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ACT

To state the law of evidence in regard to civil proceedings, to repeal the Ordinance for altering, amending, and declaring in certain respects, the Law of Evidence within this Colony, 1830 (Cape), the Ordinance for improving the Law of Evidence, 1846 (Cape), the Bankers' Books Evidence Act, 1877 (Cape), the Oaths and Declarations Act, 1891 (Cape), the Law to regulate the Law of Evidence in the Colony of Natal, 1859 (Natal), the Law to amend the Law of Evidence, 1870 (Natal), the Law to provide for the production in evidence of Copies, instead of Originals, of Public Documents, 1884 (Natal) and the Presumption of Death of Soldiers Act, 1952, to amend the Law of Evidence Amendment Act, 1861 (Cape), the Law to make further provision in respect of the substitution, in certain cases, of Declarations for Oaths, 1862 (Natal), the Law of Evidence Ordinance, 1902 (Orange Free State), the Law of Evidence Proclamation, 1902 (Transvaal), the Administration of Justice Proclamation, 1919 (South-West Africa), the Further Administration of Justice Proclamation, 1920 (South-West Africa), the Procedure and Evidence Proclamation, 1938 (South-West Africa), the General Law Amendment Act, 1935, the General Law Amendment Act, 1952, the Criminal Procedure Act 1955, and the Evidence Act, 1962, and to provide for other incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 15th March, 1965.)

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BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Definitions.

1. In this Act, unless the context otherwise indicates—
 “Minister” means the Minister of Justice;
 “Republic” includes the territory of South-West Africa.

PART I.

ADMISSIBILITY OF EVIDENCE.

Evidence as to irrelevant matters.

2. No evidence as to any fact, matter or thing which is irrelevant or immaterial and cannot conduce to prove or disprove any point or fact in issue shall be admissible.

Evidence of non-access by husband and wife.

3. For the purposes of rebutting the presumption that a child to which a married woman has given birth is the offspring of her husband, she or her husband or both of them may give evidence that they had no sexual intercourse with each other during the period when the child was conceived.

Evidence of genuineness of disputed writings.

4. Comparison of a disputed writing with any writing proved to be genuine may be made by witnesses, and such writings and the evidence of any witness with respect thereto may be submitted as evidence of the genuineness or otherwise of the writing in dispute.

Proof of law or anything published in official publications.

5. (1) Judicial notice shall be taken of any law or government notice, or of any other matter which has been published in the *Gazette* or in the Official Gazette of the territory of South-West Africa.

(2) A copy of the *Gazette* or of the said Official Gazette, or a copy of such law, notice or other matter purporting to be printed under the superintendence or authority of the Government printer, shall, on its mere production, be evidence of the contents of such law, notice or other matter, as the case may be.

Proof of signature of public officer.

6. Any document purporting to bear the signature of any person holding a public office and bearing a seal or stamp which purports to be the seal or stamp of the department, office or institution to which such person is attached, shall, on its mere production, be *prima facie* proof that such person signed such document.

Proof by party calling witness, of previous inconsistent statement of such witness.

7. Any party who has called a witness who has given evidence in any civil proceedings (whether that witness is or is not, in the opinion of the person presiding at such proceedings, adverse to the party calling him) may, after the said party or the person so presiding has asked the witness whether he has or has not previously made a statement with which his evidence in the said proceedings is inconsistent, and after sufficient particulars of the alleged previous statement to designate the occasion when it was made, have been mentioned to the witness, prove that he previously made a statement with which his said evidence is inconsistent.

PART II.

COMPETENCY OF WITNESSES.

Save as otherwise provided, every person competent and compellable to give evidence.

8. Save in so far as this Act or any other law otherwise provides, every person shall be competent and compellable to give evidence in any civil proceedings.

Incompetency from insanity or intoxication.

9. No person appearing or proved to be afflicted with idiocy, lunacy or insanity, or to be labouring under any imbecility of mind arising from intoxication or otherwise, whereby he is deprived of the proper use of reason, shall be competent to give evidence while so afflicted or disabled.

