



Civil Evidence Act 1968

1968 CHAPTER 64

PART I

HEARSAY EVIDENCE

1 Hearsay evidence to be admissible only by virtue of this Act and other statutory provisions, or by agreement.

- (1) In any civil proceedings a statement other than one made by a person while giving oral evidence in those proceedings shall be admissible as evidence of any fact stated therein to the extent that it is so admissible by virtue of any provision of this Part of this Act or by virtue of any other statutory provision or by agreement of the parties, but not otherwise.
- (2) In this section “statutory provision ” means any provision contained in, or in an instrument made under, this or any other Act, including any Act passed after this Act.

Modifications etc. (not altering text)

- C1** Pt. I (except s. 5) extended by [Civil Evidence Act 1972 \(c. 30\), s. 1\(1\)](#); amended by [Inheritance \(Provision for Family and Dependents\) Act 1975 \(c. 63\), s. 21](#)

2 Admissibility of out-of-court statements as evidence of facts stated.

- (1) In any civil proceedings a statement made, whether orally or in a document or otherwise, by any person, whether called as a witness in those proceedings or not, shall, subject to this section and to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.
- (2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person by whom the statement was made, the statement—

Status: Point in time view as at 19/12/1991.

Changes to legislation: There are currently no known outstanding effects for the Civil Evidence Act 1968, Part I. (See end of Document for details)

- (a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and
 - (b) without prejudice to paragraph (a) above, shall not be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person by whom it was made, except—
 - (i) where before that person is called the court allows evidence of the making of the statement to be given on behalf of that party by some other person; or
 - (ii) in so far as the court allows the person by whom the statement was made to narrate it in the course of his examination-in-chief on the ground that to prevent him from doing so would adversely affect the intelligibility of his evidence.
- (3) Where in any civil proceedings a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made shall be admissible for the purpose of proving it: Provided that if the statement in question was made by a person while giving oral evidence in some other legal proceedings (whether civil or criminal), it may be proved in any manner authorised by the court.

Modifications etc. (not altering text)

- C2** S. 2(1) extended by [Inheritance \(Provision for Family and Dependants\) Act 1975 \(c. 63\), s. 21](#)
- C3** Power to exclude s. 2(2) conferred by [Civil Evidence Act 1972 \(c. 30\), s. 2\(1\)](#)

3 Witness's previous statement, if proved, to be evidence of facts stated.

- (1) Where in any civil proceedings—
- (a) a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of section 3, 4 or 5 of the ^{M1}Criminal Procedure Act 1865; or
 - (b) a previous statement made by a person called as aforesaid is proved for the purpose of rebutting a suggestion that his evidence has been fabricated,
- that statement shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.
- (2) Nothing in this Act shall affect any of the rules of law relating to the circumstances in which, where a person called as a witness in any civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in those proceedings; and where a document or any part of a document is received in evidence in any such proceedings by virtue of any such rule of law, any statement made in that document or part by the person using the document to refresh his memory shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

Marginal Citations

- M1** 1865 c. 18.

Status: Point in time view as at 19/12/1991.

Changes to legislation: There are currently no known outstanding effects for the Civil Evidence Act 1968, Part 1. (See end of Document for details)

4 Admissibility of certain records as evidence of facts stated.

- (1) Without prejudice to section 5 of this Act, in any civil proceedings a statement contained in a document shall, subject to this section and to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if the document is, or forms part of, a record compiled by a person acting under a duty from information which was supplied by a person (whether acting under a duty or not) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information and which, if not supplied by that person to the compiler of the record directly, was supplied by him to the compiler of the record indirectly through one or more intermediaries each acting under a duty.
- (2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person who originally supplied the information from which the record containing the statement was compiled, the statement—
 - (a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and
 - (b) without prejudice to paragraph (a) above, shall not without the leave of the court be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person who originally supplied the said information.
- (3) Any reference in this section to a person acting under a duty includes a reference to a person acting in the course of any trade, business, profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

Modifications etc. (not altering text)

C4 S. 4 amended by [Civil Evidence Act 1972 \(c. 30\), s. 1\(2\)](#)

5 Admissibility of statements produced by computers.

- (1) In any civil proceedings a statement contained in a document produced by a computer shall, subject to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) below are satisfied in relation to the statement and computer in question.
- (2) The said conditions are—
 - (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any body, whether corporate or not, or by any individual;
 - (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
 - (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or

Status: Point in time view as at 19/12/1991.

