

LAWS OF MALAYSIA

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Act 56

EVIDENCE ACT 1950

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LAWS OF MALAYSIA

Act 56

EVIDENCE ACT 1950

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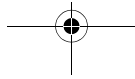
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EVIDENCE ACT 1950

An Act to define the law of evidence.

*[Peninsular Malaysia—23 May 1950,
Ord. No. 11 of 1950;
Sabah and Sarawak—1 November 1971,
P.U.(A) 261/1971]*

PART I

RELEVANCY

CHAPTER I

PRELIMINARY

Short title

1. This Act may be cited as the Evidence Act 1950.

Extent

2. This Act shall apply to all judicial proceedings in or before any court, but not to affidavits presented to any court or officer nor to proceedings before an arbitrator.

Interpretation

3. In this Act, unless the context otherwise requires—

“computer” means any device for recording, storing, processing, retrieving or producing any information or other matter, or for performing any one or more of those functions, by whatever name or description such device is called; and where two or more computers carry out any one or more of those functions in combination or in succession or otherwise howsoever conjointly, they shall be treated as a single computer;

“court” means a court established by or under Part IX of the Federal Constitution and includes—

- (a) a Judge;
- (b) a Sessions Court Judge;
- (c) a Magistrate; and
- (d) except an arbitrator, every person legally authorized to take evidence;

“document” means any matter expressed, described, or howsoever represented, upon any substance, material, thing or article, including any matter embodied in a disc, tape, film, sound track or other device whatsoever, by means of—

- (a) letters, figures, marks, symbols, signals, signs, or other forms of expression, description, or representation whatsoever;
- (b) any visual recording (whether of still or moving images);
- (c) any sound recording, or any electronic, magnetic, mechanical or other recording whatsoever and howsoever made, or any sounds, electronic impulses, or other data whatsoever;
- (d) a recording, or transmission, over a distance of any matter by any, or any combination, of the means mentioned in paragraph (a), (b) or (c),

or by more than one of the means mentioned in paragraphs (a), (b), (c) and (d), intended to be used or which may be used for the purpose of expressing, describing, or howsoever representing, that matter;

ILLUSTRATIONS

A writing is a document.

Words printed, lithographed or photographed are documents.

A map, plan, graph or sketch is a document.

An inscription on wood, metal, stone or any other substance, material or thing is a document.

A drawing, painting, picture or caricature is a document.

A photograph or a negative is a document.

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A tape recording of a telephonic communication, including a recording of such communication transmitted over distance, is a document.

A photographic or other visual recording, including a recording of a photographic or other visual transmission over a distance, is a document.

A matter recorded, stored, processed, retrieved or produced by a computer is a document;

“evidence” includes—

- (a) all statements which the court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry: such statements are called oral evidence;
- (b) all documents produced for the inspection of the court: such documents are called documentary evidence;

“fact” means and includes—

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

ILLUSTRATIONS

- (a) That there are certain objects arranged in a certain order in a certain place is a fact.
- (b) That a man heard or saw something is a fact.
- (c) That a man said certain words is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at a specified time conscious of a particular sensation, is a fact.
- (e) That a man has a certain reputation is a fact;

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

ILLUSTRATIONS

A is accused of the murder of *B*.

At his trial the following facts may be in issue:

- that *A* caused *B*’s death;
- that *A* intended to cause *B*’s death;

that *A* had received grave and sudden provocation from *B*;

that *A* at the time of doing the act which caused *B*'s death was by reason of unsoundness of mind incapable of knowing its nature;

“film” includes a microfilm and any negative;

“microfilm” means any transparent material bearing a visual image in reduced size either singly or as a series and includes a microfiche;

“negative” means a transparent negative photograph on any substance or material, and includes any transparent negative photograph made from the original negative photograph;

“proved”: a fact is said to be “proved” when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists;

“disproved”: a fact is said to be “disproved” when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist;

“not proved”: a fact is said to be “not proved” when it is neither proved nor disproved;

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

Presumption

4. (1) Whenever it is provided by this Act that the court may presume a fact, it may either regard the fact as proved unless and until it is disproved, or may call for proof of it.

(2) Whenever it is directed by this Act that the court shall presume a fact, it shall regard the fact as proved unless and until it is disproved.

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

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CHAPTER II
RELEVANCY OF FACTS

General

Evidence may be given of facts in issue and relevant facts

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

Explanation—This section shall not enable any person to give evidence of a fact which he is disentitled to prove by the law relating to civil procedure.

ILLUSTRATIONS

(a) *A* is tried for the murder of *B* by beating him with a club with the intention of causing his death.

At *A*'s trial the following facts are in issue:

- A*'s beating *B* with the club;
- A*'s causing *B*'s death by the beating; and
- A*'s intention to cause *B*'s death.

(b) *A* a party to a suit does not comply with a notice given by *B* the other party to produce for *B*'s inspection a document referred to in *A*'s pleadings. This section does not enable *A* to put the document in evidence on his behalf in that suit, otherwise than in accordance with the conditions prescribed by the law relating to civil procedure.

Relevancy of facts forming part of same transaction

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

ILLUSTRATIONS

(a) *A* is accused of the murder of *B* by beating him. Whatever was said or done by *A* or *B* or the bystanders at the beating or so shortly before or after it as to form part of the transaction is a relevant fact.

(b) *A* is accused of waging war against the Yang di-Pertuan Agong by taking part in an armed insurrection in which property is destroyed, troops are attacked

and gaols are broken open. The occurrence of these facts is relevant as forming part of the general transaction, though *A* may not have been present at all of them.

(c) *A* sues *B* for a libel contained in a letter forming part of a correspondence. Letters between the parties relating to the subject out of which the libel arose and forming part of the correspondence in which it is contained are relevant facts though they do not contain the libel itself.

(d) The question is whether certain goods ordered from *B* were delivered to *A*. The goods were delivered to several intermediate persons successively. Each delivery is a relevant fact.

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

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

ILLUSTRATIONS

(a) The question is whether *A* robbed *B*.

The facts that shortly before the robbery *B* went to a fair with money in his possession and that he showed or mentioned the fact that he had it to third persons are relevant.

(b) The question is whether *A* murdered *B*.

Marks on the ground produced by a struggle at or near the place where the murder was committed are relevant facts.

(c) The question is whether *A* poisoned *B*.

The state of *B*'s health before the symptoms ascribed to poison and habits of *B*, known to *A*, which afforded an opportunity for the administration of poison, are relevant facts.

Motive, preparation and previous or subsequent conduct

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

(2) The conduct of any party, or of any agent to any party, to any suit or proceeding in reference to that suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and

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the conduct of any person an offence against whom is the subject of any proceeding, is relevant if the conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1—The word “conduct” in this section does not include statements unless those statements accompany and explain acts other than statements; but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2—When the conduct of any person is relevant any statement made to him or in his presence and hearing which affects his conduct is relevant.

ILLUSTRATIONS

(a) *A* is tried for the murder of *B*.

The facts that *A* murdered *C*, that *B* knew that *A* had murdered *C* and that *B* had tried to extort money from *A* by threatening to make his knowledge public are relevant.

(b) *A* sues *B* upon a bond for the payment of money. *B* denies the making of the bond.

The fact that at the time when the bond was alleged to be made *B* required money for a particular purpose is relevant.

(c) *A* is tried for the murder of *B* by poison.

The fact that before the death of *B*, *A* procured poison similar to that which was administered to *B* is relevant.

(d) The question is whether a certain document is the will of *A*.

The facts that not long before the date of the alleged will *A* made inquiry into matters to which the provisions of the alleged will relate, that he consulted lawyers in reference to making the will, and that he caused drafts of other wills to be prepared of which he did not approve are relevant.