Husband and wife not compellable to disclose communications between them.

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

Dissolution of marriage does not affect privilege which existed during marriage.

11. No person whose marriage has been dissolved or annulled shall be compelled to give evidence as to any fact, matter or thing which occurred during the subsistence of the marriage or supposed marriage, and as to which he or she could not have been compelled to give evidence if the marriage were subsisting.

No witness compellable to testify if husband or wife not compellable.

12. No person shall be compelled to answer any question or to give any evidence which the husband or wife of such person, if under examination as a witness, could not be compelled to answer or give.

When evidence of communication alleging commission of an offence is admissible.

13. Notwithstanding anything contained in any legal provisions in terms of which a witness shall not be compellable or permitted to give evidence in respect of certain matters on grounds of public policy or from regard to public interest, it shall be competent for any person in any civil proceedings to adduce evidence of any communication alleging the commission of an offence, if the making of that communication *prima facie* constitutes an offence, and it shall be competent for the person presiding at such proceedings to determine whether the making of such communication *prima facie* does or does not constitute an offence, and such determination shall, for the purposes of those proceedings, be final.

Witness not excused from answering question by reason that the answer would establish a civil claim against him.

14. A witness may not refuse to answer a question relevant to the issue, the answering of which has no tendency to incriminate himself, or to expose him to penalty or forfeiture of any nature whatsoever, by reason only or on the sole ground that the answering of such question may establish or tend to establish that he owes a debt or is otherwise subject to a civil suit.

PART III.

SUFFICIENCY OF EVIDENCE.

Admissions on record.

15. It shall not be necessary for any party in any civil proceedings to prove nor shall it be competent for any such party to disprove any fact admitted on the record of such proceedings.

Sufficiency of evidence of one witness.

16. Judgment may be given in any civil proceedings on the evidence of any single competent and credible witness.

PART IV.

DOCUMENTARY EVIDENCE (GENERAL PROVISIONS).

Proof of trial and conviction or acquittal of any person.

17. The trial and conviction or acquittal of any person may be proved by the production of a document certified or purporting to be certified by the registrar or clerk of the court or other officer having the custody of the records of the court where such conviction or acquittal took place, or by the deputy of such registrar, clerk or other officer, to be a copy of the record of the charge and of the trial, conviction and judgment or acquittal, as the case may be, omitting the formal parts thereof.

Certified copies of or extracts from public documents admissible in evidence.

18. (1) Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from proper custody, any copy thereof or extract therefrom proved to be an examined copy or extract or purporting to be signed and certified as a true copy or extract by the officer to whose custody the original is entrusted, shall be admissible in evidence.

(2) Such officer shall furnish such certified copy or extract to any person applying therefor, upon payment of an amount in accordance with the tariff of fees prescribed by or under any law or, if no such tariff has been so prescribed, an amount in accordance with such tariff of fees as the Minister in consultation with the Minister of Finance may from time to time determine.

Production of official documents.

19. (1) No original document in the custody or under the control of any State official by virtue of his office, shall be produced in evidence in any civil proceedings except upon the order of the head of the department in whose custody or under whose control such document is or of any officer in the service of the State authorized by such head.

(2) Any such document may be produced in evidence by any person authorized by the person ordering the production thereof.

Certified copies of or extracts from official documents sufficient.

20. (1) Except when the original is ordered to be produced any copy of or extract from any document in the custody or under the control of any State official by virtue of his office, certified as a true copy or extract by the head of the department in whose custody or under whose control such document is or by any officer in the service of the State authorized by such head, shall be admissible in evidence and be of the same force and effect as the original document.

(2) Any such copy or extract may be handed in by any party who desires to avail himself thereof.

(3) No such copy or extract shall be furnished to any person except upon payment of an amount in accordance with the tariff of fees prescribed by or under any law or, if no such tariff has been so prescribed, an amount in accordance with such tariff of fees as the Minister in consultation with the Minister of Finance may from time to time determine.

Penalty for issue of false certificate.

