



Isle of Man

Ellan Vannin

AT 1 of 1871

THE EVIDENCE ACT 1871



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AN ACT to amend the Law of Evidence, and for other purposes.

GENERAL NOTE: See SD352/09 Rules of the High Court of Justice 2009 Sch 15.1 para 2 reproduced below:

- “2. In any statutory provision a reference (however expressed) to —
- (a) the superior jurisdiction or summary jurisdiction of the court or of the Common Law Division, or
 - (b) the court or the Common Law Division exercising superior jurisdiction or summary jurisdiction,
- shall be construed as a reference to the Civil Division.”
-

Preliminary

1 Short title

This Act may be cited for all purposes as “The Evidence Act 1871”.

2 Interpretation

In this Act the following words and expressions shall, unless repugnant to the context, have the meanings hereby assigned to them- that is to say —

“**Court**” shall mean any Court of Justice, and shall include any judge, and any other person for the time being having by law, or by consent of parties, authority to hear, receive, and examine evidence.

“**Superior Court**” shall apply to the High Court and also to the Ecclesiastical Courts.¹

“**Cause**” shall include any issue, matter, or question, or any inquiry arising in any suit, action, or other proceeding in any Court, or before any judge, jury,

magistrate, coroner, arbitrator, or other person having by law, or by consent of parties, authority to hear, receive, and examine evidence.

“**Indictment**” shall include information or petition, in a case where a private person may prosecute for an indictable offence; and

“**Indictable offence**” shall include an offence which may be prosecuted by information, or by the petition of a private prosecutor.

“**British Possession**” shall mean any of the dominions of Her Majesty other than the United Kingdom and this Island.

Competency of Witnesses, etc.

3 Witnesses not incapacitated by reason of crime or interest

No person offered as a witness in any cause shall hereafter be excluded, by reason of incapacity from crime or interest, from giving evidence, either viva voce or by deposition, according to the practice of the Court, but every person so offered may and shall be admitted to give evidence, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the cause in which he is offered as a witness, and notwithstanding that such person offered as a witness may have been previously convicted of any crime or offence.

4 All parties admissible as witnesses

The parties to any cause, and the husbands and wives of such parties, and the persons in whose behalf any cause may be brought or defended, and the husbands and wives of such parties, shall, except as hereinafter excepted, be competent and compellable to give evidence, either viva voce or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the said cause.

5 [Repealed]²

6 Persons not bound to criminate themselves

Save as mentioned in paragraphs (e) and (f) of section one of the *Criminal Evidence Act 1946*, nothing contained in this Act or in the said Act of 1946 shall render any person compellable to answer any question tending to criminate himself.³

7 [Repealed]⁴

8 [Repealed]⁵

9 [Repealed]⁶

Impeachment of Credit of Witnesses, etc.

10 How a party may contradict his own witness

A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the Court, prove adverse, contradict him by other evidence, or, by leave of the Court, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

11 Proof of contradictory statements of adverse witness

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

12 Cross-examination as to previous statements in writing

A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of contradicting him: Provided always, that it shall be competent to the Court, at any time during the trial or enquiry, to require the production of the writing for the inspection of the Court, and the Court may thereupon make such use of it for the purpose of the cause as the Court shall think fit.

13 Proof of previous conviction of a witness may be given

A witness may be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either dispute the fact or refuses to answer, it shall be lawful for the opposite party to prove such

conviction; and a certificate, containing the substance and effect only (omitting the formal part) of the indictment and conviction for such offence, purporting to be signed by the Clerk of the Rolls, or other officer having the custody of the records of the Court where the offender was convicted, shall, upon proof of the identity of the person, be sufficient evidence of the said conviction.

14 **Impeachment of credit of witness by evidence as to character**

The credit of a witness shall not be impeached by evidence of the opinion or belief of another, formed on or derived from particular facts, but it may be impeached by evidence as to the general reputation of the witness for veracity and otherwise amongst his neighbours and others to whom his character may be known.

Proof of Signatures and Handwriting

15 **Attesting witnesses need not be produced in all cases**

It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission, or otherwise, as if there had been no attesting witnesses thereto.

