

CHAPTER 49**THE EVIDENCE LAW****ARRANGEMENT OF SECTIONS**

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CHAPTER 49

THE EVIDENCE LAW

Laws
3 of 1947.
17 of 1962.
Jamaica.
Cap. 118

[Part II September, 1947]

[Part III 7th March, 1872]

1. This Law may be cited as the Evidence Law.

Short title.

PART I: *Competency of Witnesses*

2. No person offered as a witness shall be excluded, by reason of incapacity from crime or interest, from giving evidence either in person or by deposition, according to the practice of the Court, on the trial of any issue joined, or of any matter or question or any inquiry arising in any suit, action, or proceeding, civil or criminal, in any Court, or before any Judge, Jury, Coroner, Magistrate, Officer, or person having by law or by consent of parties authority to hear, receive, and examine evidence; but every person so offered may and shall be admitted to give evidence on oath (or solemn affirmation in those cases wherein affirmation is by law receivable) notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or inquiry, or of the suit, action, or proceeding, in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence:

Removal of
incapacity to
testify from
crime or
interest.

Provided that this section shall not repeal any provision in the Wills Law:

Cap. 186.

Provided also that in Courts of equity any defendant to any cause pending in any such Court may be examined as a witness on the behalf of the plaintiff or of any co-defendant in any such cause, saving just exceptions, and that any interest which such defendant so to be examined may have in the matters, or any of the matters,

in question in the cause, shall not be deemed a just exception to the testimony of such defendant, but shall only be considered as affecting or tending to affect, the credit of such defendant as a witness.

Parties to record may be examined as witnesses.

3. On the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action or other proceeding in any Court of justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the parties thereto, and the persons in whose behalf any such suit, action, or other proceeding may be brought or defended, shall be competent and compellable to give evidence, either *viva voce*, or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action or other proceeding.

Husbands' and wives' evidence against each other.

4. (1) On the trial of any issue joined, or of any matter, or question, or on any inquiry arising in any suit, action or other proceeding in any Court of justice, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, the husbands and wives of the parties thereto, and of the persons on whose behalf any such suit, action, or other proceeding may be brought, or instituted, or opposed, or defended, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said suit, action or other proceeding.

Exceptions.

(2) Nothing in subsection (1) shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for against or her husband in any criminal proceeding.

Evidence of access.

5. (1) Notwithstanding any rule of law, the evidence of a husband or wife shall be admissible in any proceedings to prove that marital intercourse did or did not take place between them during any period.

(2) Notwithstanding anything in this section or in any rule of law, a husband or wife shall not be compelled in any proceedings to give evidence of the matters aforesaid.

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

Not compellable to disclose communication made during marriage.

7. The parties to any action for breach of promise of marriage shall be competent to give evidence in such action:

In action for breach of promise of marriage, how far parties competent to give evidence.

Provided always, that no plaintiff in any action for breach of promise of marriage shall recover a verdict unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

8. The parties to any proceeding instituted in consequence of adultery, and the husbands and wives of such parties, shall be competent to give evidence in such proceeding:

In proceedings arising out of adultery, how far parties may give evidence.

Provided that no witness in any proceeding, whether a party to the suit or not, shall be liable to be asked, or bound to answer any question tending to show that he or she has been guilty of adultery, unless such witness has already given evidence in the same proceeding in disproof of his or her alleged adultery.

ACCUSED PERSON'S COMPETENCY TO GIVE EVIDENCE

9. Every person charged with an offence, and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person:

Accused persons and their wives competent witnesses.