Changes to legislation: There are currently no known outstanding effects for the Civil Evidence Act 1968, Part I. (See end of Document for details)

was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and

- (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

- (3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2)

(a) above was regularly performed by computers, whether—

- (a) by a combination of computers operating over that period; or
 (b) by different computers operating in succession over that period; or
 (c) by different combinations of computers operating in succession over that period; or
 (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this Part of this Act as constituting a single computer; and references in this Part of this Act to a computer shall be construed accordingly.

- (4) In any civil proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say—

- (a) identifying the document containing the statement and describing the manner in which it was produced;
 (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer;
 (c) dealing with any of the matters to which the conditions mentioned in subsection (2) above relate,

and purporting to be signed by a person occupying a responsible position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

- (5) For the purposes of this Part of this Act—

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
 (b) where, in the course of activities carried on by any individual or body, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
 (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

- (6) Subject to subsection (3) above, in this Part of this Act “computer” means any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

Status: Point in time view as at 19/12/1991.

Changes to legislation: There are currently no known outstanding effects for the Civil Evidence Act 1968, Part 1. (See end of Document for details)

6 Provisions supplementary to ss. 2 to 5.

- (1) Where in any civil proceedings a statement contained in a document is proposed to be given in evidence by virtue of section 2, 4 or 5 of this Act it may, subject to any rules of court, be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or of the material part thereof, authenticated in such manner as the court may approve.
- (2) For the purpose of deciding whether or not a statement is admissible in evidence by virtue of section 2, 4 or 5 of this Act, the court may draw any reasonable inference from the circumstances in which the statement was made or otherwise came into being or from any other circumstances, including, in the case of a statement contained in a document, the form and contents of that document.
- (3) In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of section 2, 3, 4 or 5 of this Act 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—
 - (a) in the case of a statement falling within section 2(1) or 3(1) or (2) of this Act, 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 maker of the statement had any incentive to conceal or misrepresent the facts;
 - (b) in the case of a statement falling within section 4(1) of this Act, to the question whether or not the person who originally supplied the information from which the record containing the statement was compiled did so contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not that person, or any person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts; and
 - (c) in the case of a statement falling within section 5(1) of this Act, to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied thereto, contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.
- (4) For the purpose of any enactment or rule of law or practice requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated—
 - (a) a statement which is admissible in evidence by virtue of section 2 or 3 of this Act shall not be capable of corroborating evidence given by the maker of the statement; and
 - (b) a statement which is admissible in evidence by virtue of section 4 of this Act shall not be capable of corroborating evidence given by the person who originally supplied the information from which the record containing the statement was compiled.
- (5) If any person in a certificate tendered in evidence in civil proceedings by virtue of section 5(4) of this Act wilfully makes a statement material in those proceedings which

Status: Point in time view as at 19/12/1991.

Changes to legislation: There are currently no known outstanding effects for the Civil Evidence Act 1968, Part I. (See end of Document for details)

he knows to be false or does not believe to be true, he shall be liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both.

7 Admissibility of evidence as to credibility of maker etc. of statement admitted under s. 2 or 4.

- (1) Subject to rules of court, where in any civil proceedings a statement made by a person who is not called as a witness in those proceedings is given in evidence by virtue of section 2 of this Act—
- (a) any evidence which, if that person had been so called, would be admissible for the purpose of destroying or supporting his credibility as a witness shall be admissible for that purpose in those proceedings; and
 - (b) evidence tending to prove that, whether before or after he made that statement, that person made (whether orally or in a document or otherwise) another statement inconsistent therewith shall be admissible for the purpose of showing that that person has contradicted himself:

Provided that nothing in this subsection shall enable evidence to be given of any matter of which, if the person in question 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.

