



Jersey

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## CIVIL EVIDENCE (JERSEY) LAW 2003

### Arrangement

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## CIVIL EVIDENCE (JERSEY) LAW 2003

**A LAW** to provide for the admissibility of hearsay evidence and the proof of certain documentary evidence in civil proceedings; and for connected purposes.

*Adopted by the States* 24th September 2002

*Sanctioned by Order of Her Majesty in Council* 27th February 2003

*Registered by the Royal Court* 21st March 2003

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### 1 Interpretation

(1) In this Law –

“civil proceedings” means civil proceedings before any court;

“court” means any tribunal in relation to which the strict rules of evidence apply, whether as a matter of law or by agreement of the parties;

“document” means anything in which information of any description is recorded, and “copy”, in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

“hearsay” means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated, and references to hearsay include hearsay of whatever degree;

“oral evidence” includes evidence which, by reason of a defect of speech or hearing, a person called as a witness gives in writing or by signs;

“original statement”, in relation to hearsay evidence, means the underlying statement (if any) by –

(a) in the case of evidence of fact, a person having personal knowledge of that fact; or

- (b) in the case of evidence of opinion, the person whose opinion it is; “statement” means any representation of fact or opinion, however made.
- (2) A reference in this Law to an Article by number only and without further identification is a reference to the Article of that number in this Law.
- (3) A reference in an Article or other division of this Law to a paragraph or sub-paragraph by number or letter only and without further identification is a reference to the paragraph or sub-paragraph of that number or letter in the Article or other division of this Law in which that reference occurs.
- (4) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another enactment, including another provision of this Law.

## **2 Application**

- (1) Subject to paragraph (2) this Law applies to any civil proceedings begun on or after its commencement.
- (2) This Law shall apply to civil proceedings begun before the commencement of this Law if –
- (a) the parties to those proceedings so agree; and
- (b) the court so consents.

## **3 Admissibility of hearsay evidence**

- (1) Evidence shall not be excluded on the ground that it is hearsay.
- (2) Nothing in this Law affects the admissibility of evidence admissible apart from this Article.
- (3) Articles 4 to 8 do not apply to hearsay evidence admissible apart from this Article even if it may also be admissible by virtue of this Article.

## **4 Notice of proposal to adduce hearsay evidence**

- (1) Subject to the following provisions of this Article, a party proposing to adduce hearsay evidence in civil proceedings shall give to the other party or parties to those proceedings –
- (a) such notice (if any) of that proposal; and
- (b) where so requested, such particulars of or relating to the evidence, as is reasonable and practicable in the circumstances to enable that party or parties to deal with matters arising from the fact that evidence is hearsay.
- (2) Rules of Court may –
- (a) specify classes of proceedings or evidence in relation to which paragraph (1) does not apply; and

- (b) make provision as to the manner in which (including the time within which) the duties imposed by that paragraph are to be complied with in the cases where it does apply.
- (3) The parties to the proceedings may exclude paragraph (1) by agreement and a party may waive any requirement for notice to be given to him.
- (4) A failure to comply with paragraph (1), or with Rules of Court under paragraph (2)(b), does not affect the admissibility of the evidence but the court may take into account such failure –
  - (a) in considering the exercise of its powers with respect to the course of proceedings and costs; and
  - (b) as a matter adversely affecting the weight to be given to the evidence in accordance with Article 6.

## **5 Power to call witness for cross-examination on hearsay statement**

Rules of Court may provide that where a party adduces hearsay evidence of a statement made by a person and does not call that person as a witness, any other party to the proceedings may, with the leave of the court, call that person as a witness and cross-examine him on the statement as if he had been called by the first-mentioned party and as if the hearsay statement were his evidence in chief.

## **6 Considerations relevant to weighing of hearsay evidence**

- (1) In estimating the weight (if any) to be given to hearsay evidence the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
- (2) Regard may be had, in particular, to the following –
  - (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
  - (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
  - (c) whether the evidence involves multiple hearsay;
  - (d) whether any person involved had any motive to conceal or misrepresent matters;
  - (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
  - (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

## **7 Competence and credibility**

- (1) Hearsay evidence shall not be admitted if or to the extent that it is shown to consist of, or to be proved by means of, a statement made by a person who was not competent as a witness at the time he made the statement.

- (2) For the purposes of paragraph (1) –
  - (a) “not competent as a witness” means suffering from such mental or physical infirmity, or lack of understanding, as would render a person incompetent as a witness in civil proceedings; but
  - (b) a child shall be treated as competent as a witness if, in the opinion of the court he understands that it is his duty to speak the truth and he has sufficient understanding to justify his evidence being heard.
- (3) Where hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness –
  - (a) evidence which, if he had been so called, would be admissible for the purpose of attacking or supporting his credibility as a witness is admissible for that purpose in the proceedings; and
  - (b) evidence tending to prove that, whether before or after he made the statement, he made any other statement inconsistent with it is admissible for the purpose of showing that he had contradicted himself.
- (4) Despite paragraph (3), evidence may not be given of any matter of which, if the maker of the original statement, or of any statement relied upon to prove another statement, had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

## **8 Previous statements of witnesses**

- (1) Subject to the following provisions of this Article, the provisions of this Law as to hearsay evidence apply equally (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings.
- (2) A party who has called or intends to call a person as a witness in civil proceedings may not in those proceedings adduce evidence of a previous statement made by that person, except –
  - (a) with the leave of the court; or
  - (b) for the purpose of rebutting a suggestion that his evidence has been fabricated.
- (3) Paragraph (2) shall not be construed as preventing a written statement of oral evidence which a party to the proceedings intends to lead, from being adopted by a witness in giving evidence or treated as his evidence.
- (4) Where any enactment or rule of law makes provision as to –
  - (a) how far a witness may be discredited by the party producing him;
  - (b) the proof of contradictory statements made by a witness; and
  - (c) cross-examination as to previous statements in writing,this Law does not authorize the adducing of evidence of a previous inconsistent or contradictory statement otherwise than in accordance with such enactment or rule.