Provided as follows:—

- (a) a person so charged shall not be called as a witness in pursuance of this Law, except upon his own application;
- (b) the failure of any person charged with an offence, or of the wife or husband, as the case may be, of the person so charged, to give evidence shall not be made the subject of any comment by the prosecution;
- (c) the wife or husband of the person charged shall not, save as in this Law mentioned, be called as a witness in pursuance of this Law, except upon the application of the person so charged;

- (d) nothing in this Law shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage;
- (e) a person charged and being a witness in pursuance of this Law may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;
- (f) a person charged and called as a witness in pursuance of this Law shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed or been convicted 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 committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged; or
 - (ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or
 - (iii) he has given evidence against any other person charged with the same offence;
- (g) every 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;
- (h) nothing in this Law shall affect the provisions of section 37 of the Justices of the Peace Jurisdiction Law; or any right of the person charged to make a statement without being sworn.

Cap. 78.

Where
accused
himself is
his only
witness.

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

11. In cases where the right of reply depends upon the question whether evidence has been called for the defence, the fact that the person charged has been called as a witness shall not of itself confer on the prosecution the right of reply.

Right of reply does not accrue to prosecution because accused has given evidence.

12. (1) The wife or husband of a person charged with an offence under any Law or Part of a Law mentioned in the First Schedule may be called as a witness either for the prosecution or defence and without the consent of the person charged.

When wife or husband of accused may be called as witness for prosecution.

(2) Nothing in this Law shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

13. Sections 9 to 12 inclusive shall apply to all criminal proceedings, notwithstanding any enactment in force on the 19th day of May, 1911.

Sections 9 to 12 apply to all criminal proceedings.

14. Sections 9 to 12 inclusive shall apply to proceedings in courts-martial if so provided:—

Sections 9 to 12 apply to courts-martial if so provided.

(a) as to courts-martial under the Imperial Naval Discipline Act, 29 and 30 Victoria, chapter 109, by general orders made in pursuance of section 65 of that Act; and

(b) as to courts-martial under the Imperial Army Act, 44 and 45 Victoria, chapter 58, by rules made in pursuance of section 70 of that Act.

IMPEACHING CREDIT, CROSS-EXAMINATION OF WITNESS

15. A party producing a witness shall be not allowed to impeach his credit by general evidence of bad character, but he may, in case the witness, in the opinion of the Judge, proves adverse, contradict him by other evidence, or by leave of the Judge, 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 has made such statement.

Impeaching credit of witness when and how allowed to be done by party producing him.

How and when witness' evidence on cross-examination may be contradicted.

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

Cross-examination as to statements reduced to writing.

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

Provided always, that it shall be competent for the Judge at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it for the purpose of the trial as he thinks fit.

Questions whether witness has been convicted of felony or misdemeanour allowable.

18. A witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanour, and, upon being so questioned, if he either denies the fact, or refuses to answer it, it shall be lawful for the opposite party to prove such conviction; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the Clerk of the Court or other officer having the custody of the records of the Court, where the offender was convicted, or by the deputy of such Clerk or officer shall, upon proof of the identity of the person, be sufficient evidence of the said conviction, without proof of the signature or official character of the person appearing to have signed the same.

PROOF OF WRITTEN INSTRUMENT AND COMPARISON OF HANDWRITING

Proof of instruments in writing.

19. 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 has been no attesting witness thereto.

20. Comparison of a disputed writing with any writing proved to the satisfaction of the Judge to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness, or otherwise, of the writing in dispute.

Comparison of hand-writing.

APPLICATION OF SECTIONS

21. The provisions of sections 15 to 20 both inclusive, shall apply to every Court of civil and criminal judicature, and in all legal proceedings, civil and criminal.

Sections 15 to 20 to apply to courts of civil and criminal judicature.

ADMISSIBILITY OF VARIOUS DOCUMENTS AND COPIES

22. Whenever by any Law now in force or hereafter to be in force any certificate, official or public document or documents, or proceeding of any corporation, or joint stock or other company, 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 of any particular in any Court of justice, or before any legal tribunal, or the Legislative Assembly, or any Committee of the Legislative Assembly or in any judicial proceeding, the same shall respectively be admitted 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 the respective Laws made or to be hereafter made, 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.