- (2) Subsection (1) above shall apply in relation to a statement given in evidence by virtue of section 4 of this Act as it applies in relation to a statement given in evidence by virtue of section 2 of this Act, except that references to the person who made the statement and to his making the statement shall be construed respectively as references to the person who originally supplied the information from which the record containing the statement was compiled and to his supplying that information.
- (3) Section 3(1) of this Act shall apply to any statement proved by virtue of subsection (1) (b) above as it applies to a previous inconsistent or contradictory statement made by a person called as a witness which is proved as mentioned in paragraph (a) of the said section 3(1).

8 Rules of court.

- (1) Provision shall be made by rules of court as to the procedure which, subject to any exceptions provided for in the rules, must be followed and the other conditions which, subject as aforesaid, must be fulfilled before a statement can be given in evidence in civil proceedings by virtue of section 2, 4 or 5 of this Act.
- (2) Rules of court made in pursuance of subsection (1) above shall in particular, subject to such exceptions (if any) as may be provided for in the rules—
- (a) require a party to any civil proceedings who desires to give in evidence any such statement as is mentioned in that subsection to give to every other party to the proceedings such notice of his desire to do so and such particulars of or relating to the statement as may be specified in the rules, including particulars of such one or more of the persons connected with the making or recording of the statement or, in the case of a statement falling within section 5(1) of this Act, such one or more of the persons concerned as mentioned in section 6(3) (c) of this Act as the rules may in any case require; and
 - (b) enable any party who receives such notice as aforesaid by counter-notice to require any person of whom particulars were given with the notice to be

Status: Point in time view as at 19/12/1991.

Changes to legislation: There are currently no known outstanding effects for the Civil Evidence Act 1968, Part 1. (See end of Document for details)

called as a witness in the proceedings unless that person is dead, or beyond the seas, or unfit by reason of his bodily or mental condition to attend as a witness, or cannot with reasonable diligence be identified or found, or cannot reasonably be expected (having regard to the time which has elapsed since he was connected or concerned as aforesaid and to all the circumstances) to have any recollection of matters relevant to the accuracy or otherwise of the statement.

- (3) Rules of court made in pursuance of subsection (1) above—
- (a) may confer on the court in any civil proceedings a discretion to allow a statement falling within section 2(1), 4(1) or 5(1) of this Act to be given in evidence notwithstanding that any requirement of the rules affecting the admissibility of that statement has not been complied with, but except in pursuance of paragraph (b) below shall not confer on the court a discretion to exclude such a statement where the requirements of the rules affecting its admissibility have been complied with;
 - (b) may confer on the court power, where a party to any civil proceedings has given notice that he desires to give in evidence—
 - (i) a statement falling within section 2(1) of this Act which was made by a person, whether orally or in a document, in the course of giving evidence in some other legal proceedings (whether civil or criminal); or
 - (ii) a statement falling within section 4(1) of this Act which is contained in a record of any direct oral evidence given in some other legal proceedings (whether civil or criminal),to give directions on the application of any party to the proceedings as to whether, and if so on what conditions, the party desiring to give the statement in evidence will be permitted to do so and (where applicable) as to the manner in which that statement and any other evidence given in those other proceedings is to be proved; and
 - (c) may make different provision for different circumstances, and in particular may make different provision with respect to statements falling within sections 2(1), 4(1) and 5(1) of this Act respectively;
- and any discretion conferred on the court by rules of court made as aforesaid may be either a general discretion or a discretion exercisable only in such circumstances as may be specified in the rules.
- (4) Rules of court may make provision for preventing a party to any civil proceedings (subject to any exceptions provided for in the rules) from adducing in relation to a person who is not called as a witness in those proceedings any evidence which could otherwise be adduced by him by virtue of section 7 of this Act unless that party has in pursuance of the rules given in respect of that person such a counter-notice as is mentioned in subsection (2)(b) above.
- (5) In deciding for the purposes of any rules of court made in pursuance of this section whether or not a person is fit to attend as a witness, a court may act on a certificate purporting to be a certificate of a fully registered medical practitioner.
- (6) Nothing in the foregoing provisions of this section shall prejudice the generality of . . . ^{F1}, [^{F2}section 75 of the County Courts Act 1984], [^{F3}section 144 of the Magistrates' Courts Act 1980] or any other enactment conferring power to make rules of court; and nothing in . . . ^{F1}, [^{F2}section 75(2) of the County Courts Act 1984] or any other enactment restricting the matters with respect to which rules of court may be made