21. Any person who wilfully certifies any document admissible in evidence under this Act, as being a true copy or extract, knowing that it is not a true copy or extract, shall be guilty of an offence and liable upon conviction to imprisonment for a period not exceeding two years.

Proof of certain facts by affidavit.

22. (1) Whenever any fact ascertained by any examination or process requiring any skill in bacteriology, biology, chemistry, physics, astronomy, anatomy or pathology is or may become relevant to the issue in any civil proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is in the service of the Republic or of a province (including the Administration of South-West Africa) or in the service of or attached to the South African Institute for Medical Research or any university in the Republic or any other institution designated by the State President for the purposes of this section by proclamation in the *Gazette*, and that he has ascertained such fact by means of such examination or process, shall, subject to the provisions of sub-sections (2) and (3), on its mere production by any party in such proceedings be admissible in evidence to prove that fact.

(2) No such affidavit shall be so admissible unless a copy thereof has been delivered by the party desiring to avail himself thereof to every other party to the proceedings at least seven days before the date of production thereof.

(3) The person presiding at such proceedings may, upon the application of any party thereto, order that the person who made such affidavit be called to give oral evidence in the proceedings or that written interrogatories be submitted to him, and any such interrogatories and any reply thereto purporting to be a reply from such person, given on affidavit, shall likewise be admissible in evidence in such proceedings.

Preserving testimony.

23. (1) Any person who will, under the circumstances alleged by him to exist, become entitled, upon the happening of any future event, to any interest in any asset the right or claim to which cannot be brought to trial by him before the happening of such event, may, after notice to every other person who may have an interest in such asset, apply to any division of the Supreme Court of South Africa having jurisdiction, for an order allowing any evidence which may be material for establishing such right or claim, to be taken before a commission appointed by the said division, and the said division may refuse the application or grant it on such conditions as it may think fit to impose.

(2) If the said division grants the application, the rules of such division relating to the taking of evidence on commission in trial actions shall *mutatis mutandis* apply to the taking of such evidence.

(3) Any evidence taken in terms of this section which would be admissible if given in a court of law, shall be admissible in any civil proceedings brought after the happening of the future event to which the application for leave to take such evidence relates, if the parties to such proceedings are the same as the parties to such application or are the legal representatives or successors in title to the parties to such application: Provided that if the person who gave such evidence is available as a witness, the person presiding at such proceedings may refuse to admit such evidence.

Depositions of witnesses taken on commission.

24. Nothing in this Act contained shall be construed as rendering inadmissible the depositions of witnesses taken on commission in terms of any law.

Official reports as evidence in applications for orders presuming death of soldiers.

25. (1) In any proceedings in a court in which application is made for an order that the death of any soldier be presumed, any official report shall, notwithstanding anything to the contrary in any other law contained, on its mere production by any person be admissible in proof of the facts stated therein, provided such report is accompanied by an affidavit by the Secretary for Defence in which he certifies—

- (a) that the person to whose alleged death the proceedings relate was a soldier on active service at the time when, as far as is known, he was last seen alive;
- (b) that the said official report was received by him through the normal official channels, and that he has no reason to believe that the allegations of fact contained therein were not made in the course of the official duty of the person purporting to have made them;
- (c) that the person to whose alleged death the proceedings relate has been posted by the appropriate military authorities as "missing"; and
- (d) that no information is available in the records of the Department of Defence tending to show that the said person is still alive.

(2) Nothing in this section contained shall affect the admissibility of any other evidence, or the right of a court to require, in the exercise of its discretion, any person to appear as a witness, or to give evidence on affidavit (whether or not the official report purports to contain the statement of that person), before the court would be prepared to grant the order requested.

(3) In this section, unless the context otherwise indicates—
"active service" means service in the military, air or naval forces of the Republic at any place beyond the boundaries of the Republic;

"court" means any division of the Supreme Court of South Africa or any judge thereof;

"official report" means any document which forms part of the official records of the Department of Defence relating to the circumstances of the disappearance of a soldier on active service, or leading up to such disappearance, or to any action taken to ascertain whether he is alive or dead;

"soldier" means a member of the South African Defence Force.