(e) *A* is accused of a crime.

The facts that either before or at the time of or after the alleged crime *A* provided evidence which would tend to give to the facts of the case an appearance favourable to himself, or that he destroyed or concealed evidence or prevented the presence or procured the absence of persons who might have been witnesses or suborned persons to give false evidence respecting it are relevant.

(f) The question is whether *A* robbed *B*.

The facts that after *B* was robbed, *C* said in *A*'s presence: "The police are coming to look for the man who robbed *B*" and that immediately afterwards *A* ran away are relevant.

(g) The question is whether *A* owes *B* RM10,000.

The facts that *A* asked *C* to lend him money, and that *D* said to *C* in *A*'s presence and hearing: "I advise you not to trust *A* for he owes *B* RM10,000," and that *A* went away without making any answer are relevant facts.

(h) The question is whether *A* committed a crime.

The fact that *A* absconded after receiving a letter warning him that inquiry was being made for the criminal and the contents of the letter are relevant.

(i) *A* is accused of a crime.

The facts that after the commission of the alleged crime he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it are relevant.

(j) The question is whether *A* was ravished.

The facts that shortly after the alleged rape she made a complaint relating to the crime, the circumstances under which and the terms in which the complaint was made are relevant.

The fact that without making a complaint she said that she had been ravished is not relevant as conduct under this section, though it may be relevant—

(i) as a dying declaration under section 32(1)(a); or

(ii) as corroborative evidence under section 157.

(k) The question is whether *A* was robbed.

The fact that soon after the alleged robbery he made a complaint relating to the offence, the circumstances under which and the terms in which the complaint was made are relevant.

The fact that he said he had been robbed without making any complaint is not relevant as conduct under this section, though it may be relevant—

(i) as a dying declaration under section 32(1)(a); or

(ii) as corroborative evidence under section 157.

Facts necessary to explain or introduce relevant facts

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

ILLUSTRATIONS

(a) The question is whether a given document is the will of *A*.

The state of *A*'s property and of his family at the date of the alleged will may be relevant facts.

(b) *A* sues *B* for a libel imputing disgraceful conduct to *A*; *B* affirms that the matter alleged to be libellous is true.

The position and relations of the parties at the time when the libel was published may be relevant facts as introductory to the facts in issue.

The particulars of a dispute between *A* and *B* about a matter unconnected with the alleged libel are irrelevant, though the fact that there was a dispute may be relevant if it affected the relations between *A* and *B*.

(c) *A* is accused of a crime.

The fact that soon after the commission of the crime *A* absconded from his house is relevant under section 8 as conduct subsequent to and affected by facts in issue.

The fact that at the time when he left home he had sudden and urgent business at the place to which he went is relevant as tending to explain the fact that he left home suddenly.

The details of the business on which he left are not relevant, except in so far as they are necessary to show that the business was sudden and urgent.

(d) *A* sues *B* for inducing *C* to break a contract of service made by him with *A*. *C* on leaving *A*'s service says to *A*: "I am leaving you because *B* has made me a better offer." This statement is a relevant fact as explanatory of *C*'s conduct, which is relevant as a fact in issue.

(e) *A* accused of theft is seen to give the stolen property to *B*, who is seen to give it to *A*'s wife. *B* says as he delivers it: "*A* says you are to hide this." *B*'s statement is relevant as explanatory of a fact which is part of the transaction.

(f) *A* is tried for a riot and is proved to have marched at the head of a mob. The cries of the mob are relevant as explanatory of the nature of the transaction.

Things said or done by conspirator in reference to common design

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

ILLUSTRATIONS

Reasonable ground exists for believing that *A* has joined in a conspiracy to wage war against the Yang di-Pertuan Agong.

The facts that *B* procured arms in Europe for the purpose of the conspiracy, *C* collected money in Malacca for a like object, *D* persuaded persons to join the conspiracy in Province Wellesley, *E* published writings advocating the object in view at Singapore, and *F* transmitted from Singapore to *G* at Djakarta the money which *C* had collected at Malacca, and the contents of a letter written by *H* giving an account of the conspiracy are each relevant, both to prove the existence of the conspiracy and to prove *A*'s complicity in it, although he may have been ignorant of all of them, and although the persons by whom they were done were strangers to him, and although they may have taken place before he joined the conspiracy or after he left it.

When facts not otherwise relevant become relevant

11. Facts not otherwise relevant are relevant—

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

ILLUSTRATIONS

(a) The question is whether *A* committed a crime at Kuala Lumpur on a certain day.

The fact that on that day *A* was at Taiping is relevant.

The fact that near the time when the crime was committed *A* was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it is relevant.

(*b*) The question is whether *A* committed a crime.

The circumstances are such that the crime must have been committed either by *A*, *B*, *C* or *D*. Every fact which shows that the crime could have been committed by no one else and that it was not committed by either *B*, *C* or *D* is relevant.

In suits for damages facts tending to enable court to determine amount are relevant

12. In suits in which damages are claimed any fact which will enable the court to determine the amount of damages which ought to be awarded is relevant.

Facts relevant when right or custom is in question

13. Where the question is as to the existence of any right or custom the following facts are relevant:

- (*a*) any transaction by which the right or custom in question was created, claimed, modified, recognized, asserted or denied or which was inconsistent with its existence;
- (*b*) particular instances in which the right or custom was claimed, recognized or exercised or in which its exercise was disputed, asserted or departed from.

ILLUSTRATIONS

The question is whether *A* has a right to a fishery. A document conferring the fishery on *A*'s ancestors, a pledge of the fishery by *A*'s father, a subsequent grant of the fishery by *A*'s father irreconcilable with the pledge, particular instances in which *A*'s father exercised the right, or in which the exercise of the right was stopped by *A*'s neighbours, are relevant facts.

Facts showing existence of state of mind or of body or bodily feeling

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or

goodwill towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists not generally but in reference to the particular matter in question.

Explanation 2—But where upon the trial of a person accused of an offence the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of that person shall also be relevant fact.

ILLUSTRATIONS

(a) *A* is accused of receiving stolen goods, knowing them to be stolen. It is proved that he was in possession of a particular stolen article.

The fact that at the same time he was in possession of many other stolen articles is relevant as tending to show that he knew each and all of the articles of which he was in possession to be stolen.

(b) *A* is accused of fraudulently delivering to another person a counterfeit coin, which at the time when he delivered it he knew to be counterfeit.

The fact that at the time of its delivery *A* was possessed of a number of other pieces of counterfeit coin is relevant.

The fact that *A* had been previously convicted of delivering to another person as genuine a counterfeit coin, knowing it to be counterfeit, is relevant.

(c) *A* sues *B* for damage done by a dog of *B*'s which *B* knew to be ferocious.

The facts that the dog had previously bitten *X*, *Y* and *Z*, and that they had made complaints to *B*, are relevant.

(d) The question is whether *A*, the acceptor of a bill of exchange, knew that the name of the payee was fictitious.

The fact that *A* had accepted other bills drawn in the same manner before they could have been transmitted to him by the payee, if the payee had been a real person, is relevant, as showing that *A* knew that the payee was a fictitious person.

(e) *A* is accused of defaming *B* by publishing an imputation intended to harm the reputation of *B*.

The fact of previous publications by *A* respecting *B*, showing ill will on the part of *A* towards *B*, is relevant, as proving *A*'s intention to harm *B*'s reputation by the particular publication in question.

The facts that there was no previous quarrel between *A* and *B*, and that *A* repeated the matter complained of as he heard it, are relevant as showing that *A* did not intend to harm the reputation of *B*.