Status: Point in time view as at 19/12/1991.

Changes to legislation: There are currently no known outstanding effects for the Civil Evidence Act 1968, Part I. (See end of Document for details)

shall prejudice the making of rules of court with respect to any matter mentioned in the foregoing provisions of this section or the operation of any rules of court made with respect to any such matter.

Textual Amendments

- F1** Words repealed by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), s. 152(4), [Sch. 7](#)
- F2** Words substituted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1)(2), [Sch. 2 Pt. V para. 33](#), [Sch. 3 para. 9](#)
- F3** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, [Sch. 7 para. 75](#)

Modifications etc. (not altering text)

- C5** [S. 8\(2\)](#) restricted by [Civil Evidence Act 1972 \(c. 30\)](#), s. 2(2)

9 Admissibility of certain hearsay evidence formerly admissible at common law.

- (1) In any civil proceedings a statement which, if this Part of this Act had not been passed, would by virtue of any rule of law mentioned in subsection (2) below have been admissible as evidence of any fact stated therein shall be admissible as evidence of that fact by virtue of this subsection.
- (2) The rules of law referred to in subsection (1) above are the following, that is to say any rule of law—
- (a) whereby in any 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;
 - (b) whereby in any civil proceedings 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 therein;
 - (c) whereby in any civil proceedings 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 therein; or
 - (d) whereby in any civil proceedings records (for example, the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated therein.

In this subsection “admission ” includes any representation of fact, whether made in words or otherwise.

- (3) In any civil proceedings a statement which tends to establish reputation or family tradition with respect to any matter and which, if this Act had not been passed, would have been admissible in evidence by virtue of any rule of law mentioned in subsection (4) below—
- (a) shall be admissible in evidence by virtue of this paragraph in so far as it is not capable of being rendered admissible under section 2 or 4 of this Act; and
 - (b) if given in evidence under this Part of this Act (whether by virtue of paragraph (a) above or otherwise) shall by virtue of this paragraph be admissible as evidence of the matter reputed or handed down;

Status: Point in time view as at 19/12/1991.

Changes to legislation: There are currently no known outstanding effects for the Civil Evidence Act 1968, Part I. (See end of Document for details)

and, without prejudice to paragraph (b) above, reputation shall for the purposes of this Part of this Act be treated as a fact and not as a statement or multiplicity of statements dealing with the matter reputed.

- (4) The rules of law referred to in subsection (3) above are the following, that is to say any rule of law—
- (a) whereby in any civil proceedings evidence of a person's reputation is admissible for the purpose of establishing his good or bad character;
 - (b) whereby in any civil proceedings involving a question of pedigree or in which the existence of a marriage is in issue evidence of reputation or family tradition is admissible for the purpose of proving or disproving pedigree or the existence of the marriage, as the case may be; or
 - (c) whereby in any civil proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing.
- (5) It is hereby declared that in so far as any statement is admissible in any civil proceedings by virtue of subsection (1) or (3)(a) above, it may be given in evidence in those proceedings notwithstanding anything in sections 2 to 7 of this Act or in any rules of court made in pursuance of section 8 of this Act.
- (6) The words in which any rule of law mentioned in subsection (2) or (4) above is there described are intended only to identify the rule in question and shall not be construed as altering that rule in any way.

