

THE EVIDENCE ACT 1967

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THE UNITED REPUBLIC OF TANZANIA



No. 6 OF 1967

I ASSENT,

Julius K. Nyerere
President

27TH APRIL, 1967

An Act to declare the Law of Evidence

[—————]

ENACTED by the Parliament of the United Republic of Tanzania.

CHAPTER I-PRELIMINARY

1. This Act may be cited as the Evidence Act 1967 and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint. Short title and commencement
2. This Act shall apply to all judicial proceedings in Tanganyika in or before the High Court and all magistrates' courts except Primary Courts, but not to affidavits presented to any court or officer nor, subject to section 76, to proceedings before an arbitrator. Application
- 3.-(1) In this Act the following words and expressions are used in the following senses unless a contrary intention appears from the context- Interpretation
- "court" includes all judges, magistrates and assessors and all persons, except arbitrators, legally authorized to take evidence;
- "document" means any writing, handwriting, typewriting, printing, photostat, photograph and every recording upon any tangible thing, any form of communication or representation by letters, figures, marks or symbols or by more than one of these means, which may be used for the purpose of recording any matter provided that such recording is reasonably permanent and readable by sight;
- "documentary evidence" means all documents produced as evidence before the court;

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

"fact" includes—

- (a) any thing, state of things, or relation of things, capable of being perceived by the senses;
- (b) any mental condition of which any person is conscious;

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

"husband" or "wife" means the spouse of a marriage which is valid according to the statutory or customary laws of the United Republic;

"oral evidence" means all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry,

"relevant" - one fact is said to be relevant to another when the one is connected with the other in any of the ways referred to in the provisions of this Act relating to the relevancy of facts.

(2) A fact is said to be proved when-

- (a) in criminal matters except where otherwise provided by statute or other law, the court believes it to exist beyond reasonable doubt;
- (b) in civil matters, including matrimonial causes and matters, its existence is established by a preponderance of probability.

Permissible inferences

4. Whenever it is provided by this Act or any other written law that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

Presumptions

5. Whenever it is directed by this Act or any other written law that the court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.

Conclusive proof

6. When one fact is declared by this Act or any other written law to be conclusive proof of another, the court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.

CHAPTER II OF THE RELEVANCY OF FACTS

PART I

GENERAL

Evidence may be given of facts in issue and relevant facts

7. Subject to the provisions of any other law, evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue, and of such other facts as are hereinafter declared to be relevant, and of no others.

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

Relevancy of facts forming part of same transaction

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

Facts which are the occasion cause or effect of facts in issue

10. (1) Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

(2) The conduct of any party, or of any agent of any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Motive, preparation and previous or subsequent conduct

(3) When the conduct of any person is relevant, any statement made to him or in his presence and hearing which affects such conduct is relevant.

(4) The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements; but this provision shall not affect the relevancy of statements under any other section of this Act.

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

Facts necessary to explain or introduce relevant facts

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

Things said or done by conspirator in reference design

13. Facts not otherwise relevant are relevant-

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

When facts not otherwise relevant become relevant

- In suits for damages, facts tending to enable court to determine amount are relevant
14. In suits in which damages are claimed, any fact which will enable the court to determine the amount of damages which ought to be awarded is relevant.
- Facts affecting existence of right or custom
15. Where the existence of any right or custom is in question, the following facts are relevant-
- (a) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied, or which was inconsistent with its existence;
- (b) particular instances in which the right or custom was claimed, recognized or exercised, or in which its exercise was disputed, asserted or departed from.
- Facts showing existence of state of mind or of body, feeling
- 16-(1) Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state or of bodily of body or bodily feeling, are relevant, when the existence of any such state of mind or body or bodily feeling is in issue or relevant.
- (2) A fact relevant within the meaning of subsection (1) as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question.
- (3) Where, upon the trial of a person accused of an offence, the previous commission by the accused of an offence is relevant within the meaning of subsection (1), the previous conviction of such person shall also be a relevant fact.
- Facts bearing on question whether act was accidental or intentional
Existence of course of business when relevant
17. When there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.
18. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

PART II

ADMISSIONS

- Admission defined
19. An admission is a statement, oral or documentary, which suggests any inference as to a fact in issue or relevant fact, and which is made by any of the persons, and in the circumstances, hereinafter mentioned.
- Statements by party to suit or agent or interested party
- 20-(1) Statements made by a party to the proceeding or by an agent to any such party, whom the court regards in the circumstances of the case as expressly or impliedly authorized by him to make them, are admissions.
- (2) Statements made by parties to suits, suing or sued in a representative character, are not admissions unless they were made while the party making them held that character.

(3) Statements made by-

- (a) persons who have any proprietary or pecuniary interest in the subject matter of the proceeding, and who make the statement in their character of persons so interested; or
- (b) persons from whom the parties to the suit have derived their interest in the subject matter of the suit,

are admissions if they are made during the continuance of the interest of the persons making the statements.

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

Admissions by persons whose Position must if be proved as against party suit

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

Admissions by persons referred to by party to suit

23. Admissions are relevant and may be proved as against the person who makes them or his representative in interest, but they cannot be proved by or on behalf of the person who makes them or by his persons representative in interest, except in the following cases:-

Proof of admissions against making them and by or on their behalf

- (a) an admission may be proved by or on behalf of the person making it when it is of such a nature that, if the person making it were dead, it would be relevant as between third parties under section 34;
- (b) an admission may be proved by or on behalf of the person making it, when it consists of a statement of the existence of any state of mind or body, relevant or in issue made at or about the time when such state of mind of body existed, and is accompanied by conduct rendering its falsehood improbable; and
- (c) an admission may be proved by or on behalf of the person making it, if it is relevant otherwise than as an admission.

24. oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question.

Oral admissions as to contents of documents

25.-(I) In civil cases no admission is relevant if it is made either upon an express condition that evidence of it is not to be given, or in circumstances from which the court can infer that the parties agreed together that evidence of it should not be given.

Admissions made without prejudice in civil cases

(2) Nothing in subsection (1) shall be taken to exempt any advocate from giving evidence of any matter of which he may be compelled to give evidence under section 137.

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

Admissions not conclusive proof, but may estop

PART III

CONFESSIONS

- Statements, etc., made to police officers 27. No confession made to a police officer shall be proved as against a person accused of an offence.
- Confessions while in police custody Cap. 537 28. No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a magistrate as defined in the Magistrates' Courts Act, 1963 or a justice of the peace under that Act, shall be proved as against such person.
- Confession caused by inducement, threat or promise 29. No confession which is tendered in evidence shall be rejected on the ground that a promise or threat has been held out to, the person confessing unless the court is of the opinion that the inducement was made in such circumstances and was of such a nature as was likely to cause an untrue admission of guilt to be made.
- Confession made after removal of impression caused by inducement 30. Where an inducement has been made to a person accused of an offence in such circumstances and of such a nature as are referred to in section 29 and a confession is made after the impression caused by the inducement has, in the opinion of the court, been fully removed, the confession is relevant and need not be rejected.
- Relevance of information received from accused in police custody 31. When any fact is proved to be discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, is relevant.
- Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc. 32. If such a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.
- Consideration of proved confession affecting person making it and others jointly under trial for same offence 33.-(1) When more persons than one are being tried jointly for the same offence and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court shall not take into consideration such confession as against such other person but may take it into consideration only against the person who makes such confession.
- (2) In this section "offence" includes the abetment of, or attempt to commit, the offence.

PART IV

STATEMENTS BY PERSONS WHO CANNOT BE CALLED AS WITNESSES

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

- | | |
|---|---|
| (a) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question. Such statements are admissible whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into, question; | Statement by deceased person, etc., when-

relating to cause of death |
| (b) when the statement was made by such person in the ordinary course of business, and in particular when it consists of an entry or memorandum made by him in books or records kept in the ordinary course of business or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce, written or signed by him; or of the date of a letter or other document usually dated, written or signed by him; | Made in the course of business |
| (c) when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages; | against the interest of maker |
| (d) when the statement gives the opinion of any such person as to - the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen; | an opinion as to public right or custom |
| (e) when the statement relates to the existence of any relationship by blood, marriage, or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised; | relating to existence of relationship |
| (f) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised; | relating to family affairs |
| (g) when the statement is contained in any deed or other document which relates to any such transaction as is mentioned in paragraph (a) of section 15; | relating to a transaction asserting, etc., a custom |

- made by several persons and expressing feelings
- (h) when the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.
- Relevancy of evidence given in previous proceedings
35. (1) Evidence given by a witness in a judicial proceeding is relevant for the purpose of proving, in a subsequent judicial proceeding or in a later stage of the same judicial proceeding, the truth of the facts which it states in the following circumstances-
- (a) where the witness is dead, or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or where his presence cannot be obtained without an amount of delay or expense which in the circumstances of the case the court considers unreasonable;
- and where, in the case of a subsequent proceeding-
- (b) the proceeding is between the same parties or their representatives in interest; and
- (c) the adverse party in the first proceeding had the right and opportunity to cross-examine; and
- (d) the questions in issue were substantially the same in the first as in the second proceeding.
- (2) For the purposes of this section-
- (a) the expression "judicial proceeding" shall be deemed to include any proceeding in which evidence is taken by a person authorized by law to take that evidence on oath;
- (b) a criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused.

PART V

STATEMENTS UNDER SPECIAL CIRCUMSTANCES

- Entries in books of account
36. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to inquire, but such statement shall not alone be sufficient evidence to charge any person with liability.
- Entries in public records
37. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact.
- Statements, etc., in maps, charts and plans
38. Statements of facts in issue or relevant facts, made in published maps or charts generally offered for public sale or in maps or plans made under the authority of Government, as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.
- Statement of fact in laws, gazettes, etc.
39. When the court has to form an opinion as to the existence of any fact of a public nature, any statement of it, made in a recital contained in any Act, or in any law of the United Republic duly promulgated, or in a notification of the Government appearing in the *Gazette* is a relevant fact,

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

Statements as to law contained in books

PART VI

EXTENT TO WHICH STATEMENT IS TO BE PROVED

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

What evidence to be given when statement forms part of a conversation, document, book or serious of letter or papers

PART VII

RELEVANCY OF JUDGMENTS

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

Previous judgments relevant to bar a second suit or trial

43-(1) A final judgment, order or decree of a competent court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character or the title of any such person to, any such thing, is relevant.

Relevancy of certain judgments in probate etc., jurisdiction

(2) Such judgment, order or decree is conclusive proof-

- (a) that any legal character which it confers accrued at the time when such judgment, order or decree came into operation;
- (b) that any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person;
- (c) that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declares that it had ceased or should cease; and
- (d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property.

44. Judgments, orders or decrees other than those mentioned in section 43 are relevant if they relate to matters of a public nature relevant to the inquiry, but such judgments, orders or decrees are not conclusive proof of that which they state.

Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 43

Relevancy of judgments etc., other than those mentioned in sections 42 to 44
 45. Judgments, orders or decrees, other than those mentioned in sections 42, 43 and 44, are irrelevant unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.

Fraud or collision in obtaining judgment or incompetency of court may be proved
 46. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under sections 42, 43 or 44, and which has been proved by the adverse party, was delivered by a court not competent to deliver it, or was obtained by fraud or collusion.