16 **Comparison of disputed writing**

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

17 **Copies of UK and Manx legislation**

- (1) A copy of a document specified in column 1 of the Table which complies with the condition in column 2 shall be admitted in evidence in any court in the Island without further proof.

Document	Condition
An Act of Parliament	The document purports to be printed or published by or under the authority of the Queen's Printer of Acts of Parliament.
An instrument of a legislative character made under an Act of Parliament by an authority in the United Kingdom (subject to the next entry).	
A document falling within the preceding entry which is applied or extended to the Island by a Manx enactment.	The document purports to be printed or published by or under the authority of the Attorney General.
An Act of Tynwald.	The copy purports to be printed or published by authority.
A Statutory Document or Government Circular.	

- (2) Without prejudice to subsection (1), a copy of an instrument of a legislative character purporting —
- (a) to be, or to be contained in, a Government Circular, or
 - (b) to be a Statutory Document,
- shall be admitted in evidence in any court in the Island without further proof.
- (3) In this section —
- “Government Circular” means a document numbered as one of the series of documents issued after 1911 by authorities in the Island as Government Circulars;
- “Statutory Document” means a document either —
- (a) numbered as one of the series of documents issued after 1992 and before 2018 by authorities in the Island as Statutory Documents; or
 - (b) issued after 2017 and numbered in accordance with section 40 of the *Legislation Act 2015*.⁷

18 Copies of Acts of State, etc

Prima facie evidence of any act of State of the Government of this Island, or of any public document or of any of the proceedings of the Tynwald Court or of either branch thereof, may be given in all courts of justice, and in all legal proceedings whatsoever, by the production of a copy of such act of State, public document or proceedings purporting to be printed by authority and without any proof being given that such copy was so printed.⁸

19 Proof of acts of state, judgments etc, of Foreign States and Courts

All proclamations, treaties, and other acts of the Government of the United Kingdom, or of any British possession, or of any foreign State, and all judgments, decrees, orders, and other judicial proceedings of any Court of Justice in the United Kingdom, in any British possession, or in any foreign State, and all affidavits, depositions, pleadings, and other legal documents filed or deposited in any such Court, may be proved in any Court either by examined copies or by copies authenticated as hereinafter mentioned, that is to say: If the document sought to be proved be a proclamation, treaty, or other act of State of the United Kingdom, the authenticated copy to be admissible in evidence must purport to be sealed with the seal of the department or office from which such copy may issue; if the document sought to be proved be a proclamation, treaty, or other act of State of a British possession, or of a foreign State, the authenticated copy to be admissible in evidence must purport to be sealed with the seal of the British possession or foreign State to which the original document belongs; and if the document sought to be proved be a judgment, decree, order, or other judicial proceeding of any such Court, or an affidavit, deposition, pleading, or other legal document filed or deposited in any such Court, the authenticated copy to be

admissible in evidence must purport either to be sealed with the seal of the Court to which the original document belongs, or, in the event of such Court having no seal, to be signed by the judge, or if there be more than one judge, by any one of the judges of the said Court, and such judge shall attach to his signature a statement in writing on the said copy that the Court whereof he is a judge has no seal; but if any of the aforesaid authenticated copies shall purport to be sealed or signed as hereinbefore respectively directed, the same shall respectively be admitted in evidence in every case in which the original document could have been received in evidence, without any proof of the seal where a seal is necessary, or of the signature, or of the truth of the statement attached thereto, where such signature and statement are necessary, or of the judicial character of the person appearing to have made such signature and statement.

19A Offence: false statement that document printed by authority

- (1) A person must not, without due authority, print or publish or cause to be printed or published, on a document purporting to be a copy of any of the following, a statement that the copy was printed by authority of —
 - (a) an act of State of the Government;
 - (b) Manx legislation or a reprint of Manx legislation;
 - (c) UK legislation applying to the Island;
 - (d) a non-legislative public document; or
 - (e) proceedings of Tynwald Court, the Keys or the Council.

Maximum penalty (summary) — £5,000.⁹

- (2) A person commits an offence if the person prints or publishes a document which purports to be a copy of a Government Circular or Statutory Document but is not a true copy of the document in question.