Evidence of times of sunrise and sunset.

26. (1) The Minister may from time to time by notice in the *Gazette* approve of tables prepared at any official observatory in the Republic of the times of sunrise and sunset on particular days at particular places in the Republic or any portion thereof and appearing in any publication specified in the notice, and thereupon, until the notice is withdrawn, such tables shall on their mere production in any civil proceedings by any party thereto be admissible as evidence of such times.

(2) Any tables in force immediately prior to the commencement of this Act by virtue of the provisions of section *twenty-six* of the General Law Amendment Act, 1952 (Act No. 32 of 1952), shall be deemed to be tables approved of under sub-section (1) of this section.

PART V.

DOCUMENTARY EVIDENCE (SPECIAL PROVISIONS AS TO BANKERS' BOOKS).

Definition of "bank".

27. In this Part "bank" means a "banking institution" as defined in the Banks Act, 1965, and includes the Land and Agricultural Bank of South Africa, the Land and Agricultural Bank of South-West Africa and a building society.

Entries in bankers' books admissible in certain cases.

28. The entries in ledgers, day-books, cash-books and other account books of any bank, shall be admissible as *prima facie* evidence of the matters, transactions and accounts therein recorded, on proof being given by affidavit in writing of a director, manager or officer of such bank, or by other evidence, that such ledgers, day-books, cash-books or other account books are or have been the ordinary books of such bank, and that the said entries have been made in the usual and ordinary course of business, and that such books are in or come immediately from the custody or control of such bank.

Examined copies of entries in bankers' books admissible.

29. Copies of all entries in ledgers, day-books, cash-books or other account books used by any bank, may be proved as evidence of such entries without production of the originals, by means of the affidavit of a person who has examined the same, stating the fact of the examination and that the copies sought to be put in evidence are correct.

Notice of intention to adduce evidence relating to entries in bankers' books.

30. (1) No ledger, day-book, cash-book or other account book of any bank, and no copies of entries therein contained, shall be adduced or received in evidence under this Part, unless at least ten days' notice in writing, or such other notice as may be ordered by the person presiding at the proceedings concerned, containing a copy of the entries proposed to be adduced in evidence, has been given by the party proposing to adduce the same in evidence to the other party.

(2) On the application of any party who has received such notice, the person presiding at the proceedings may order that such party be at liberty to inspect and take copies of any entry in the ledgers, day-books, cash-books or other account books of the bank concerned, relating to the matters in question, and such order may be made in the discretion of the person so presiding, either with or without summoning before him such bank or the other party, and shall be intimated to such bank at least three days before such copies are required.

(3) On the application of any party who has received such notice, the person presiding at the proceedings may order that the entries and copies mentioned in the notice shall not be admissible as evidence of the matters, transactions and accounts recorded in such ledgers, day-books, cash-books or other account books.

Bank not compelled to produce books unless ordered to do so.

31. No bank shall be compelled to produce its ledgers, day-books, cash-books or other account books in any civil proceedings unless the person presiding at such proceedings orders that they shall be so produced.

This Part not to apply to proceedings to which bank is a party.

32. Nothing in this Part contained shall apply to any civil proceedings to which any bank whose ledgers, day-books, cash-books or other account books are required to be produced in evidence, is a party.

PART VI.

DOCUMENTARY EVIDENCE (MISCELLANEOUS PROVISIONS).

Definitions.

33. In this Part, unless the context otherwise indicates—
 "document" includes any book, map, plan, drawing or photograph;
 "statement" includes any representation of fact, whether made in words or otherwise.

Admissibility of documentary evidence as to facts in issue.