PART VIII
 RELEVANCY OF OPINIONS OF THIRD PERSONS

Opinions of experts
 47. (1) When the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger or other impressions, opinions upon that point of persons possessing special knowledge, skill, experience or training in such foreign law, science or art or question as to identity of handwriting or finger or other impressions are relevant facts.

(2) Such persons are called experts.

Facts bearing upon opinions of experts
 48. Facts, not otherwise relevant, are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Relevancy of opinion as to handwriting
 49. (1) When the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that is was or was not written or signed by that person, is a relevant fact.

(2) For the purposes of subsection (1), a person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Relevancy of opinion as to existence of right or custom
 50.-(1) When the court has to form an opinion as to the existence of any general custom or right, the opinions as to the existence of such custom or right of persons who would be likely to know of its existence if it existed are relevant.

(2) For the purposes of subsection (1), the expression "general custom or right" includes customs or rights common to any considerable class of persons.

Relevancy of opinion as to usages, tenets, etc.
 51. When the court has to form an opinion as to-
 (a) the usages and tenets of any body of men or family; or
 (b) the constitution and government of any religious or charitable foundation; or
 (c) the meaning of words or terms used in particular districts or by particular classes of people,
 the opinion of persons having special means of knowledge thereon are relevant facts.

52. When the court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact:

Relevancy of opinion on relationship

Provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Matrimonial Causes Ordinance, or in prosecutions under section 164 of the Penal Code.

cap. 364
Cap.16

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

Grounds of opinion

PART IX RELEVANCY OF CHARACTER

54.-(1) In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct imputed to him is irrelevant, except in so far as such character appears from facts otherwise relevant.

Character in civil cases

(2) In civil cases the fact that the character of any person is such as to affect the amount of damages which he ought to receive is relevant.

55. In criminal proceedings the fact that the person accused is of a good character is relevant.

Good character in criminal cases

56.-(1) In criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he, has a good character, in which case it becomes relevant:

Bad character in criminal cases

Provided that a previous conviction for any offence becomes relevant, after conviction in the case under trial, for the purpose of affecting the sentence to be awarded by the court.

(2) Subsection (1) does not apply to cases in which tile bad character of any person is itself a fact in issue.

(3) A previous conviction is relevant as evidence of bad character.

(4) A person charged and called as a witness in pursuance of subsection (3) of section 130 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 of, or been charged with, any offence other than that wherewith he is then charged, or that he is of bad character, unless-

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

Definition of "character" 57. In sections 46, 47, 48 and 49 the word "character" includes both reputation and disposition but, except as provided in sections 48 and 49, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition were shown.

CHAPTER III-PROOF

PART I

FACTS REQUIRING NO PROOF

Facts judicially noticed 58. No fact of which the court shall take judicial notice need be proved.

Facts of which court shall take judicial notice 59.(1) The court shall take judicial notice of the following facts:-

- (a) all written laws, rules, regulations, proclamations, orders or notices having the force of law now or heretofore in force, or hereafter to be in force, in any part of the United Republic;
- (b) the existence and title of societies or other bodies the registration of which has been notified in the Gazette;
- (c) the course of proceeding of Parliament;
- (d) all seals of all the courts of the United Republic duly established and of notaries public, and all seals which any person is authorized to use by any written law;
- (e) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of the United Republic, if the fact of their appointment to such office is noticed in the Gazette;
- (f) the existence, title and national flag of every State or Sovereign recognized by the United Republic;
- (g) the divisions of time, the geographical divisions of the world, and public festivals, fasts and holidays notified in the Gazette;
- (h) the commencement, continuance and termination of hostilities between the United Republic and any other State or body of persons;
- (i) the names of the members and officers of the court, and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates and other persons authorized by law to appear or act before it.

(2) In all cases within subsection (1) and also in matters of public history, literature, science or art, the court may resort for its aid to appropriate books or documents of reference.

(3) If the court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider to enable it to do so.

60. No fact need be proved in any civil proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Facts admitted in civil proceeding need not be proved

Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

PART 11

ORAL EVIDENCE

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

oral evidence

62.-(1) Oral evidence must, in all cases whatever, be direct; that is to say-

Oral evidence must be direct

- (a) if it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;
- (b) if it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;
- (c) if it refers to a fact which could be perceived by any other sense, or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;
- (d) if it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion or, as the case may be, who holds it on those grounds:

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatise if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable.

(2) If oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for its inspection.

PART III

DOCUMENTARY EVIDENCE

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

Proof of contents of documents

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

(2) Where a document is executed in several parts, each part is primary evidence of the document.

Primary evidence

(3) Where a document is executed in counterpart, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing it.

(4) Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original.

Secondary evidence

65. Secondary evidence includes-

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

Proof of documents by primary evidence

66. Documents must be proved by primary evidence except in the cases hereinafter mentioned.

Proof of documents by secondary evidence

67.-(1) Secondary evidence may be given of the existence, condition or contents of a document in the following cases: -

- (a) when the original is shown or appears to be in the possession or power of-
 - (i) the person against whom the document is sought to be proved; or
 - (ii) a person out of reach of, or not subject to, the process of the court; or
 - (iii) a person legally bound to produce it, and when, after the notice specified in section 68, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) when the original is of such a nature as not to be easily movable;
- (e) when the original is a public document within the meaning of section 83;
- (2) When the original is a document of which a certified copy is permitted by this Act or by any written law to be given in evidence;
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.

(2) In the cases mentioned in paragraphs (a), (c) and (d) of subsection (1) any secondary evidence of the contents of the document is admissible.

(3) In the case mentioned in paragraph (b) of subsection (1) the written admission is admissible.

