 44(1), such one or more of the persons concerned as mentioned in paragraph (c) of section 48(3) as the Rules may, in any case, require; and
- (b) enable any party who receives such notice as aforesaid by counternotice to require any person of whom particulars were given with the notice to be called as a witness in the proceedings unless that person is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to be called as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he was connected or concerned as aforesaid and to all the circumstances) to have any recollection of matters relevant to the accuracy or otherwise of the statement.

(3) Rules of Court made under subsection (1)-

- (a) may confer on the court, in any civil proceedings, a discretion to allow a statement falling within section 44(1), 46(1) or 47(1) to be given in evidence notwithstanding that any requirement of the rules affecting the admissibility of that statement has not been complied with, but except in pursuance of paragraph (b), shall not confer on the court a discretion to exclude such a statement where the requirements of the rules affecting its admissibility have been complied with;
- (b) may confer on the court power, where a party to any proceedings has given notice that he desires to give in evidence-
 - (i) a statement falling within section 44(1) which was made by a person whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal); or
 - (ii) a statement falling within section 44(1) which is contained in a record of any direct oral evidence given in some other legal proceedings (whether civil or criminal),

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

- (c) may make different provisions for different circumstances and in particular may make different provisions with respect to statements falling within sections 44(1), 46(1) and 47(1) respectively,

and any discretion conferred on the court by Rules of Court made as aforesaid may be either a general discretion or a discretion exercisable only in such circumstances as may be specified in the rules.

(4) Rules of Court may make provision for preventing a party to any civil proceedings (subject to any exceptions provided for in the rules) from adducing in relation to a person who is not called as a witness in those proceedings any evidence which could otherwise be adduced by him by virtue of section 49 unless that party has, in pursuance of the rules, given in respect of that person such a counternotice as is mentioned in paragraph (b) of subsection (2).

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

PART V-Miscellaneous

Proof of service of summons

56. The personal service of any summons issued under the process of any court may be proved in any legal proceedings by affidavit sworn or affirmed before any Justice of the Peace.

Form of affidavit

57. Every affidavit as mentioned in section 56 shall state the name of the complainant or prosecutor, the name of the defendant, the date of the summons, the name of the person who issued the same, the hour of the day, day of the week, month and year, and the particular place at which the service is effected, and shall state that at the time of service such summons was read over or explained to the person served, and shall also state whether or not the person served was, previous to the service, personally known to the person serving the summons; and, if not so known, shall state how the person serving the summons knew that the person served was the person who ought to be served; such affidavit may be in the form given in the Schedule or to the like effect.

58. The original summons shall be marked for identification by the person taking the affidavit, and the affidavit when made, shall be attached to the original summons. Original summons to be marked for identification
59. Any affidavit which contains the statement required by section 57 is receivable, without proof, in any legal proceedings as *prima facie* evidence of the facts therein stated. Affidavit shall be received in evidence
60. Notwithstanding anything in this or any other law contained, where any summons or other process of a court is served by a constable or other person authorised in that behalf, the service may be proved by endorsement on the original or a copy of the summons or process under the hand of such person effecting the service, showing the fact and mode of the service of such summons or process; and any such person wilfully and corruptly endorsing any false statement on the original or a copy of a summons or other process is guilty of perjury and punishable accordingly. Proof of service of process
61. Where any document has been admitted in evidence before any court and such court is of the opinion that, in relation to that document, an offence has been committed, the court may impound such document and make such order in relation to it as the court thinks fit. Power of court to impound documents
62. Whoever, being authorised or required by this Law to furnish any certified copy or extract, wilfully certifies any such copy or extract as being a true copy or extract, not believing the same to be a true copy or extract, is guilty of an offence and liable on conviction to imprisonment for two years. False certificates
63. A court, on being satisfied that any person under recognisance to appear before it to give evidence in any criminal proceeding is likely to leave the Islands before having done so, may order such person to give security that he will not leave the Islands until he has duly appeared to give such evidence, and in default of such security the court may, if it thinks fit, order that such person shall be detained until he has appeared to give evidence in such proceeding upon such terms as to costs and compensation for loss of time to such person as the court may deem fit. Witness about to leave the Islands

SCHEDULE

(Section 57)

Form Of Service Of Summons

I, E.F. (Constable), (or as the case may be), do swear that on the day of ,
20 , at o'clock in the fore/afternoon at, , I served
upon A.B. a summons now marked "A", dated the day of , 20 , and
issued by J.S., a against A.B. on the of C.D.
the .

At the time that I served the summons on A.B., I read over the same to him (or
explained the same to him). Before the day on which I served such summons I
knew A.B. personally (or other means of identification).

Taken and sworn to before me at this day of , 20 .

(Signed) A.B.

Justice of the Peace
(or as the case may be)

Publication in consolidated and revised form authorised by the Governor in
Cabinet this 6th day of July, 2004.

Carmena Watler
Clerk of Cabinet

(Price \$ 8.00)