Official or public documents, etc.

23. All Courts, Judges, Justices, the Clerk of the Grand Court, Taxing Officers of Courts, Commissioners judicially acting, and other Judicial Officers, shall henceforth take judicial notice of the signature of any of Her Majesty's Judges of the Supreme Court of Judicature in England, and of the Judge of the Grand Court, provided such signature be attached or appended to any decree, order, certificate, or other judicial or official document.

Judicial notice to be taken of signature of Judges of Superior Courts.

Private Acts
and minutes
of Legisla-
tive
Assembly.

24. All copies of private Acts of Parliament, if purporting to be printed by the Queen's Printer, and all copies of private Laws of the Legislature of the Islands, if purporting to be printed by the Government Printing Office or Government Printer and all copies of the Minutes of the Legislative Assembly, and of Royal Proclamations, purporting to be printed by the Printers to the Crown, or by the Government Printing Office or Government Printer respectively, or by any or either of them, shall be admitted as evidence thereof by all Courts, Judges, Justices, and others, without any proof being given that such copies were so printed.

Acts of
State, etc.

25. (1) All proclamations, treaties, and other Acts of State of any Foreign State, British Dominion or British Colony, and all judgments, decrees, orders and judicial proceedings of any Court of justice in any Foreign State, or in any British Dominion or British Colony, and all affidavits, pleadings, and other legal documents filed or deposited in any such Court, 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 examined copies, or by copies authenticated as hereinafter mentioned; that is to say, if the document sought to be proved by 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, British Dominion 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, Dominion 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 Foreign, Dominion or Colonial Court to which the original document belongs, or, in the event of such Court having no seal, to be signed by the Judge; or if there be more than one Judge, by any one of the Judges of the said 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 authenticated 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 sig-

nature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

(2) The words "British Colony" as used in this section shall apply to all possessions of the British Crown, wheresoever and whatsoever, other than the United Kingdom of Great Britain and Northern Ireland.

26. 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 one shilling; 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.

27. Whenever, in any proceeding whatever, it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person, or a copy thereof, but it shall be sufficient that it be certified, or purport to be certified under the hand of the Clerk of the Court, or other officer having the custody of the records of the Court where such conviction or acquittal took place, or by the Deputy of such Clerk or other officer, that the paper produced is a copy of the record of the indictment, trial, conviction, and judgment or acquittal, as the case may be, omitting the formal parts thereof.

Certificate of
conviction
or acquittal.

Examined
copies of
contents of
books of
publicnature.

28. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof or extract therefrom shall be admissible in evidence in any Court of justice, or before any person now or hereafter having, by law or by consent of parties authority to hear, receive, and examine evidence:

Provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted; and which officer is hereby required to furnish such certified copy or extract to any person applying at a reasonable time for the same, upon payment of a reasonable sum for the same, not exceeding sixpence for every folio of ninety words.

Government
Notices
admissible
in evidence
without
proof of
signature
and official
character of
person
signing
them.
Law 17/1962

29. All Government Notices of any date whatsoever purporting to have been issued by the Administrator's Office, and purporting to bear the signature of the Administrator or other Officer for the time being Administering the Government, whether in handwriting or print, shall be admissible in evidence in any Court in the Cayman Islands without proof of the signature or official character of the person purporting to have signed the same.

Power of
Court to
impound
documents.

30. 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 may think fit.

PENALTY FOR FALSE CERTIFICATE

Wilfully
certifying
false
certificate.

31. If any officer authorized or required by this Law to furnish any certified copies or extract, wilfully certifies any document as being a true copy or extract, knowing that the same is not a true copy or extract, as the case may be, he shall be guilty of a misdemeanour, and be liable, upon conviction, to imprisonment for a term not exceeding eighteen months.

POWER TO ADMINISTER OATHS

32. Every Court, Judge, Stipendiary Magistrate, Justice, Officer, Commissioner, Arbitrator, or other person now or hereafter having by law or by consent of parties authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively.