(4) In the cases mentioned in paragraphs (e) and (f) of subsection (1) a certified copy of the document, but no other kind of secondary evidence, is admissible.

(5) In the case mentioned in paragraph (g) of subsection (1) evidence may be given as to the general result of the accounts or documents by any person who has examined them, and who is skilled in the examination of such accounts or documents.

68. Secondary evidence of the contents of the documents referred to in paragraph (a) of subsection (1) of section 67 shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as a court considers reasonable in the circumstances of the case:

Rules as to
notice to
produce

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases: ---

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

69. If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

Proof of
signature and
handwriting
of person
alleged to
have signed or
written
documents

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

Proof of
execution
of document
required by
law to be
attested

Proof where no attesting witness found

71. If no such attesting witness can be found or when such witness is not subject to the process of the Court or is incapable of giving evidence, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document

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

Proof when attesting witness denies the execution

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

Proof of document not required by law to be attested

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

Comparison of signature, writing or seal with others admitted or proved

75.(I) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal, admitted or proved to the satisfaction of the -court to have been written or made by that person, may be compared with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

(2) The court may direct any person in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person.

(3) This section applies also, with any necessary modifications, to finger impressions.

PART IV BANKERS' BOOKS

Definitions

76. For the purposes of this Part the expression-
 "bank" or "banker" means any person carrying on the business of banking in the United Republic, and for the purposes of sections 76, 77 and 78 includes any person carrying on the business of banking in Uganda or Kenya;
 "court" means the court, judge, arbitrator or person or persons before whom a legal proceeding is held or taken;
 "legal proceeding" means any civil or criminal proceeding or inquiry, including an arbitration, in which evidence is or may be given in the United Republic, and for the purposes of section 81 includes any such proceeding or inquiry in Kenya or in Uganda.

Mode of proof of entries in banker's books

77. Subject to this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry and of the matters, transactions and accounts therein recorded.

Proof that book is a banker's book

78.(I) A copy of an entry in a banker's book shall not be received in evidence under this Act 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.

(2) 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 for oaths or person authorized to take affidavits.

79.-(I) A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the Original entry and is correct.

(2) Such proof shall be given by some person who, has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner for oaths or person authorized to take affidavits.

80. A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be Proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of a court made for special cause.

Case in which
banker
etc. not
compellable
to produce
book etc.
Court may
order
inspection,
etc

81. 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 entries in a banker's book for any of the purposes of such proceedings. An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before the same is to be obeyed unless the court otherwise directs.

82. The costs of any application to a court under or for the purposes of this part of this Act, and the costs of anything done or to be done under an order of a court made under or for the purposes of this part of this Act shall be in the discretion of the court which may order the same or any part thereof to be paid to any party by the bank where the same have been occasioned by any default or delay on the part of the bank. Any such order against a bank may be enforced as if the bank was a party to the proceeding.

Costs

PART V

PUBLIC DOCUMENTS

83. The following documents are public documents--

Public
documents

(a) documents forming the acts or records of the acts-

- (i) of the President of the United Republic;
- (ii) of official bodies and tribunals; and
- (iii) Of Public officers, legislative, judicial and executive;

(b) Public records kept in the United Republic of Private documents.

84. All documents other than public documents are private.

Private
documents

Certified
copies of
public
documents

85. (1) Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and official title, and shall be sealed whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.

(2) Any officer who by the ordinary course of his official duty is authorized to deliver copies of public documents shall be deemed to have the custody of such documents within the meaning of this section.

Proof of
documents by
production of
certified
copies

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

Proof of
other official
documents

87. The following public documents may be proved as follows: --

- (a) acts, orders or notifications of the Government of the United Republic, the Executive of Zanzibar, the High Commission or the Organization or any service thereof, or any local authority or of a ministry or department of any of the foregoing-
 - (i) by the records of the service, authority, ministry, or department certified by the head thereof; or
 - (ii) by any document purporting to be printed or published by order of the Government or other body concerned;
- (b) the proceedings of the legislatures of the United Republic and of the East African Central Legislative Assembly-
 - by the journals of those bodies respectively, or by published Acts or abstracts, or by copies, purporting to be printed by order of Government or the Common Services Authority;
- (c) proclamations, orders or regulations issued by the President of the United Republic or of Zanzibar or by any department of the Government of the United Republic or of the Executive of Zanzibar-
 - by copies or extracts contained in the *Gazette* or purporting to be printed by the Government Printer;
- (d) the acts of the executive or the proceedings of the legislature of a foreign country—
 - by journals published by their authority, or commonly received in that country as such, or by a copy certified under the seal of the country or sovereign, or by a recognition thereof in some written law;
- (e) the proceedings of a municipal body in the United Republic-
 - by a copy of such proceedings, certified by the legal keeper thereof, or by printed book purporting to be published by the authority of such body;

- (f) public documents of any other class in a foreign country by the original or by a copy certified by the legal keeper thereof, with a certificate under the seal of a foreign service officer or diplomatic representative of a Commonwealth country, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the documents according to the law of the foreign country.

PART VI

PRESUMPTIONS AS TO DOCUMENTS

88-(1) The court shall presume to be genuine every document purporting to be a certificate, certified copy or other document, which-

Presumption as to genuineness of certified copies

- (a) is by law declared to be admissible as evidence of any particular fact;
- (b) purports to be duly certified by any public officer in the United Republic; and
- (c) is substantially in the form and purports to be executed in the manner directed by law in that behalf.

(2) The court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed it, the official character which he claims in such paper.

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

Presumption as to documents produced as record of evidence

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

90--(1) The court shall presume the genuineness of every document purporting to be the Government *Gazette of the United Republic* or of Zanzibar, or to be a newspaper or journal, or to be a copy of a private Act of the National Assembly printed by the Government Printer, and of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and is produced from proper custody.