Evidence

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(f) *A* is sued by *B* for fraudulently representing to *B* that *C* was solvent, whereby *B*, being induced to trust *C* who was insolvent, suffered loss.

The fact that at the time when *A* represented *C* to be solvent *C* was supposed to be solvent by his neighbours, and by persons dealing with him, is relevant, as showing that *A* made the representation in good faith.

(g) *A* is sued by *B* for the price of work done by *B* upon a house of which *A* is owner by the order of *C*, a contractor.

A's defence is that *B*'s contract was with *C*.

The fact that *A* paid *C* for the work in question is relevant as proving that *A* did in good faith make over to *C* the management of the work in question, so that *C* was in a position to contract with *B* on *C*'s own account and not as agent for *A*.

(h) *A* is accused of the dishonest misappropriation of property which he had found, and the question is whether, when he appropriated it, he believed in good faith that the real owner could not be found.

The fact that public notice of the loss of the property had been given in the place where *A* was is relevant as showing that *A* did not in good faith believe that the real owner of the property could not be found.

The fact that *A* knew or had reason to believe that the notice was given fraudulently by *C*, who had heard of the loss of the property and wished to set up a false claim to it, is relevant as showing that the fact that *A* knew of the notice did not disprove *A*'s good faith.

(i) *A* is charged with shooting at *B* with intent to kill him.

In order to show *A*'s intent, the fact of *A*'s having previously shot at *B* maybe proved

(j) *A* is charged with sending threatening letters to *B*.

Threatening letters previously sent by *A* to *B* may be proved as showing the intention of the letters.

(k) The question is whether *A* has been guilty of cruelty towards *B*, his wife.

Expression of their feelings towards each other shortly before or after the alleged cruelty are relevant facts.

(l) The question is whether *A*'s death was caused by poison.

Statements made by *A* during his illness as to his symptoms are relevant facts.

(m) The question is, what was the state of *A*'s health at the time when an assurance on his life was effected?

Statements made by *A* as to the state of his health at or near the time in question are relevant facts.

(n) *A* sues *B* for negligence in providing him with a carriage for hire not reasonably fit for use whereby *A* was injured.

The fact that *B*'s attention was drawn on other occasions to the defect of that particular carriage is relevant.

The fact that *B* was habitually negligent about the carriages which he let to hire is relevant.

(o) *A* is tried for the murder of *B* by intentionally shooting him dead.

The fact that *A* on other occasions shot at *B* is relevant as showing his intention to shoot *B*.

The fact that *A* was in the habit of shooting at people with intent to murder them is irrelevant.

(p) *A* is tried for a crime.

The fact that he said something indicating an intention to commit that particular crime is relevant.

The fact that he said something indicating a general disposition to commit crimes of that class is irrelevant.

Facts bearing on question whether act was accidental or intentional

15. When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that the act formed part of series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

ILLUSTRATIONS

(a) *A* is accused of burning down his house in order to obtain money for which it is insured.

The facts that *A* lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires *A* received payment from a different insurance office, are relevant as tending to show that the fire was not accidental.

(b) *A* is employed to receive money from the debtors of *B*. It is *A*'s duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

Evidence

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The facts that other entries made by *A* in the same book are false, and that the false entry is in each case in favour of *A* are relevant.

(c) *A* is accused of fraudulently delivering to *B* a counterfeit ringgit.

The question is whether the delivery of the ringgit was accidental.

The facts that soon before or soon after the delivery to *B*, *A* delivered counterfeit ringgit to *C*, *D* and *E* are relevant as showing that the delivery to *B* was not accidental.

Existence of course of business when relevant

16. When there is a question whether a particular act was done, the existence of any course of business, according to which it naturally would have been done, is a relevant fact.

ILLUSTRATIONS

(a) The question is whether a particular letter was despatched.

The facts that it was the ordinary course of business for all letters put in a certain place to be carried to the post, and that particular letter was put in that place, are relevant.

(b) The question is whether a particular letter reached *A*.

The facts that it was posted in due course and was not returned through the Dead Letter Office are relevant.

Admissions and Confessions

Admission and confession defined

17. (1) An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

(2) A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence.

(3) Subsection (2) shall have no application in Sarawak.

Admission by party to proceeding, his agent or person interested

18. (1) Statements made by a party to the proceeding or by an agent to any such party whom the court regards under the circumstances of the case as expressly or impliedly authorized by him to make them are admissions.

(2) Statements made by parties to suits, suing or sued in a representative character, are not admissions unless they were made while the party making them held that character.

(3) Statements made by—

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

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

Admissions by persons whose position must be proved as against party to suit

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

ILLUSTRATIONS

A undertakes to collect rents for *B*.

B sues *A* for not collecting rent due from *C* to *B*.

A denies that rent was due from *C* to *B*.

A statement by *C* that he owed *B* rent is an admission and is a relevant fact, as against *A* if *A* denies that *C* did owe rent to *B*.

Admissions by persons expressly referred to by party to suit

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

ILLUSTRATIONS

The question is whether a horse sold by *A* to *B* is sound.

A says to *B*: "Go and ask *C*; *C* knows all about it." *C*'s statement is an admission.

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

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

- (a) an admission may be proved by or on behalf of the person making it when it is of a nature that, if the person making it were dead, it would be relevant as between third persons under section 32;
- (b) an admission may be proved by or on behalf of the person making it when it consists of a statement of the existence of any state of mind or body relevant or in issue, made at or about the time when that state of mind or body existed and is accompanied by conduct rendering its falsehood improbable;
- (c) an admission may be proved by or on behalf of the person making it if it is relevant otherwise than as an admission.

ILLUSTRATIONS

(a) The question between *A* and *B* is whether a certain document is or is not forged. *A* affirms that it is genuine; *B* that it is forged.

A may prove a statement by *B* that the document is genuine, and *B* may prove a statement by *A* that the document is forged; but *A* cannot prove a statement by himself that the document is genuine, nor can *B* prove a statement by himself that the document is forged.

(b) *A*, the captain of a ship, is tried for casting her away.

Evidence is given to show that the ship was taken out of her proper course.

A produces a book kept by him in the ordinary course of his business, showing observations alleged to have been taken by him from day to day, and indicating that the ship was not taken out of her proper course. *A* may prove these statements because they would be admissible between third parties if he were dead under paragraph 32(1)(b).

(c) *A* is accused of a crime committed by him at Kuala Lumpur. He produces a letter written by himself and dated at Penang on that day, and bearing the Penang postmark of that day.

The statement in the date of the letter is admissible, because if *A* were dead it would be admissible under paragraph 32(1)(b).

(d) *A* is accused of receiving stolen goods, knowing them to be stolen.

He offers to prove that he refused to sell them below their value.

A may prove these statements though they are admissions, because they are explanatory of conduct influenced by facts in issue.

(e) *A* is accused of fraudulently having in his possession counterfeit coin which he knew to be counterfeit.

He offers to prove that he asked a skilful person to examine the coin as he doubted whether it was counterfeit or not, and that that person did examine it and told him it was genuine.

A may prove these facts for the reasons stated in illustration (d).

When oral admissions as to contents of documents are relevant

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

Admissions in civil cases when relevant

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

Explanation—Nothing in this section shall be taken to exempt any advocate from giving evidence of any matter of which he may be compelled to give evidence under section 126.

Confession caused by inducement, threat or promise when irrelevant in criminal proceeding

24. A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Confession to police officer below the rank of Inspector not to be proved

25. (1) Subject to any express provision contained in any written law, no confession made to a police officer who is below the rank of Inspector by a person accused of any offence shall be proved as against that person.