Power to administer oath.

PART II. *Medical Evidence*

33. (1) Notwithstanding anything contained in any Law, but subject always to the provisions of this Part, any certificate or report, if accompanied by a sworn statement by the medical practitioner who has signed the certificate or report, shall be admitted in evidence in any criminal proceedings before Justices, or at any Coroner's Inquest, without the medical practitioner being called upon to attend and to give evidence upon oath.

Law 3/1947. Medical certificates and reports admissible in evidence.

(2) Where, in any criminal proceedings before Justices it is intended to put in evidence a certificate or report as provided in subsection (1), the prosecution shall, at least three clear days before the proceedings, serve upon the defendant written notice of such intention, together with a copy of the certificate or report, and the defendant, at the commencement of the proceedings, may object to the admission of the certificate or report, and may require the attendance of the medical practitioner to give evidence on oath.

34. Nothing in this Part shall be deemed to prejudice or take away the right of the defendant, or of the Court or Coroner, as the case may be, at any stage of any proceedings to require the medical practitioner who has signed a certificate or report to attend and give evidence on oath.

Saving.

PART III. *Service of Courts Process (Proof)*

35. The personal service of any summons issued by any Justice or Stipendiary Magistrate under the Justices of the Peace Jurisdiction Law or in any criminal proceeding, may be proved in any legal proceeding by affidavit, sworn or affirmed before any Judge, Justice or Clerk of the Grand Court.

Service of summons may be proved by affidavit or affirmation. Cap. 78.

Form of
affidavit.

36. Every such affidavit shall state the name of the complainant or prosecutor, the name of the defendant, the date of the summons, the name of the Judge or Justice who issued the same, the hour of the day, day of the week, the month and year, and the particular place, namely, the number of house, name of street, pen, estate or other locality 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 Second Schedule, or to the like effect.

Second
Schedule.

Original
summons to
be marked
for
identification.

37. 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.

Affidavit
under
sections 35
and 36 shall
be received
in evidence.

38. Any affidavit which contains the statement required by section 36, and purports to be taken as required by section 35, shall be received, without proof, in any legal proceeding as *prima facie* evidence of the fact therein stated.

Proof of
service of
process.

39. (1) Notwithstanding anything in this or any Law contained where any summons or other process of a Court is served by a constable or other Peace Officer, or by a Bailiff of any Court, the service may be proved by endorsement on the original or a copy of the summons or process under the hand of any 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 the copy of a summons or other process shall be guilty of a misdemeanour and on conviction thereof in the Grand Court shall incur the same penalties as are or may be incurred by persons convicted of wilful and corrupt perjury.

(2) In this section, "Court" means the Grand Court, the Stipendiary Magistrate's Court, the Petty Court, or a Court of Petty Sessions.

FIRST SCHEDULE

Section 12
(1).

TITLE OF LAW	ENACTMENT REFERRED TO
The Offences against the Person Law. Cap. 115.	Sections 43 to 54.
The Married Women's Property Law. Cap. 94.	Sections 13 and 15.

SECOND SCHEDULE

Section 36.

I, *E.F.* (Constable, or as the case may be), do swear that on the _____ day of _____, 19____, at _____ o'clock in the afternoon (or morning, as the case may be), (at No. _____ George Town), (or at _____ pen, as the case may be, describing the locality), I served upon *A.B.* a summons now marked "A", dated the _____ day of _____, 19____, and issued by *J.S.*, Justice of the Peace (or, as the case may be), against *A.B.* on the information (or complaint) of *C.D.* (the complainant or prosecutor). 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 I did not know *A.B.* personally, but I asked him if he were *A.B.* and he said that he was, or the other means by which *E.F.* ascertained that the person served was *A.B.*, must be stated).

Taken and sworn to before me, at _____, this _____ day of _____, 19____.

(Signed) _____ *A.B.*,

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