Presumption as to Gazettes, newspapers, private Acts of the National Assembly and other documents

(2) For the purposes of subsection (1), documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

Presumption
as to maps
or plans
made by
authority of
Government

91. The court shall presume that maps or plans purporting to be made by the authority of Government were so made, and are accurate; but maps or plans made for the purposes of any legal proceeding must be proved to be accurate.

Presumption
as to
collections
of laws and
reports of
decisions

92. The court shall presume the genuineness of every book purporting to be printed or published under the authority of the Government of any country, and to contain any of the laws of that country, and of every book purporting to contain reports of decisions of the courts of any country.

Presumption
as to private
documents
executed
outside the
United
Republic

93. The court shall presume that private documents purporting to be executed out of the United Republic were duly executed and the execution duly authenticated if-

- (a) in the case of such document executed in Uganda, Kenya, Malawi or Zambia it purports to be authenticated by a magistrate, registrar or judge under the seal of the court or by a notary public under his signature and seal of office;
- (b) in the case of such document executed in Uganda, Kenya, Malawi or Zambia which affects or relates to property not exceeding in amount or value of Shs. 5,000/= there purports to be appended to or endorsed on such document a statement signed by a magistrate or a justice of the peace-
 - (i) that the person executing such document is a person known to him: or
 - (ii) that two other persons known to him have separately testified before him that the person executing such document is known to each of them-,
- (c) in the case of such document executed in any other place outside the United Republic if it purports to be authenticated by the signature and seal of office-
 - (i) of a foreign service officer of the United Republic or a diplomatic representative of a Commonwealth country in such place; or
 - (ii) of any Secretary of State, Minister, Under-Secretary of State or any other person in such foreign place, who shall be shown by the certificate of the foreign service officer of the United Republic or a diplomatic representative of a Commonwealth country in such place, to be duly authorized under the law of such place to authenticate such document.

Presumption
as to powers
of attorney

94. The court shall presume that every document purporting to be a power of attorney and to have been executed before and authenticated by a notary public, or commissioner for oaths, any court, judge, magistrate, registrar, foreign service officer or diplomatic representative of a Commonwealth country, was so executed and authenticated.

95. The court may presume that any document purporting to be a certified copy of any judicial record of any foreign country is genuine and accurate, if the document purports to be certified in any manner which is certified by any foreign service officer or diplomatic representative of a Commonwealth country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to certified copies of foreign judicial records

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

Presumption as to books, maps and charts

97. The court may presume that a message, forwarded from a telecommunications office to the person to whom such message purports to be addressed, corresponds with a message delivered for transmission at the office from which the message purports to be sent; but the court shall not make any presumption as to the person by whom such message was delivered for transmission.

Presumption as to telecommunications messages

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

Presumption as to due executions etc., of documents not produced
Presumption as to documents twenty years old

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

(2) For the purposes of subsection (1), documents are said to be in proper custody if they are in the place in which, and under the care of the person with whom, they would naturally be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

PART VII

OF THE EXCLUSION OF ORAL BY DOCUMENTARY EVIDENCE

100.-(1) When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained.

Evidence of terms of contracts, grants and other dispositions of property reduced to form of document

(2) Notwithstanding subsection (1), when a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is appointed need not be proved.

(3) Wills admitted to probate in the United Republic may be proved by the probate.

(4) Subsection (1) applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document, and to cases in which they are contained in more documents than one.

(5) When there are more originals than one, one original only need be proved.

(6) The statement, in any document whatever, of a fact other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

Exclusion of
evidence of
oral
agreement

101. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 100, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from its terms:

Provided that-

- (a) any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, want or failure of consideration, or mistake in fact or law;
- (b) the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved, and in considering whether or not this paragraph of this proviso applies, the court shall have regard to the degree of formality of the document;
- (c) the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved;
- (d) the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing or has been registered according to the law in force for the time being as to the registration of documents;
- (e) any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved if the annexing of such incident would not be repugnant to or inconsistent with the express terms of the contract;
- (f) any fact may be proved which shows in what manner the language of a document is related to existing facts.

<p>102. When the language used in a document is, on its face, ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.</p>	<p>Exclusion of evidence to explain patent ambiguity</p>
<p>103. When language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.</p>	<p>Exclusion of evidence against application of document to existing facts</p>
<p>104. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.</p>	<p>Evidence as to latent ambiguity</p>
<p>105. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to apply to more than one, of several persons or things, evidence may be given of facts which show which of those persons or things it was intended to apply to.</p>	<p>Evidence as to application of language which can apply to one only of several persons</p>
<p>106. When the language used in a document applies partly to one set of existing facts, and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.</p>	<p>Evidence as to application of language to one of two sets of facts</p>
<p>107. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and regional expressions, of abbreviations and of words used in a peculiar sense.</p>	<p>Evidence as to meaning of liable characters, etc.</p>
<p>108. Persons who are not parties to a document, or their representatives in interest, may give evidence of any facts tending to show a contemporaneous agreement varying the terms of the document.</p>	<p>Evidence of variation given by third parties</p>
<p>109. Nothing in this Part of this Chapter shall be taken to affect the provisions of any other written law as to the construction of Wills or other testamentary dispositions.</p>	<p>Saving of provisions of written law as to construction of wills, etc.</p>

CHAPTER IV----PRODUCTION AND EFFECT OF EVIDENCE

PART I

THE BURDEN OF PROOF

<p>110-(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.</p>	<p>Burden of proof</p>
<p>(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.</p>	
<p>111. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side</p>	<p>On whom burden of proof lies</p>
<p>112. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.</p>	<p>Burden of proof of particular fact</p>

Burden of proving fact to be proved to make evidence admissible

113. The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Extent of burden of proof on accused

114.(I) When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any exception or exemption from, or qualification to, the operation of the law creating the offence with which he is charged and the burden of proving any fact especially within the knowledge of such person is upon him:

Provided that such burden shall be deemed to be discharged if the court is satisfied by evidence given by the prosecution, whether in cross-examination or otherwise, that such circumstances or facts exist:

Provided further that the person accused shall be entitled to be acquitted of the offence with which he is charged if the court is satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to the guilt of the accused person in respect of that offence.