(2) *(Deleted by Act A324).*

Confession by accused while in custody of police not to be proved against him

26. (1) Subject to any express provision contained in any written law, no confession made by any person whilst he is in the custody of a police officer, unless it is made in the immediate presence of a Sessions Court Judge or Magistrate, shall be proved as against that person.

(2) *(Deleted by Act A324).*

How much of information received from accused may be proved

27. (1) When any fact is proved to be discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much of that information, whether the information amounts to a confession or

not, as relates distinctly to the fact thereby discovered may be proved.

(2) *(Deleted by Act A324).*

Confession made after removal of impression caused by inducement, threat or promise relevant

28. (1) If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court, been fully removed, it is relevant.

(2) *(Deleted by Act A324).*

Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.

29. (1) If such a confession as is referred to in section 24 is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practised on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make a confession and that evidence of it might be given against him.

(2) *(Deleted by Act A324).*

Consideration of proved confession affecting person making it and others jointly under trial for same offence

30. (1) When more persons than one are being tried jointly for the same offence, and a confession made by one of those persons affecting himself and some other of those persons is proved, the court may take into consideration the confession as against the other person as well as against the person who makes the confession.

(2) *(Deleted by Act A324).*

Explanation— “offence” as used in this section includes the abetment of or attempt to commit the offence.

ILLUSTRATIONS

(a) *A* and *B* are jointly tried for the murder of *C*. It is proved that *A* said: “*B* and I murdered *C*.” The court may consider the effect of this confession as against *B*.

(b) *A* is on his trial for the murder of *C*. There is evidence to show that *C* was murdered by *A* and *B* and that *B* said: “*A* and I murdered *C*.”

This statement may not be taken into consideration by the court against *A* as *B* is not being jointly tried.

Admissions not conclusive proof but may estop

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

31A. (*Deleted by Act A978*).

Statements by persons who cannot be called as witnesses

Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant

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

(a) when the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person’s death comes into question.

Such a statement is relevant whether the person who made it was or was not at the time when it was made under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question;

(b) when the statement was made by any such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by

him in books kept in the ordinary course of business or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce, written or signed by him, or of the date of a letter or other document usually dated, written or signed by him;

- (c) when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages;
- (d) when the statement gives the opinion of any such person as to the existence of any public right or custom or matter of public or general interest, of the existence of which if it existed he would have been likely to be aware, and when the statement was made before any controversy as to the right, custom or matter had arisen;
- (e) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons as to whose relationship by blood, marriage or adoption the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised;
- (f) when the statement relates to the existence of any relationship by blood, marriage or adoption between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree or upon any tombstone, family portrait or other thing on which such statements are usually made, and when the statement was made before the question in dispute was raised;
- (g) when the statement is contained in any document which relates to any transaction as is mentioned in paragraph 13(a);
- (h) when the statement was made by a number of persons and expressed feelings or impressions on their part relevant to the matter in question;

Evidence

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- (i) when the statement was made in the course of, or for the purposes of, an investigation or inquiry into an offence under or by virtue of any written law; and
- (j) where the statement was made by a public officer in the discharge of his duties.

ILLUSTRATIONS

- (a) The question is whether *A* was murdered by *B*; or

A dies of injuries in a transaction in the course of which she was ravished. The question is whether she was ravished by *B*; or

The question is whether *A* was killed by *B* under circumstances that a suit would lie against *B* by *A*'s widow.

Statements made by *A* as to the cause of his or her death, referring respectively to the murder, the rape and the actionable wrong under consideration, are relevant facts.

- (b) The question is as to the date of *A*'s birth.

An entry in the diary of a deceased surgeon regularly kept in the course of business, stating that on a given day he attended *A*'s mother and delivered her of a son, is a relevant fact.

- (c) The question is whether *A* was in Kuala Lumpur on a given day.

A statement in the diary of a deceased advocate regularly kept in the course of business that on a given day the advocate attended *A* at a place mentioned in Kuala Lumpur for the purpose of conferring with him upon specified business is a relevant fact.

- (d) The question is whether a ship sailed from Penang harbour on a given day.

A letter written by a deceased member of a merchant's firm by which she was chartered to their correspondents in London, to whom the cargo was consigned, stating that the ship sailed on a given day from Penang harbour is a relevant fact.

- (e) The question is whether rent was paid to *A* for certain land.

A letter from *A*'s deceased agent to *B*, saying that he had received the rent on *A*'s account and held it at *A*'s orders, is a relevant fact.

- (f) The question is whether *A* and *B* were legally married.

The statement of a deceased clergyman that he married them under circumstances that the celebration would be a crime is relevant.

(g) The question is whether *A*, a person who cannot be found, wrote a letter on a certain day.

The fact that a letter written by him is dated on that day is relevant.

(h) The question is what was the cause of the wreck of a ship?

A protest made by the captain, whose attendance cannot be procured, is a relevant fact.

(i) The question is whether a given road is a public way.

A statement by *A*, a deceased Penghulu of the Mukim, that the road was public is a relevant fact.

(j) The question is what was the price of shares on a certain day in a particular market.

A statement of the price made by a deceased broker in the ordinary course of his business is a relevant fact.

(k) The question is whether *A*, who is dead, was the father of *B*.

A statement by *A* that *B* was his son is a relevant fact.

(l) The question is what was the date of the birth of *A*?

A letter from *A*'s deceased father to a friend, announcing the birth of *A* on a given day, is a relevant fact.

(m) The question is whether and when *A* and *B* were married.

An entry in a memorandum book by *C*, the deceased father of *B*, of his daughter's marriage with *A* on a given date, is a relevant fact.

(n) *A* sues *B* for a libel expressed in a printed caricature exposed in a shop window.

The question is as to the similarity of the caricature and its libellous character.

The remarks of a crowd of spectators on these points may be proved.

(2) The provisions of paragraphs (1)(i) and (j) shall apply only in relation to a criminal proceeding.

Relevancy of certain evidence for proving in subsequent proceeding the truth of facts therein stated

33. Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a

later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case the court considers unreasonable:

Provided that—

- (a) the proceeding was between the same parties or their representatives in interest;
- (b) the adverse party in the first proceeding had the right and opportunity to cross-examine;
- (c) the questions in issue were substantially the same in the first as in the second proceeding.

Explanation—A criminal trial or inquiry shall be deemed to be a proceeding between the prosecutor and the accused within the meaning of this section.

Statements Made Under Special Circumstances

Entries in books of account when relevant

34. Entries in books of accounts regularly kept in the course of business are relevant whenever they refer to a matter into which the court has to inquire, but the entries shall not alone be sufficient evidence to charge any person with liability.

ILLUSTRATION

A sues *B* for RM1,000 and shows entries in his account books showing *B* to be indebted to him to this amount. The entries are relevant, but are not sufficient without other evidence to prove the debt.

Relevancy of entry in public record made in performance of duty

35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which the book, register or record is kept, is itself a relevant fact.

Relevancy of statements in maps, charts and plans

36. Statements of facts in issue or relevant facts made in published maps or charts generally offered for public sale, or in maps or plans made under the authority of the Government of Malaysia or of any State as to matters usually represented or stated in such maps, charts or plans, are themselves relevant facts.

Relevancy of statement as to fact of public nature contained in certain legislation or notifications

37. When the court has to form an opinion as to the existence of any fact of a public nature any statement of it made in a recital contained in—

- (a) any legislation enacted by Parliament or by the legislature of any part of the Commonwealth;
- (b) any legislation enacted by the legislature of any State; or
- (c) any printed paper purporting to be—
 - (i) the *Gazette* printed under the authority of the Government of Malaysia or of any State;
 - (ii) the *London Gazette*; or
 - (iii) the *Gazette* of any other part of the Commonwealth including, where any part thereof is both under a central Government and a local Government, any such local Government,

is a relevant fact.