Maximum penalty (summary) — level 5 fine.¹⁰

- (3) It is a defence for a person charged with an offence under subsection (2) to show that he or she reasonably believed that the purported copy was a true copy of the document in question.¹¹
- (4) In this section “Government Circular” and “Statutory Document” have the same meanings as in section 17.^{12 13}

20 Proof of registers of vessels, etc

Every register of a vessel kept under any of the Acts relating, or which for the time being may relate, to the registry of British vessels, may be proved in any Court, either by the production of the original, or by an examined copy thereof, purporting to be signed under the hand of the person having the charge of the original; and every such register, or such copy of a register, and also every certificate of registry granted under any Act relating, or which may relate, to the registry of British vessels, and purporting to be signed as required by law, shall

be received in evidence in any Court as prima facie proof of all the matters contained or recited in such register when the register, or such copy thereof as aforesaid, is produced, and of all the matters contained or recited in or endorsed on such certificate of registry when the said certificate is produced.¹⁴

21 Proof of documents of corporations, companies, etc

Whenever, by any Act of Parliament, or Act of Tynwald, now in force or hereafter to be in force, any certificate, official or public document, or document or proceeding of any corporation, or of any joint-stock or other company, or any certified copy of any document, bye-law, or entry in any register or other book, or of any other proceeding, shall be receivable in evidence of any particular in any Court, the same shall respectively be admitted in evidence, provided they respectively purport to be sealed or impressed with a stamp, or sealed and signed, or signed alone as required, or impressed with a stamp and signed, as directed by the respective Acts made, or to be hereafter made, without any proof of the seal or stamp, where a seal or stamp is necessary, or of the signature, or of the official character of the person appearing to have signed the same, and without any further proof thereof, in every case in which the original could have been received in evidence.

22 Copies of public documents

Whenever any book, register, or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents proveable by means of a copy, any copy thereof, or extract therefrom, shall be admissible in evidence in any Court, provided it be proved to be an examined copy or extract, or provided it purport to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted, and which officer is hereby required to furnish such certified copy or extract to any person applying, at a reasonable time for the same, upon payment of the sum of 5p; but provided that, if such copy or extract exceed a page of sixteen lines, a sum of 3p shall be paid for each page of sixteen lines beyond the first page, and also for the last page, if it contain a less number of lines.¹⁵

23 Certificate of conviction or acquittal of a person charged with an indictable offence

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

24 Act to be cumulative

The provisions of this Act shall be deemed to be in addition to, and not in derogation of, any powers of proving documents given by any existing statute, or existing at Common Law.

25 Certifying false documents, etc

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

26 Forging seal, stamp, or signature, felony

If any person shall forge the seal, stamp, or signature, of any certificate, or document of any kind in this Act mentioned or referred to, or of any certified copy of any such document, or shall tender in evidence any such certificate or document, or any certified copy of any such document, with a false or counterfeit seal, stamp, or signature thereto, knowing the same to be false or counterfeit; or if any person shall forge the signature of any judge to any order, decree, certificate, or other judicial or official document, or shall tender in evidence any order, decree, certificate, or other judicial or official document, with a false or counterfeit signature of any such judge as aforesaid thereto, knowing the same to be false or counterfeit; or if any person shall print any copy of any Act of Parliament, Act of Tynwald, or other document, which copy shall falsely purport to have been printed by the printers to the Crown, or to be printed by authority, or if any person shall tender in evidence any such copy, knowing that the same was not printed by authority or by the persons by whom it so purports to have been printed, every such person shall be guilty of felony, and shall be liable on conviction on information to custody for a term not exceeding 5 years: Provided also, that whenever any such certificate or document shall have been received in evidence by virtue of this Act, the Court which shall have admitted the same shall, on the request of any party against whom the same is so received, be authorised, at its own discretion, to direct that the same shall be impounded, and be kept in the custody of some officer of the Court or other proper person, for such period, and subject to such conditions as to the said Court shall seem meet.¹⁶

*Admission of Documents***27 Admission of Documents**

Any party in a cause may call on any other party in the cause by notice to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the hearing or trial

the Court shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except in cases where the omission to give the notice is, in the opinion of the Court, or of the taxing officer, a saving of expense.