(2) Nothing in this section shall--

- (a) prejudice or diminish in any respect the obligation to establish by evidence according to law any acts, omissions or intentions which are legally necessary to constitute the offence with which the person accused is charged; or
- (b) impose on the prosecution the burden of proving that the circumstances or facts described in subsection (1) do not exist; or
- (c) affect the burden placed upon an accused person to prove a defence of intoxication or insanity.

Burden of proving fact especially within knowledge in civil proceedings

115. In civil proceedings, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Burden of proving death of person known to have been alive within thirty years

116. When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

Burden of Proving that person is alive who has not been heard of for seven years

117. Notwithstanding section 116, when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent

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

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

Burden of proof as to ownership

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

Proof of good faith in transactions where one party is in relation of active confidence

121. The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

Birth during marriage conclusive Proof If legitimacy

122. The court may infer the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Court may presume existence of certain facts

PART 11

ESTOPPEL

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

Estoppel

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

Estopped of tenant of or licenses of person in possession

125. No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw such bill or to endorse it:

Estoppel of acceptor of bill of exchange

Provided that the acceptor of a bill of exchange may deny that the bill was really drawn or endorsed by the person by whom it Purports to have been drawn or endorsed.

126. No bailee or licensee shall be permitted to deny that his bailor or licensor had, at the time when the bailment or licence Commenced, authority to make such bailment or grant such licence:

Estoppel of a bailee or licensee

Provided that if a bailee delivers the goods bailed to a person other than the bailor, he may prove that such person **had a right to them as against the bailor.**

CHAPTER V-WITNESSES

PART I

COMPETENCY, COMPELLABILITY AND PRIVILEGE OF WITNESSES

Who may testify

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

(2) Where in any criminal cause or matter any child of tender years called as a witness does not, in the opinion of the court, understand the nature of an oath, his evidence may be received, though not given upon oath or affirmation, if in the opinion of the court, to be recorded in the proceedings, he is possessed of sufficient intelligence to justify the reception of his evidence, and understands the duty of speaking the truth:

Provided that where evidence received by virtue of this subsection is given on behalf of the prosecution, the accused shall not be liable to be convicted unless such evidence is corroborated by some other material evidence in support thereof implicating the accused.

(3) A person of unsound mind is not incompetent to testify, unless he is prevented by his condition from understanding the questions put to him and giving rational answers to them.

Dumb witnesses

128.-(1) A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written, and the signs made, in open court.

(2) Evidence so given shall be deemed to be oral evidence.

Privilege of court

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

Competency and compellability of accused and husband or Wife

130.-(1) Where a person charged with an offence is the husband or the wife of another person, such last named person shall be a competent but not a compellable witness on behalf of the prosecution:

Provided that the wife or husband shall be a competent and compellable witness for the prosecution in the following cases only:.

(a) in any case where the person charged is charged with an offence under Chapter XV of the Penal Code or against section 164 of the Penal Code;

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(b) in any case where the person charged is charged in respect of an act or omission affecting the person or property of the wife or husband of such person or the children or either of them.

(2) Where a person whom the court has reason to believe is the husband or wife of a person charged with an offence is called as a witness for the prosecution, the court shall, except in the cases specified in the proviso to subsection (1), ensure that such person is before giving evidence made aware of the provisions of subsection (1) and the evidence of such person shall not be admissible unless the court has recorded in the proceedings that this subsection has been complied with.

(3) 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 where the person so charged is charged solely or jointly with any other person:

Provided that the wife or husband of the person so charged shall not be called as a witness except upon the application of the person so charged.

(4) Nothing under this section shall make a husband compellable to disclose a 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.

(5) The failure of any person charged with an offence, or of the wife or husband of any such person, to give evidence shall not be the subject of any comment by the prosecution.

131. In all civil proceedings the parties to the suit, and the husband and wife of any party to the suit, shall be competent and compellable witnesses.

General
competency
of parties
and their
husbands
and wives in
civil
proceedings
Privilege
relating to
official
records

132. Whenever it is stated on oath (whether by affidavit or otherwise) by a Minister, or by the Secretary-General of the Common Services Organization, that he has examined the contents of any document forming part of any unpublished official records or communications received by a public officer in the course of his duty, the production of which document has been called for in any proceedings, and that he is of the opinion that such production would be prejudicial to the public interest, either by reason of the contents thereof or of the fact that it belongs to a class which, on grounds of public policy, should be withheld from such production, the document shall not be admissible.

133.--(I) No judge, magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue.

Information
as to
commission
of offences

(2) For the purpose of subsection (1), "revenue officer" means any officer employed in or about the business of any branch of the public revenue and public revenue includes income tax, customs and excise.

Professional
communication

134.(I) No advocate shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such advocate by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment:

Provided that nothing in this section shall protect from disclosure-

- (a) any communication made in furtherance of any illegal purpose;
- (b) any fact observed by any advocate in the course of his employment as such, showing that any crime or fraud has, been committed since the commencement of his employment, whether the attention of such advocate was or was not directed to such fact by or on behalf of his client.