Relevancy of statements as to any law contained in law books

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

How Much of a Statement to be Proved

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

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

Judgments of Courts when Relevant

Previous judgments relevant to bar a second suit or trial

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

Relevancy of certain judgments in probate, *etc.*, jurisdiction

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

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

- (a) that any legal character which it confers accrued at the time when the judgment, order or decree came into operation;
- (b) that any legal character to which it declares any such person to be entitled accrued to that person at the time

when the judgment, order or decree declares it to have accrued to that person;

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

Relevancy and effect of judgments, orders or decrees other than those mentioned in section 41

42. Judgments, orders or decrees other than those mentioned in section 41 are relevant if they relate to matters of a public nature relevant to the inquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.

ILLUSTRATIONS

A sues *B* for trespass on his land. *B* alleges the existence of a public right of way over the land which *A* denies.

The existence of a decree in favour of the defendant in a suit by *A* against *C* for a trespass on the same land in which *C* alleged the existence of the same right of way is relevant, but it is not conclusive proof that the right of way exists.

Judgments, etc., other than those mentioned in sections 40 to 42 when relevant

43. Judgments, orders or decrees other than those mentioned in sections 40, 41 and 42 are irrelevant unless the existence of such judgment, order or decree is a fact in issue or is relevant under some other provision of this Act.

ILLUSTRATIONS

(a) *A* and *B* separately sue *C* for a libel which reflects upon each of them. *C* in each case says that the matter alleged to be libellous is true, and the circumstances are such that it is probably true in each case or in neither.

A obtains a decree against *C* for damages on the ground that *C* failed to make out his justification. The fact is relevant as between *B* and *C*.

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(b) *A* prosecutes *B* under section 498 of the Penal Code for enticing away *C*, *A*'s wife.

B denies that *C* is *A*'s wife, but the court convicts *B*.

Afterwards *C* is prosecuted for bigamy in marrying *B* during *A*'s lifetime. *C* says that she never was *A*'s wife.

The judgment against *B* is irrelevant as against *C*.

(c) *A* has obtained a decree for the possession of land against *B*. *C*, *B*'s son, murders *A* in consequence.

The existence of the judgment is relevant as showing motive for a crime.

(d) *A* is charged with theft and with having been previously convicted of theft.

The previous conviction is relevant as a fact in issue.

(e) *A* is tried for the murder of *B*. The fact that *B* prosecuted *A* for libel and that *A* was convicted and sentenced is relevant under section 8 as showing the motive for the fact in issue.

Fraud or collusion in obtaining judgment or incompetency of court may be proved

44. Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42, and which has been proved by the adverse party, was delivered by a court not competent to deliver it or was obtained by fraud or collusion.

Opinions of Third Persons When Relevant

Opinions of experts

45. (1) When the court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions, are relevant facts.

(2) Such persons are called experts.

ILLUSTRATIONS

- (a) The question is whether the death of *A* was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which *A* is supposed to have died are relevant.

- (b) The question is whether *A*, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether symptoms exhibited by *A* commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do or of knowing that what they do is either wrong or contrary to law, are relevant.

- (c) The question is whether a certain document was written by *A*. Another document is produced which is proved or admitted to have been written by *A*.

The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant.

Facts bearing upon opinions of experts

46. Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts when such opinions are relevant.

ILLUSTRATIONS

- (a) The question is whether *A* was poisoned by a certain poison.

The fact that other persons who were poisoned by that poison exhibited certain symptoms, which experts affirm or deny to be the symptoms of that poison, is relevant.

- (b) The question is whether an obstruction to a harbour is caused by a certain sea wall.

The fact that other harbours similarly situated in other respects but where there were no such sea walls began to be obstructed at about the same time is relevant.

Opinion as to handwriting when relevant

47. When the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it

is supposed to have been written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

ILLUSTRATIONS

The question is whether a given letter is in the handwriting of *A*, a merchant in London.

B is a merchant in Kuala Lumpur, who has written letters addressed to *A* and received letters purporting to be written by him. *C* is *B*'s clerk, whose duty it was to examine and file *B*'s correspondence. *D* is *B*'s broker, to whom *B* habitually submitted the letters purporting to be written by *A* for the purpose of advising him thereon.

The opinions of *B*, *C* and *D* on the question whether the letter is in the handwriting of *A* are relevant, though neither *B*, *C* nor *D* ever saw *A* write.

Opinion as to existence of right or custom when relevant

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

Explanation—The expression “general custom or right” includes customs or rights common to any considerable class of persons.

ILLUSTRATION

The right of the inhabitants of a particular village to use the water of a particular well is a general right within the meaning of this section.

Opinion as to usages, tenets, etc., when relevant

49. When the court has to form an opinion as to—

- (a) the usages and tenets of any body of men or family;
- (b) the constitution and government of any religious or charitable foundation; or

- (c) the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon are relevant facts.

Opinion on relationship when relevant

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

(2) Such opinion shall not be sufficient to prove a marriage in prosecutions under section 494, 495 or 498 of the Penal Code [*Act 574*].

ILLUSTRATIONS

- (a) The question is whether *A* and *B* were married.

The fact that they were usually received and treated by their friends as husband and wife is relevant.

- (b) The question is whether *A* was a legitimate son of *B*.

The fact that *A* was always treated as such by members of the family is relevant.

Grounds of opinion when relevant

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

ILLUSTRATION

An expert may give an account of experiments performed by him for the purpose of forming his opinion.

Character When Relevant

In civil cases character to prove conduct imputed irrelevant

52. In civil cases the fact that the character of any person concerned is such as to render probable or improbable any conduct

imputed to him is irrelevant, except so far as his character appears from facts otherwise relevant.

In criminal cases previous good character relevant

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

Previous bad character not relevant except in reply

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

(2) A person charged and called as a witness shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed, or been convicted of or been charged with, any offence other than that wherewith he is then charged, or is of bad character, unless—

- (a) the proof that he has committed or been convicted of that other offence is admissible evidence to show that he is guilty of the offence wherewith he is then charged;
- (b) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution; or
- (c) he has given evidence against any other person charged with the same offence.

Explanation 1—This section does not apply to cases in which the bad character of any person is itself a fact in issue.

Explanation 2—A previous conviction is relevant as evidence of bad character.

Character as affecting damages

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

Explanation—In sections 52, 53, 54 and 55 the word “character” includes both reputation and disposition; but, except as provided in section 54, evidence may be given only of general reputation and general disposition, and not of particular acts by which reputation or disposition is shown.