28 Proof of admissions

An affidavit of the attorney in the cause, or of his clerk, or of the agent of the party, of the due signature of any admissions made in pursuance of such notice and annexed to the affidavit, shall be in all cases sufficient evidence of such admissions.

29 Proof of notice to produce

An affidavit of the attorney in the cause, or of his clerk, or of the agent of the party, of the service of any notice to produce, in respect of which notice to admit shall have been given, and of the time when it was served, with a copy of such notice to produce annexed to such affidavit, shall be sufficient evidence of the service of the original of such notice, and of the time when it was served.

30 to 38 [Repealed]¹⁷

Affidavits, etc.

39 Governor may appoint Commissioners for taking affidavits

It shall be lawful for the Governor from time to time to appoint any persons practising as solicitors or attorneys (by whatever name designated) in the United Kingdom, or in the Channel Islands, or in any British possession, to administer oaths to affidavits, and to take declarations and affirmations to be filed or used in the Courts of this Island, which persons shall be entitled to a fee of 8p for each affidavit, declaration, or affirmation sworn or taken before them, and 5p for each exhibit referred to in any such affidavit, declaration, or affirmation, and marked as such, and which persons shall be styled, "Commissioners for taking Oaths in the Courts of the Isle of Man".¹⁸

40 How answers, affidavits, etc, may be sworn

Answers, affidavits, declarations, and affirmations to be used in any Court or matter in this Island may be sworn and taken in this Island before any Court, or before any judge or officer of any Court having power to administer oaths, or before any High-Bailiff, Notary Public or Commissioner for Oaths or Justice of the Peace; in the United Kingdom and in any British possession, before any Court, judge, magistrate, notary public, or any other person lawfully authorised to administer oaths in the place where the oath may be administered, or the declaration or affirmation taken, or before a Commissioner for taking oaths in the Courts of the Isle of Man; and in foreign parts out of Her Majesty's dominions,

before any ambassador, envoy, minister, charge d'affaires, or secretary of embassy or of legation, British consul-general, consul, vice-consul, acting-consul, pro-consul, or consular agent, or before any foreign local judge, magistrate, or other person having locally authority to administer an oath; and judicial notice shall be taken of the seal or signature (as the case may be) of any such Court, judge, or other person in this section referred to: Provided always, that nothing herein contained shall prejudice or affect the power of any Court having authority in that behalf to issue commissions for the examination of witnesses, or for other purposes.¹⁹

41 Special reports by examiners

It shall be lawful for every Commissioner, or other person authorised by any Court, having power in that behalf by commission, rule, or order, to take the examination of witnesses, and he is hereby required to make, if need be, a special report to the Court in which the cause may be depending touching such examination, and the conduct or absence of any witness or other person therein or relating thereto; and the Court is hereby authorised to institute such proceedings, and make such order upon such report as justice may require, and as may be instituted and made in any case of contempt of the Court.

Oaths, Affirmations, etc.

42 Courts may administer oaths

Every Court is hereby empowered to administer an oath to all such witnesses as are legally called before it.

43 and 44 [Repealed]²⁰

45 [Repealed]²¹

46 In legal proceedings not necessary to state that jurors had made affirmation

Wherever, in any legal proceedings, whatever legal proceedings may be set out, it shall not be necessary to specify that any particular persons who acted as jurors had made affirmation instead of oath, but it may be stated that they served as jurymen in the same manner as if no Act had passed for enabling persons to serve as jurymen without oath.

*Declarations in lieu of Voluntary Oaths***47 Declarations in lieu of voluntary oaths**

In order to the abolition of unnecessary oaths, it shall be lawful for any High-Bailiff, Justice of the Peace, or other officer now authorised to administer an oath, to take and receive the declaration of any person voluntarily making the same before him, in the following form- that is to say:

“I, C.D., do solemnly and sincerely declare that , and I make this solemn declaration conscientiously believing the same to be true.”

And every such declaration shall be known and may be described as a statutory declaration.

48 [Repealed]²²**49 Proviso as to previous suits**

Nothing in this Act shall apply to or affect any suit, action, or proceeding brought or commenced before the promulgation of this Act.