(2) The obligation stated in this section continues after the employment has ceased.

(3) For the purposes of this section and of sections 135, 136 and 137, the words "advocate" and "professional legal adviser" mean a person authorized by law or reasonably believed by the client to be authorized by law to practise law in any country, the law of which recognizes a privilege against disclosure of confidential communication between client and professional legal adviser or advocate.

Privilege of
interpreters,
and
advocates
clerks

135. The provisions of section 134 shall apply to interpreters, and the clerks or servants of advocates.

Privilege not
waived by
volunteering
evidence

136.-(1) If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 134.

(2) If any party to a suit or proceeding calls any such advocate as a witness he shall be deemed to have consented to such disclosure only if he questions such advocate on matters which, but for such question, he would not be at liberty, to disclose.

Confidential
communica-
tions with
legal advisers

137. No one shall be compelled to disclose to the court any confidential communication which has taken place between him and his advocate or professional legal adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the court necessary to be known in order to explain any evidence which he has given, but no others.

Production of
title-deeds of
witness not a
party

138. No witness who is not a party to a suit shall be compelled to produce his title-deeds to any property or any document under which he holds any property as pledge or mortgagee, unless he has agreed in writing with the person seeking the production of such deeds or some person through whom he claims to produce them.

139. No witness who is not a party to the suit shall be compelled to produce a document, the production of which might tend to incriminate him, unless he has agreed in writing with the person seeking the production of such document or some person through whom he claims to produce it.

Production of incrimination documents

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

Production document which another person having possession could refuse to produce

141. A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any Civil or criminal proceeding, upon the ground that the answer to such question will incriminate, or may tend directly or indirectly to, incriminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind, or that it may establish or tend to establish that he owes a debt or is otherwise subject to a civil suit:

Witness not excused from answering on ground that answer will incriminate

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any subsequent criminal proceeding, except a prosecution for giving false evidence by such answer.

142. An accomplice shall be a competent witness, against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

Accomplice

143. Subject to the provisions of any other written law, no particular number of witnesses shall in any case be required for the proof of any fact.

Number of witnesses

PART III

EXAMINATION OF WITNESSES

144. The order in which witnesses are produced and examined shall be regulated by the law and practice for the time being relating to civil and criminal procedure respectively, and in the absence of any such law, by the discretion of the court.

Order of production and examination of witnesses

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

Court to decide as to admissibility of evidence

(2) The court shall admit the evidence of any fact if it thinks that the fact, if proved, would be relevant, and not otherwise.

(3) If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned unless the party undertakes to give proof of such fact and the court is satisfied with such undertaking.

(4) If the relevancy of one alleged fact depends upon another alleged fact being first proved, the judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved or require evidence to be given of the second fact before evidence is given of the first fact.

Examination
of witnesses

146. (1) The examination of a witness by the party who calls him shall be called his examination-in-chief.

(2) The examination of a witness by the adverse party shall be called his cross-examination.

(3) The examination of a witness, subsequent to the cross-examination, by the party who called him, shall be called his re-examination.

Order and
direction of
examinations

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

(2) The examination-in-chief must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

(3) The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the court, introduced in re-examination, the adverse party may further cross-examine upon that matter.

(4) The court may in all cases permit a witness to be recalled either for further examination-in-chief or for further cross-examination, and if it does so, the parties have the right of further cross-examination and re-examination respectively.

PART IV

QUESTIONING OF WITNESSES

Cross-
examination
of person
called to
produce a
document
Witnesses to
character

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

149. Witnesses to character may be cross-examined and re-examined.

Meaning of
leading
question

150. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

Leading
questions in
examination
in-chief and
re-examina-
tion

151. (1) Leading questions must not, if objected to by the adverse - party, be asked in an examination-in-chief, or in a re-examination, except with the permission of the court.

(2) The court shall permit leading questions as to matters which are introductory or undisputed, or which have in its opinion been already sufficiently proved.

152. Leading questions may be asked in cross-examination. Leading questions in-cross-examination
153. Any witness may be asked, whilst under examination, whether any contract or grant or other disposition of property, as to which he is giving evidence, was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document, which, in the opinion of the court, ought to be produced, the adverse party may object to such evidence being given until such document is produced. or until facts have been proved which entitle the party who called the witness to give secondary evidence of it. Evidence as to matters in writing
154. A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him or being proved, but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. cross examination as to previous statements in writing
155. When a witness is cross-examined, he may, in addition to the questions herein before referred to, be asked any questions which tend-
- (a) to test his veracity;
 - (b) to discover who he is and what is his position in life; or
 - (c) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.
156. If any question asked under section 155 relates to a matter relevant to the suit or proceeding, the provisions of section 141 shall apply thereto. Questions lawful in cross-examination
157. A person charged with an offence who is called as a witness for the defence may be asked any question in cross-examination, notwithstanding that the answer may tend to incriminate him as to the offence charged. Cross examination of accused person
- 158.(1) If any question asked relates to a matter not relevant to the suit or proceeding, except in so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it does not so compel him, warn the witness that he is not obliged to answer it. Court to decide when questions shall be asked and when witness compelled to answer
- (2) In exercising its discretion under subsection (1), the court shall have regard to the following considerations-
- (a) such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;

- (b) such questions are improper if the imputation which they convey relates to matters so remote in time, or of such a character, that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (c) such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

(3) The court may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer, if given, would be unfavorable

Questions not to be asked without reasonable grounds

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

Indecent and scandalous questions

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

Questions intended to insult or annoy

161. The court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

Exclusion of evidence to contradict answers to questions testing veracity

162. When a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him, but, if he answers falsely, he may afterwards be charged with giving false evidence:

Provided that-

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

Discretion to allow cross-examination of own witness

163. The court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party.

Impeaching the credit of a witness

164.-(I) The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him-

- (a) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

- (b) by proof that the witness has received or received the offer of a corrupt inducement to give his evidence;
- (c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;
- (d) when a man is prosecuted for rape, or an attempt to commit rape, it may be shown that the prosecutrix was of generally immoral character.