PART II

PROOF

CHAPTER III

FACTS WHICH NEED NOT BE PROVED

Fact judicially noticeable need not be proved

56. No fact of which the court will take judicial notice need be proved.

Facts of which court must take judicial notice

57. (1) The court shall take judicial notice of the following facts:

- (a) all laws or regulations having the force of law now or heretofore in force or hereafter to be in force in Malaysia or any part thereof;
- (b) all public Acts passed or hereafter to be passed by the Parliament of the United Kingdom, and all local and personal Acts directed by it to be judicially noticed;
- (c) articles of war for the armed forces or any visiting force lawfully present in Malaysia;
- (d) the course of proceedings in Parliament, in the federal legislatures that existed in Malaysia before Parliament was constituted, in the legislature of any State in Malaysia and in the Parliament of the United Kingdom;
- (e) the accession of the Yang di-Pertuan Agong and the accession of the Ruler of any State in Malaysia and the appointment of a Yang di-Pertua Negeri;
- (f) the accession and the sign manual of the Sovereign for the time being of the United Kingdom;

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- (g) the seals of all the courts of Malaysia all seals which any person is authorized to use by any law in force for the time being in Malaysia or any part thereof, all seals of which English courts take judicial notice, and the seals of Courts of Admiralty and maritime jurisdiction and of notaries public;
- (h) the accession to office, names, titles, functions and signatures of the persons filling for the time being any public office in any part of Malaysia, if the fact of their appointment to such office is notified in the *Gazette* or in any *State Gazette*;
- (i) the existence, title and national flag of every State or Sovereign recognized by the Yang di-Pertuan Agong;
- (j) the ordinary course of nature, natural and artificial divisions of time, the geographical divisions of the world, the meaning of Malay and English words, and public festivals, fasts and holidays notified in the *Gazette* or in any *State Gazette*;
- (k) the Commonwealth countries;
- (l) the commencement, continuance and termination of hostilities between Malaysia or any other part of the Commonwealth and any other country or body of persons;
- (m) the names of the members and officers of the court and of their deputies and subordinate officers and assistants, and also of all officers acting in execution of its process, and of all advocates and other persons authorized by law to appear or act before it;
- (n) the rule of the road on the land, sea regulations and the rules of the air;
- (o) all other matters which it is directed by any written law to notice.

Explanation—The words “Parliament of the United Kingdom” in paragraphs (b) and (d) mean—

- (i) the Parliament of the United Kingdom of Great Britain and Northern Ireland;
- (ii) the Parliament of the United Kingdom of Great Britain and Ireland;

- (iii) the Parliament of Northern Ireland;
- (iv) the Parliament of Great Britain;
- (v) the Parliament of England;
- (vi) the Parliament of Scotland;
- (vii) the Parliament of Ireland prior to 1 January 1801.

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

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

Facts admitted need not be proved

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

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

- (2) This section has no application to criminal proceedings.

CHAPTER IV
ORAL EVIDENCE

Proof of facts by oral evidence

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

Oral evidence must be direct

60. (1) Oral evidence shall in all cases whatever be direct, that is to say—

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

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

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

CHAPTER V

DOCUMENTARY EVIDENCE

Proof of contents of documents

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

Primary evidence

62. Primary evidence means the document itself produced for the inspection of the court.

Explanation 1—Where a document is executed in several parts, each part is primary evidence of the document.

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

Explanation 2—Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original they are not primary evidence of the contents of the original.

Explanation 3—A document produced by a computer is primary evidence.

ILLUSTRATION

A person is shown to have been in possession of a number of placards, all printed at one time from one original. Any one of the placards is primary evidence of the contents of any other, but no one of them is primary evidence of the contents of the original.

Secondary evidence

63. Secondary evidence includes—

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

ILLUSTRATIONS

(a) A photograph of an original is secondary evidence of its contents, though the two have not been compared, if it is proved that the thing photographed was the original.

(b) A copy compared with a copy of a letter made by a copying machine is secondary evidence of the contents of the letter if it is shown that the copy made by the copying machine was made from the original.

(c) A copy transcribed from a copy but afterwards compared with the original is secondary evidence, but the copy not so compared is not secondary evidence of the original, although the copy from which it was transcribed was compared with the original.

(d) Neither an oral account of a copy compared with the original nor an oral account of a photograph or machine copy of the original is secondary evidence of the original.

Proof of documents by primary evidence

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

Cases in which secondary evidence relating to documents may be given

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

- (a) when the original is shown or appears to be in the possession or power—
 - (i) of the person against whom the document is sought to be proved;
 - (ii) of any person out of reach of or not subject to the process of the court; or
 - (iii) of any person legally bound to produce it,and when after the notice mentioned in section 66 such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot for any other reason not arising from his own default or neglect produce it in reasonable time;
- (d) when the original is of such a nature as not to be easily movable;

- (e) when the original is a public document within the meaning of section 74;
- (f) when the original is a document of which a certified copy is permitted by this Act or by any other law in force for the time being in Malaysia to be given in evidence;
- (g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.

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

(b) In the case referred to in paragraph (1)(b) the written admission is admissible.

(c) In the case referred to in paragraph (1)(e) or (f) a certified copy of the document but no other kind of secondary evidence is admissible.

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

Rules as to notice to produce

66. Secondary evidence of the contents of the documents referred to in paragraph 65(1)(a) shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his advocate, such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases or in any other case in which the court thinks fit to dispense with it:

- (a) when the document to be proved is itself a notice;

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

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

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

Proof of execution of document required by law to be attested

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

Proof where no attesting witness found

69. If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the document is in the handwriting of that person.

Admission of execution by party to attested document

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

Proof when attesting witness denies the execution

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

Proof of document not required by law to be attested

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

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

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

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

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

Admissibility of documentary evidence in civil cases, etc.

73A. (1) Notwithstanding anything contained in this Chapter, 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 if the following conditions are satisfied:

- (a) if the maker of the statement either—
 - (i) had personal knowledge of the matters dealt with by the statement; or

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(ii) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (so far as the matters dealt with thereby 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 be supposed to have had, personal knowledge of those matters; and

(b) if the maker of the statement is called as a witness in the proceedings:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2) In any civil proceedings, the court may at any stage of the proceedings, if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence—

(a) notwithstanding that the maker of the statement is available but is not called as a witness; and

(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 certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(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) For the purposes of this section, a statement in a document shall not 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 subsections (1) to (4), the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other circumstances, and may, in deciding whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner, and, where the proceedings are with assessors, the court may in its discretion reject the statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason, it appears to it to be inexpedient in the interests of justice that the statement should be admitted.

(6) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by 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, 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 facts.

(7) 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, a statement rendered admissible as evidence by this Act shall not be treated as corroboration of evidence given by the maker of the statement.

Public Documents

Public documents

74. The following documents are public documents:

- (a) documents forming the acts or records of the acts of—
 - (i) the sovereign authority;
 - (ii) official bodies and tribunals; and
 - (iii) public officers, legislative, judicial and executive, whether Federal or State or of any

other part of the Commonwealth or of a foreign country; and

- (b) public records kept in Malaysia of private documents.

Private documents

75. All documents other than those mentioned in section 74 are private.

Certified copies of public documents

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

Explanation—Any officer who by the ordinary course of official duty is authorized to deliver the copies shall be deemed to have the custody of the documents within the meaning of this section.

Proof of documents by production of certified copies

77. Copies certified in the manner set out in section 76 may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

Proof of certain official documents

78. (1) The following public documents may be proved as follows:

- (a) acts, orders or notifications of the Government of Malaysia or of any State in any of its departments—
 - (i) by the records of the departments certified by the heads of those departments respectively;

- (ii) by a Minister in the case of the Government of Malaysia, and by the Chief Minister, a State Minister (if any), the State Secretary or the Permanent Secretary to the Chief Minister in the case of a State Government; or
 - (iii) by any document purporting to be printed by the authority of the Government concerned;
- (b) the proceedings of Parliament or of any of the federal legislatures that existed in Malaysia before Parliament was constituted or of the legislature of any State—
 - by the minutes of the body or by the published Acts of Parliament, Ordinances, Enactments or abstracts or by copies purporting to be printed by the authority of the Government concerned;
- (c) proclamations, orders or regulations issued by the Crown in the United Kingdom or by the Privy Council or by any Minister or department of the Crown—
 - by copies or extracts contained in the *London Gazette* or in the *Gazette* or in any *State Gazette* or purporting to be printed by Her Britannic Majesty's Printer;
- (d) the acts of the Executive or the proceedings of the legislature of a foreign country—
 - by journals published by their authority or commonly received in that country as such, by a copy certified under the seal of the country or sovereign or by a recognition thereof in some Act, Ordinance or Enactment of Malaysia or of any State;
- (e) the proceedings of a municipal body, town board or other local authority in Malaysia—
 - by a copy of the proceedings certified by the lawful keeper thereof, or by a printed book purporting to be published by the authority of that body;
- (f) public documents of any other class in a foreign country—
 - by the original or by a copy certified by the lawful keeper thereof, with a certificate under the seal of a notary public or of a consular officer of

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Malaysia that the copy is duly certified by the officer having the lawful custody of the original and upon proof of the character of the document according to the law of the foreign country.