10 Interpretation of Part I, and application to arbitrations, etc.

- (1) In this Part of this Act—
- “computer ” has the meaning assigned by section 5 of this Act;
 - “document ” includes, in addition to a document in writing—
 - (a) any map, plan, graph or drawing;
 - (b) any photograph;
 - (c) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and
 - (d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom;
 - “film ” includes a microfilm;
 - “statement ” includes any representation of fact, whether made in words or otherwise.
- (2) In this Part of this Act any reference to a copy of a document includes—
- (a) in the case of a document falling within paragraph (c) but not (d) of the definition of “document ” in the foregoing subsection, a transcript of the sounds or other data embodied therein;
 - (b) in the case of a document falling within paragraph (d) but not (c) of that definition, a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not;

Status: Point in time view as at 19/12/1991.

Changes to legislation: There are currently no known outstanding effects for the Civil Evidence Act 1968, Part I. (See end of Document for details)

- (c) in the case of a document falling within both those paragraphs, such a transcript together with such a still reproduction; and
- (d) in the case of a document not falling within the said paragraph (d) of which a visual image is embodied in a document falling within that paragraph, a reproduction of that image, whether enlarged or not,
- and any reference to a copy of the material part of a document shall be construed accordingly.
- (3) For the purposes of the application of this Part of this Act in relation to any such civil proceedings as are mentioned in section 18(1)(a) and (b) of this Act [^{F4}other than civil proceedings on a reference to arbitration under section 64 of the County Courts Act 1984], any rules of court made for the purposes of this Act under [^{F5}section 84 of the Supreme Court Act 1981] shall (except in so far as their operation is excluded by agreement) apply, subject to such modifications as may be appropriate, in like manner as they apply in relation to civil proceedings in the High Court:
- [^{F6}(3A) For the purposes of the application of this Part of this Act in relation to proceedings on an arbitration under section 64 of the County Courts Act 1984 any rules made for the purposes of this Act under section 75 of that Act shall (except in so far as their operation is excluded by agreement) apply, subject to such modifications as may be appropriate, in like manner as they apply in relation to proceedings in the county court.]
- (4) If any question arises as to what are, for the purposes of any such civil proceedings as are mentioned in section 18(1)(a) or (b) of this Act, the appropriate modifications of any such rule of court as is mentioned in subsection (3) above, that question shall, in default of agreement, be determined by the tribunal or the arbitrator or umpire, as the case may be.

Textual Amendments

- F4** Words inserted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1)(2), [Sch. 2 Pt. V para. 34\(a\)](#), [Sch. 3 para. 9](#)
- F5** Words substituted by virtue of [Interpretation Act 1978 \(c. 30, SIF 115:1\)](#), [s. 17\(2\)\(a\)](#)
- F6** Words substituted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1)(2), [Sch. 2 Pt. V para. 34\(b\)](#), [Sch. 3 para. 9](#)

Modifications etc. (not altering text)

- C6** [S. 10](#) definition of "documents" applied by [Commercial and Private Bank Act 1991 \(c. xxii\)](#), [s. 9\(2\)](#)
- C7** [S. 10\(2\)](#) applied by [Finance Act 1985 \(c. 54, SIF 40:1\)](#), [s. 10\(1\)](#) and [Finance Act 1988 \(c. 39, SIF 63\)](#), [s. 127\(1\)](#)
[S. 10\(2\)](#) applied (1.9.1994) by [1994 c. 22](#), [s. 52\(4\)\(a\)\(5\)](#) (with [s. 57\(4\)](#))
- C8** [S. 10\(3\)\(4\)](#) extended by [Civil Evidence Act 1972 \(c. 30\)](#), [s. 5\(2\)](#)

Status:

Point in time view as at 19/12/1991.

Changes to legislation:

There are currently no known outstanding effects for the Civil Evidence Act 1968, Part I.