(2) A person Who, called as a witness pursuant to paragraph (a) of subsection (1), declares another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

165. when a witness whom it is intended to corroborate given evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near to the time or place at which such relevant fact occurred, if the court is of opinion that such circumstances, if proved, would corroborate his testimony as to the relevant fact about which he testifies.

Evidence testing to corroborate evidence of relevant fact admissible

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

Former statements of witness may be proved to corroborate later testimony as to same fact

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

What matter may be proved in connection with proved statement relevant under section 34 or 35

PART V

REFRESHING MEMORY AND PRODUCTION OF DOCUMENTS

168--(1) A witness may, while under examination, refresh his memory by referring to any writing made by himself at the time of the transaction concerning which he is questioned or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory.

Refreshing memory

(2) A witness may, while under examination, refresh his memory by referring to any writing made by any other person and read by the witness within the time referred to in subsection (1), if when he read it he knew it to be correct.

- When witness may use copy of document to refresh memory
169. Whenever a witness may refresh his memory by reference to any writing, he may, if the court is satisfied that there is sufficient reason for the non-production of the original, and with the permission of the court, refer to a copy of such writing.
- Expert may refresh his memory
170. An expert may refresh his memory by reference to professional treatises.
- Testimony to facts stated in document although facts not themselves specifically recalled
171. A witness may also testify to facts mentioned in any such document as is mentioned in section 168 or 169, although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.
- Right of adverse party used to refresh memory
172. Any writing referred to under the provisions of section 168 or 169 must be produced and shown to the adverse party if he requires it and such party may, if he pleases, cross-examine the witness thereupon.
- Production of documents
- 173.(I) A witness summoned to produce a document shall, if it is in his possession or power, bring it to court, notwithstanding any objection which there may be to its production or to its admissibility, but the validity of any such objection shall be decided on by the court.
- (2) (a) The court may, if it sees fit, inspect the document, unless it is a document to which section 132 is applied, or may take other evidence to enable it to determine on its admissibility.
- (b) If for such a purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and if the interpreter disobeys such direction, he shall be held to have committed an offence under section 96 of the Penal Code.
- Cap. 16
- Giving as evidence, of document called for and produced on notice
Using as evidence of document production of which was refused
174. When a party calls for a document which he has given the other party notice to produce, and such document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so.
175. When a party refuses to produce a document which he has had notice to produce, he cannot afterwards use the document as evidence without the consent of the other party or the order of the court.
- Power of court to put questions or Order production
176. (I) The court may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that judgment must be based upon facts declared by this Act, to be relevant, and duly proved.

- (2) Subsection (1) shall not authorize a court-
- (a) to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Part II of this Chapter, if the question were asked or the document were called for by the adverse party;
 - (b) to ask any question which it would be improper for any other person to ask under section 158 or 159; or
 - (c) to dispense with primary evidence of any document, except in the cases excepted by this Act.

PART VI

QUESTIONS By ASSESSORS

177. In cases tried with assessors, the assessors may put any questions to the witness, through or by leave of the judge, which the judge himself might put and which he considers proper.

Power of assessors to put questions

CHAPTER VI-IMPROPER ADMISSION AND REJECTION OF EVIDENCE

178. The improper admission or rejection of evidence shall not be ground of itself for a new trial, or reversal of any decision in any case, if it shall appear to the court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that if the rejected evidence had been received, it ought not to have varied the decision.

No new trial for improper admission or rejection of evidence

CHAPTER VII-MISCELLANEOUS

179. Save as otherwise expressly provided in this Act, nothing in this saving for Act shall be deemed to derogate from the provisions of any other written other law, law which relate to matters of evidence.

saving for other laws

180.-(1) The Criminal Procedure Code is amended as follows: -

- (a) in section 145, by deleting the words "sections 123 or 124 of the Indian Evidence Act, 1872, applied to the Territory" in subsection (2) and substituting therefor the words "section 132 of the Evidence Act, 1967";
- (b) in section 152, by deleting subsection (3);
- (c) by repealing sections 155 and 161; and

Amendment and repeal of laws

- (d) in section 159, by, deleting the words "section 33 of the Indian Evidence Act, 1872, as applied to the Territory" in subsection (2) and substituting therefor the words "section 132 of the Evidence Act, 1967".
- Cap. 6 (2) The Evidence (Bankers Books) Ordinance is hereby repealed.
- Cap. I (3) Sections 7 and 11 of the Evidence Act, 1851, of the United Kingdom shall cease to apply to Tanganyika as part of the law thereof and section 10 of the Interpretation and General Clauses Ordinance shall apply as if that law was an Ordinance repealed by this Act.
- Cap. 453 (4) Part I of the Schedule to the Jurisdiction and Application of Laws Ordinance, 1961 is hereby amended by deleting the reference therein to the Evidence Act, 1851.
- (5) The Indian Evidence Act, 1872 shall cease to apply to Tanganyika as part of the law thereof and section 10 of the Interpretation and General Clauses Ordinance shall apply as if that Act were an Ordinance repealed by this Act.
- (6) The Indian Acts (Application) Ordinance is amended as follows: -
- (a) by repealing section 8, and
- (b) *by* deleting the reference to the Indian Evidence Act in the Schedule thereto.

Passed in the National Assembly on- the seventeenth day of April, 1967.


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Clerk of the National Assembly