(2) Copies of Acts, Ordinances and Statutes passed by the legislature of any part of the Commonwealth and of orders, regulations and other instruments issued or made under the authority of any such Act, Ordinance or Statute, if purporting to be printed by the Government Printer, shall be received in evidence by all courts in Malaysia without any proof being given that the copies were so printed.

(3) In this section "Government Printer" means, as respects any part of the Commonwealth, the printer purporting to be the printer authorized to print the Acts, Ordinances or Statutes of the legislature of that territory, or otherwise to be the Government Printer of that territory.

Proof of public documents produced by computers

78A. Notwithstanding anything contained in sections 77 and 78, the provisions of sections 90A, 90B and 90C shall apply to a public document.

*Presumptions as to Documents***Presumption as to genuineness of certified copies**

79. (1) The court shall presume to be genuine every document purporting to be a certificate, certified copy or other document which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer in Malaysia who is duly authorized thereto:

Provided that the document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

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

Presumption as to documents produced as record of evidence

80. Whenever any document is produced before any court purporting to be a record or memorandum of the evidence or of any part of the evidence given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law and purporting to be signed by any Judge, Sessions Court Judge or Magistrate or by any such officer as aforesaid, the court shall presume that—

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

Presumption as to *Gazettes*, newspapers, etc.

81. The court shall presume the genuineness of every document purporting to be the *Gazette*, a *State Gazette* or the *London Gazette*, or the *Government Gazette* of any part of the Commonwealth, or to be the *Gazette* issued by the local Government of any part of the Commonwealth, or to be a newspaper or journal, or to be a copy of a private Act of Parliament printed by Her Britannic Majesty's Printer, and of every document purporting to be a document directed by any law to be kept by any person, if the document is kept substantially in the form required by law and is produced from proper custody.

Explanation—see explanation to section 90.

Presumption as to document admissible in England without proof of seal or signature

82. When any document is produced before any court, purporting to be a document which by the law in force for the time being in England or Northern Ireland would be admissible in proof of any particular in any Court of Justice in England or Northern Ireland, without proof of the seal or stamp or signature authenticating it, or of the judicial or official character claimed by the person by whom it purports to be signed—

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- (a) the court shall presume that such seal, stamp or signature is genuine, and that the person signing it held at the time when he signed it the judicial or official character which he claims;
- (b) the document shall be admissible for the same purpose for which it would be admissible in England or Northern Ireland.

Presumption as to maps or plans made by authority of Government

83. (1) The court shall presume that maps or plans purporting to be made by the authority of the Government of Malaysia or the Government of any State were so made and are accurate.

(2) *(Deleted by P.U.(A) 261/1971).*

Presumption as to collections of laws and reports of decisions

84. The court shall presume the genuineness of every book purporting—

- (a) to be printed or published under the authority of the Government of any country and to contain any of the laws of that country; or
- (b) to contain reports of decisions of the courts of that country.

Presumption as to powers of attorney

85. The court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a Notary Public or Commissioner for Oaths, or any court, Judge, Magistrate, or consular officer of Malaysia was so executed and authenticated.

Presumption as to certified copies of foreign judicial records

86. The court may presume that any document purporting to be a certified copy of any judicial record of any country not being a part of the Commonwealth is genuine and accurate if the

document purports to be certified in any manner which is certified by any representative of the Yang di-Pertuan Agong in or for such country to be the manner commonly in use in that country for the certification of copies of judicial records.

Presumption as to books, maps and charts

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

Presumption as to telegraphic messages

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

Presumption as to due execution, etc., of documents not produced

89. The court shall presume that every document called for and not produced, after notice to produce given under section 66, was attested, stamped and executed in the manner required by law.

Presumption as to documents twenty years old

90. Where any document purporting or proved to be twenty years old is produced from any custody which the court in the particular case considers proper, the court may presume that the signature and every other part of that document which purports to be in the handwriting of any particular person is in that person's handwriting, and in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested.

Explanation—Documents are said to be in proper custody if they are in the place in which and under the care of the person with whom they would naturally

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be; but no custody is improper if it is proved to have had a legitimate origin, or if the circumstances of the particular case are such as to render such an origin probable.

This explanation applies also to section 81.

ILLUSTRATIONS

(a) *A* has been in possession of landed property for a long time. He produces from his custody documents relating to the land, showing his title to it. The custody is proper.

(b) *A* produces documents relating to landed property of which he is the chargee. The chargor is in possession. The custody is proper.

(c) *A*, a connection of *B*, produces documents relating to lands in *B*'s possession, which were deposited with him by *B* for safe custody. The custody is proper.

*Documents Produced by a Computer***Admissibility of documents produced by computers, and of statements contained therein**

90A. (1) In any criminal or civil proceeding a document produced by a computer, or a statement contained in such document, shall be admissible as evidence of any fact stated therein if the document was produced by the computer in the course of its ordinary use, whether or not the person tendering the same is the maker of such document or statement.

(2) For the purposes of this section it may be proved that a document was produced by a computer in the course of its ordinary use by tendering to the court a certificate signed by a person who either before or after the production of the document by the computer is responsible for the management of the operation of that computer, or for the conduct of the activities for which that computer was used.

(3) (a) It shall be sufficient, in a certificate given under subsection (2), for a matter to be stated to the best of the knowledge and belief of the person stating it.

(b) A certificate given under subsection (2) shall be admissible in evidence as *prima facie* proof of all matters stated in it without proof of signature of the person who gave the certificate.

(4) Where a certificate is given under subsection (2), it shall be presumed that the computer referred to in the certificate was in good working order and was operating properly in all respects throughout the material part of the period during which the document was produced.

(5) A document shall be deemed to have been produced by a computer whether it was produced by it directly or by means of any appropriate equipment, and whether or not there was any direct or indirect human intervention.

(6) A document produced by a computer, or a statement contained in such document, shall be admissible in evidence whether or not it was produced by the computer after the commencement of the criminal or civil proceeding or after the commencement of any investigation or inquiry in relation to the criminal or civil proceeding or such investigation or inquiry, and any document so produced by a computer shall be deemed to be produced by the computer in the course of its ordinary use.

(7) Notwithstanding anything contained in this section, a document produced by a computer, or a statement contained in such document, shall not be admissible in evidence in any criminal proceeding, where it is given in evidence by or on behalf of the person who is charged with an offence in such proceeding the person so charged with the offence being a person who was—

- (a) responsible for the management of the operation of that computer or for the conduct of the activities for which that computer was used; or
- (b) in any manner or to any extent involved, directly or indirectly, in the production of the document by the computer.