50 Savings provision for repealed Evidence Act 1976

Sections 1 to 4 of the *Evidence Act 1976* continue to apply for a document enacted or made before the repeal of that Act, despite the repeal of that Act.²³

Notes:

1. *The Evidence Act 1976 was repealed by the Legislation Act 2015.*
2. *The operative provisions of that Act were as follows:*

“1 Admissibility, etc, of copies of UK legislation applied with modifications to the Island

Where any provision of any Act of Parliament, or any provision of any instrument of a legislative character made under any Act of Parliament, is applied or extended to the Island (with or without exceptions, adaptations or modifications), a copy of any such provision purporting to be published by or under the authority of the Attorney General shall be admissible in evidence in all courts in the Island and shall, until the contrary is proved, be evidence of the contents thereof.

2 Admissibility, etc, of certain copies of public documents

A copy of any public document purporting to be contained in a Government Circular or Statutory Document or otherwise purporting to have been published or printed by authority shall be admissible in evidence in all courts in the Island and shall, until the contrary is proved, be evidence of the contents thereof.

3 *Application of sections 1 and 2*

Sections 1 and 2 of this Act shall apply in relation to copies of provisions of Acts of Parliament or instruments of a legislative character, or of public documents, whether published before or after this Act comes into operation.

4 *Annual volumes and volumes of revised edition of the statutes to be admissible in evidence*

Any Act, contained in any annual volume of the statutes or in any volume of the revised edition of the statutes (whether published before or after the commencement of this Act) purporting to be printed by authority shall, until the contrary is proved, be treated as a copy of an Act to which section 17 of the Evidence Act 1871 (admission in evidence of Acts of Parliament and of Tynwald) applies.

....

6 *Saving*

Nothing in this Act shall prejudice the provisions of any other enactment relating to the admissibility in evidence, or mode of proof, of any document”.

3. Following the repeal, for the matters mentioned in those provisions see sections 17, 17A and 18 of the Evidence Act 1871 and section 74 of the Legislation Act 2015 (status of official reprint and certain printouts of official reprints).

ENDNOTES

Table of Endnote References

- ¹ Definition of “Superior Court” substituted by High Court Act 1991 Sch 3.
See General Note.
- ² S 5 repealed by Statute Law Revision Act 1989 Sch 2.
- ³ S 6 repealed by Criminal Evidence Act 1946 s 7 and inserted by Criminal Justice Act 1963 Sch 4.
- ⁴ S 7 repealed by Criminal Justice Act 1991 Sch 5.
- ⁵ S 8 repealed by Civil Evidence Act 1973 s 16.
- ⁶ S 9 repealed by Statute Law Revision Act 1989 Sch 2.
- ⁷ S 17 substituted by Justice Reform Act 2021 s 101.
- ⁸ S 18 substituted by Evidence Act 1965 s 1.
- ⁹ Text renumbered as subs (1) by Justice Reform Act 2021 s 101.
- ¹⁰ Subs (2) inserted by Justice Reform Act 2021 s 101.
- ¹¹ Subs (3) inserted by Justice Reform Act 2021 s 101.
- ¹² Subs (4) inserted by Justice Reform Act 2021 s 101.
- ¹³ S 19A inserted by Legislation Act 2015 s 98.
- ¹⁴ S 20 amended by Statute Law Revision Act 1997 Sch 2.
- ¹⁵ S 22 amended by Decimal Currency (Isle of Man) Act 1970 s 9.
- ¹⁶ S 26 amended by Statute Law Revision Act 1997 Sch 1.
- ¹⁷ Ss 30 to 38 repealed by Administration of Justice Act 1951 Sch.
- ¹⁸ S 39 amended by Decimal Currency (Isle of Man) Act 1970 s 9.
- ¹⁹ S 40 amended by Commissioners for Oaths Act 1962 s 6.
- ²⁰ Ss 43 and 44 repealed by Administration of Justice Act 2008 s 25(2).
- ²¹ S 45 repealed by Statute Law Revision Act 1983 Sch 2.
- ²² S 48 repealed by Perjury Act 1952 Sch.
- ²³ S 50 and notes inserted by Legislation Act 2015 s 98.