34. (1) In any civil proceedings where direct oral evidence of a fact would be admissible, any statement made by a person in a document and tending to establish that fact shall on production of the original document be admissible as evidence of that fact, provided—

(a) the person who made the statement either—

(i) had personal knowledge of the matters dealt with in the statement; or

(ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with therein are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had or might reasonably have been supposed to have personal knowledge of those matters; and

(b) the person who made the statement is called as a witness in the proceedings unless he is dead or unfit by reason of his bodily or mental condition to attend as a witness or is outside the Republic, and it is not reasonably practicable to secure his attendance or all reasonable efforts to find him have been made without success.

(2) The person presiding at the proceedings may, if having regard to all the circumstances of the case he is satisfied that undue delay or expense would otherwise be caused, admit such a statement as is referred to in sub-section (1) as evidence in those proceedings—

- (a) notwithstanding that the person who made the statement is available but is not called as a witness;
- (b) notwithstanding that the original document is not produced, if in lieu thereof there is produced a copy of the original document or of the material part thereof proved to be a true copy.

(3) Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.

(4) A statement in a document shall not for the purposes of this section be deemed to have been made by a person unless the document or the material part thereof was written, made or produced by him with his own hand, or was signed or initialled by him or otherwise recognized by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of the provisions of this section, any reasonable inference may be drawn from the form or contents of the document in which the statement is contained or from any other circumstances, and a certificate of a registered medical practitioner may be acted upon in deciding whether or not a person is fit to attend as a witness.

Weight to be attached to evidence admissible under this Part.

35. (1) In estimating the weight, if any, to be attached to a statement admissible as evidence under this Part, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement, and in particular to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the person who made the statement had any incentive to conceal or misrepresent facts.

(2) A statement admissible as evidence under this Part shall not, for the purpose of any rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, be treated as corroboration of evidence given by the person who made the statement.

Proof of instrument to validity of which attestation is necessary.

36. In any civil proceedings an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive: Provided that nothing in this section contained shall apply to the proof of wills or other testamentary writings.

Presumptions as to documents twenty years old.

37. There shall in any civil proceedings, in the case of a document proved or purporting to be not less than twenty years old, be made any presumption which on the fifteenth day of March, 1962, would have been made in the case of a document of like character proved or which purported to be not less than thirty years old.

Savings.

38. Nothing in this Part shall—

- (a) prejudice the admissibility of any evidence which would apart from the provisions of this Part be admissible; or
- (b) render admissible documentary evidence as to any declaration relating to a matter of pedigree, if that declaration would not have been admissible as evidence if this Part had not been enacted.

PART VII.

OATHS AND AFFIRMATIONS.

Oaths.

39. (1) No person other than a person referred to in section *forty* or *forty-one* shall be examined as a witness otherwise than upon oath.

(2) The oath to be administered to any person as a witness shall be administered in the form which most clearly conveys to him the meaning of the oath and which he considers to be binding on his conscience.

Affirmations in lieu of oaths.

40. (1) In any case where any person who is or may be required to take an oath objects to do so, it shall be lawful for such person to make an affirmation in the words following:

"I do truly affirm and declare that"

(here insert the matter to be affirmed or declared).

(2) Any person authorized, required or qualified by law to take or administer an oath shall accept, in lieu thereof, an affirmation or declaration as aforesaid.

(3) Such affirmation or declaration shall be of the same force and effect as if the person who made it had taken such oath, and the same penalties and disabilities which are respectively in force in respect of and are attached to any false or corrupt taking and subscribing of any oath administered in accordance with section *thirty-nine*, and any neglect or refusal in regard thereto, shall apply and attach in like manner in respect of the false or corrupt making or subscribing respectively, of any such affirmation or declaration as in this section mentioned and any neglect or refusal in regard thereto.

When unsworn or unaffirmed testimony admissible.

41. (1) Any person who, from ignorance arising from youth, defective education or other cause, is found not to understand the nature or to recognize the religious obligation of an oath or affirmation, may be permitted to give evidence in any civil proceedings without being upon oath or affirmation, if, before any such person proceeds to give evidence, the person presiding at the proceedings in which he is called as a witness, admonishes him to speak the truth, the whole truth and nothing but the truth and administers or causes to be administered to him any form of admonition which appears, either from his own statement or from any other source of information, to be calculated to impress his mind and bind his conscience, and which is not, as being of an inhuman, immoral or irreligious nature, obviously unfit to be administered.