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- (5) Paragraph (4) is without prejudice to any provision made by Rules of Court under Article 5.
  - (6) Nothing in this Law affects any rule of law as to the circumstances in which, where a person called as a witness is cross-examined on a document used by him to refresh his memory, that document may be made evidence in the proceedings.
  - (7) Nothing in this Article shall be construed as preventing a statement of any description referred to in this Article from being admissible by virtue of Article 3 as evidence of the matters stated.

## **9 Evidence admissible at customary law**

- (1) The rule of law whereby in civil proceedings an admission adverse to a party to the proceedings, whether made by that party or by another person, may be given in evidence against that party for the purpose of proving any fact stated in the admission is superseded.
- (2) Any rule of law whereby in civil proceedings –
  - (a) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them;
  - (b) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them; or
  - (c) records (for example, Acts of Court, treaties and commissions) are admissible as evidence of facts stated in them,shall continue to have effect.
- (3) Any rule of law whereby in civil proceedings –
  - (a) evidence of a person's reputation is admissible for the purpose of proving his good or bad character; or
  - (b) evidence of reputation or family tradition is admissible –
    - (i) for the purpose of proving or disproving pedigree or the existence of a marriage, or
    - (ii) for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing,shall continue to have effect in so far as it authorizes the court to treat such evidence as proving or disproving that matter.
- (4) Where any rule referred to in paragraph (3) applies, reputation or family tradition shall be treated for the purposes of this Law as a fact and not as a statement or multiplicity of statements about the matter in question.
- (5) The words in which a rule of law mentioned in this Article is described are intended only to identify the rule and shall not be construed as altering it in any way.

**10 Proof of statements contained in documents**

Where a statement contained in a document is admissible as evidence, it may be proved –

- (a) by the production of that document; or
- (b) whether or not that document is still in existence, by the production of a copy of that document (however many copies away from the original) or of the material part of it,

authenticated in such manner as the court may approve.

**11 Proof of records of business or public authority**

- (1) A document which is shown to form part of the records of a business or public authority may be received in evidence without further proof.
- (2) A document shall be taken to form part of the records of a business or public authority if there is produced to the court a certificate to that effect signed by an officer of the business or authority to which the records belong.
- (3) For the purposes of paragraph (2) –
  - (a) a document purporting to be a certificate signed by an officer of a business or public authority shall be deemed to have been duly given by such an officer and signed by him; and
  - (b) a certificate shall be treated as signed by a person if it purports to bear a facsimile of his signature.
- (4) The absence of an entry in the records of a business or public authority may be proved by affidavit of an officer of the business or authority to which the records belong.
- (5) The court may, having regard to the circumstances of the case, direct that all or any of the provisions of this Article do not apply in relation to a particular document or record, or description of documents or records.
- (6) In this Article –

“records” means records in whatever form;

“business” includes any activity regularly carried on over a period of time, whether for profit or not, by any body (whether corporate or not) or by an individual;

“officer” includes any person occupying a responsible position in relation to the relevant activities of the business or public authority or in relation to its records; and

“public authority” includes any public or parochial authority, statutory undertaking, States department and person holding office under the States or under Her Majesty.

**12 Rules of Court**

- (1) The power of the Royal Court to make Rules of Court under Article 11 of the Royal Court (Jersey) Law 1948<sup>1</sup> shall include power to make such



provision as may be necessary or expedient for carrying this Law into effect.

- (2) Rules of Court made for the purposes of this Law in relation to proceedings in the Royal Court shall apply to proceedings under the Arbitration (Jersey) Law 1998<sup>2</sup> –
  - (a) except in so far as their operation is excluded by agreement; and
  - (b) subject to such modifications as may be appropriate.
- (3) Any question arising as to what modifications are appropriate shall be determined, in default of agreement, by the arbitrator.

### **13 Savings**

- (1) Nothing in this Law affects the exclusion of evidence on grounds other than that it is hearsay, whether the evidence falls to be excluded in pursuance of any enactment or rule of law or for failure to comply with Rules of Court or an order of the court, or otherwise.
- (2) Nothing in this Law affects the proof of documents by means other than those specified in Article 10 or 11.

### **14 Citation and commencement**

This Law may be cited as the Civil Evidence (Jersey) Law 2003 and shall come into force on such day as the States may by Act appoint.

**C.M. NEWCOMBE**

*Greffier of the States.*

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<sup>1</sup> *Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.*

<sup>2</sup> *Volume 1998, page 441 and Volume 1999, page 521.*