(2) Any person to whom an admonition has been administered as aforesaid, who in evidence wilfully and falsely states anything which, if sworn, would have amounted to the offence of perjury or any statutory offence punishable as perjury, shall be deemed to have committed that offence, and shall upon conviction be liable to such punishment as is by law provided as a punishment for that offence.

PART VIII.

GENERAL.

Cases not otherwise provided for.

42. The law of evidence including the law relating to the competency, compellability, examination and cross-examination of witnesses which was in force in respect of civil proceedings on the thirtieth day of May, 1961, shall apply in any case not provided for by this Act or any other law.

Application of Act to South-West Africa.

43. This Act and any amendment thereof which may be made from time to time shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel referred to in section *three* of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).

Repeal and amendment of laws.

44. The laws mentioned in the Schedule are hereby repealed or amended to the extent set out in the fourth column thereof.

Short title and date of commencement.

45. This Act shall be called the Civil Proceedings Evidence Act, 1965, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

Schedule.

LAWS AMENDED OR REPEALED.

Province, Territory or Republic.	No. and year of Law.	Title or subject matter.	Extent of amendment or repeal.
Cape.	Ordinance No. 72 of 1830.	Ordinance for altering, amending, and declaring in certain respects, the Law of Evidence within this Colony.	The whole repealed.
	Ordinance No. 14 of 1846.	Ordinance for improving the Law of Evidence.	The whole repealed.
	Act No. 4 of 1861.	The Law of Evidence Amendment Act, 1861.	The whole except sections <i>eight</i> and <i>nine</i> repealed.
	Act No. 21 of 1877.	Bankers' Books Evidence Act, 1877.	The whole repealed.
	Act No. 18 of 1891.	The Oaths and Declarations Act, 1891.	The whole repealed.
Natal.	Law No. 17 of 1859.	To regulate the Law of Evidence in the Colony of Natal.	The whole repealed.
	Law No. 13 of 1862.	To make further provision in respect of the substitution, in certain cases, of Declarations for Oaths.	The whole repealed except section <i>four</i> .
	Law No. 5 of 1870.	To amend the Law of Evidence.	The whole repealed.
	Law No. 6 of 1884.	To provide for the production in evidence of Copies, instead of Originals, of Public Documents.	The whole repealed.
Orange Free State.	Ordinance No. 11 of 1902.	Law of Evidence Ordinance, 1902.	The whole except sections <i>sixty</i> and <i>sixty-one</i> repealed.
Transvaal.	Proclamation No. 16 of 1902.	The Law of Evidence Proclamation, 1902.	The whole except sections <i>forty-nine</i> and <i>fifty</i> repealed.
South-West Africa.	Proclamation No. 21 of 1919.	Administration of Justice Proclamation, 1919.	Section <i>three</i> amended by the deletion in sub-section (6) of the words "and evidence".
	Proclamation No. 38 of 1920.	Further Administration of Justice Proclamation, 1920.	Section <i>eleven</i> amended by the deletion of the words "and evidence".
	Proclamation No. 8 of 1938.	Procedure and Evidence Proclamation, 1938.	Sections <i>one</i> , <i>two</i> , <i>three</i> and <i>five</i> repealed.
Republic.	Act No. 46 of 1935.	General Law Amendment Act, 1935.	1. Section <i>one hundred and one</i> amended— (a) by the deletion of sub-sections (1) and (2); (b) by the substitution in sub-section (3) for the words "proceedings, whether civil or criminal" of the words "criminal proceedings". 2. Section <i>one hundred and three</i> repealed.
	Act No. 32 of 1952.	General Law Amendment Act, 1952.	Section <i>twenty-six</i> in so far as it relates to civil proceedings repealed.
	Act No. 42 of 1952.	Presumption of Death of Soldiers Act, 1952.	The whole repealed.