Weight to be attached to document, or statement contained in document, admitted by virtue of section 90A

90B. In estimating the weight, if any, to be attached to a document, or a statement contained in a document, admitted by virtue of section 90A, the court—

- (a) may draw any reasonable inference from circumstances relating to the document or the statement, including the manner and purpose of its creation, or its accuracy or otherwise:

- (b) shall have regard to—
- (i) the interval of time between the occurrence or existence of the facts stated in the document or statement, and the supply of the relevant information or matter into the computer; and
 - (ii) whether or not the person who supplies, or any person concerned with the supply of, such information or the custody of the document, or the document containing the statement, had any incentive to conceal or misrepresent all or any of the facts stated in the document or statement.

Sections 90A and 90B to prevail over other provisions of this Act, the Bankers' Books (Evidence) Act 1949, and any written law

90C. The provisions of sections 90A and 90B shall prevail and have full force and effect notwithstanding anything inconsistent therewith, or contrary thereto, contained in any other provision of this Act, or in the Bankers' Books (Evidence) Act 1949 [*Act 33*], or in any provision of any written law relating to certification, production or extraction of documents or in any rule of law or practice relating to production, admission, or proof, of evidence in any criminal or civil proceeding.

CHAPTER VI

EXCLUSION OF ORAL BY
DOCUMENTARY EVIDENCE

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

91. When the terms of a contract or of a grant or of any other disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of the contract, grant or other disposition of property or of the matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

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

Exception 2—Wills admitted to probate in Malaysia may be proved by the probate.

Explanation 1—This section applies equally to cases in which the contracts, grants or dispositions of property referred to are contained in one document and to cases in which they are contained in more documents than one.

Explanation 2—Where there are more originals than one, one original only need be proved.

Explanation 3—The statement in any document whatever of a fact, other than the facts referred to in this section, shall not preclude the admission of oral evidence as to the same fact.

ILLUSTRATIONS

(a) If a contract is contained in several letters, all the letters in which it is contained must be proved.

(b) If a contract is contained in a bill of exchange, the bill of exchange must be proved.

(c) If a bill of exchange is drawn in a set of three, one only need be proved.

(d) *A* contracts in writing with *B* for the delivery of pepper upon certain terms. The contract mentions the fact that *B* had paid *A* the price of other pepper contracted for verbally on another occasion.

Oral evidence is offered that no payment was made for the other pepper. The evidence is admissible.

(e) *A* gives *B* a receipt for money paid by *B*.

Oral evidence is offered of the payment.

The evidence is admissible.

Exclusion of evidence of oral agreement

92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 91, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms:

Provided that—

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

ILLUSTRATIONS

- (a) A policy of insurance is effected on goods “in ships from Penang to London.” The goods are shipped in a particular ship, which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.

(b) *A* agrees absolutely in writing to pay *B* RM1,000 on 1 March 1893. The fact that at the same time an oral agreement was made that the money should not be paid till 31 March cannot be proved.

(c) An estate called “the Kranji Tea Estate” is sold by a document which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the document cannot be proved.

(d) *A* enters into a written contract with *B* to work certain mines, the property of *B*, upon certain terms. *A* was induced to do so by a misrepresentation of *B* as to their value. This fact may be proved.

(e) *A* institutes a suit against *B* for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions on the ground that that provision was inserted in it by mistake. *A* may prove that such a mistake was made as would by law entitle him to have the contract reformed.

(f) *A* orders goods of *B* by a letter in which nothing is said as to the time of payment, and accepts the goods on delivery. *B* sues *A* for the price. *A* may show that the goods were supplied on credit for a term still unexpired.

(g) *A* sells *B* a horse and verbally warrants him sound. *A* gives *B* a paper in these words: “Bought of *A* a horse for RM300.” *B* may prove the verbal warranty.

(h) *A* hires lodgings of *B* and gives *B* a card on which is written: “Rooms RM80 a month.” *A* may prove a verbal agreement that these terms were to include partial board.

A hires lodgings of *B* for a year, and a regularly stamped agreement drawn up by an attorney is made between them. It is silent on the subject of board. *A* may not prove that board was included in the terms verbally.

(i) *A* applies to *B* for a debt due to *A* by sending a receipt for the money. *B* keeps the receipt and does not send the money. In a suit for the amount *A* may prove this.

(j) *A* and *B* make a contract in writing to take effect upon the happening of a certain contingency. The writing is left with *B*, who sues *A* upon it. *A* may show the circumstances under which it was delivered.

Exclusion of evidence to explain or amend ambiguous document

93. When the language used in a document is on its face ambiguous or defective, evidence may not be given of facts which would show its meaning or supply its defects.

Evidence

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ILLUSTRATIONS

(a) *A* agrees in writing to sell a horse to *B* for RM500 or RM600. Evidence cannot be given to show which price was to be given.

(b) A document contains blanks. Evidence cannot be given of facts which would show how they were meant to be filled.

Exclusion of evidence against application of document to existing facts

94. When language used in a document is plain in itself and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts.

ILLUSTRATION

A conveys to *B* by memorandum of transfer “my estate at Kranji containing 100 acres.” *A* has an estate at Kranji containing 100 acres. Evidence may not be given of the fact that the estate meant was one situated at a different place and of a different size.

Evidence as to document unmeaning in reference to existing facts

95. When language used in a document is plain in itself, but is unmeaning in reference to existing facts, evidence may be given to show that it was used in a peculiar sense.

ILLUSTRATION

A conveys to *B* by memorandum of transfer “my plantation in Penang.”

A had no plantation in Penang, but it appears that he had a plantation in Province Wellesley of which *B* had been in possession since the execution of the memorandum.

These facts may be proved to show that the memorandum related to the plantation in Province Wellesley.

Evidence as to application of language which can apply to one only of several persons

96. When the facts are such that the language used might have been meant to apply to any one, and could not have been meant to

apply to more than one of several persons or things, evidence may be given of facts which show to which of those persons or things it was intended to apply.

ILLUSTRATIONS

(a) *A* agrees to sell to *B* for RM500 “my white horse.” *A* has two white horses. Evidence may be given of facts which show which of them was meant.

(b) *A* agrees to accompany *B* to Halifax. Evidence may be given of facts showing whether Halifax in Yorkshire or Halifax in Nova Scotia was meant.

Evidence as to application of language to one of two sets of facts to neither of which the whole correctly applies

97. When the language used applies partly to one set of existing facts and partly to another set of existing facts, but the whole of it does not apply correctly to either, evidence may be given to show to which of the two it was meant to apply.

ILLUSTRATION

A agrees to sell to *B* “my land at *X* in the occupation of *Y*.” *A* has land at *X*, but not in the occupation of *Y*, and he has land in the occupation of *Y*, but it is not at *X*. Evidence may be given of facts showing which he meant to sell.

Evidence as to meaning of illegible characters, etc.

98. Evidence may be given to show the meaning of illegible or not commonly intelligible characters, of foreign, obsolete, technical, local and provincial expressions, of abbreviations and of words used in a peculiar sense.

ILLUSTRATION

A, a sculptor, agrees to sell to *B*, “all my mods.” *A* has both models and modelling tools. Evidence may be given to show which he meant to sell.

Who may give evidence of agreement varying terms of document

99. Persons who are not parties to a document or their representatives in interest may give evidence of any facts tending

to show a contemporaneous agreement varying the terms of the document.

ILLUSTRATION

A and *B* make a contract in writing that *B* shall sell *A* certain tin to be paid for on delivery. At the same time they make an oral agreement that three months' credit shall be given to *A*. This could not be shown as between *A* and *B*, but it might be shown by *C* if it affected his interests.

Construction of wills

100. Nothing in sections 91 to 99 shall affect the construction of wills, but in the States of Malacca, Penang, Sabah and Sarawak or any of them they shall, subject to any written law, be construed according to the rules of construction which would be applicable thereto if they were being construed in a Court of Justice in England.

PART III

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER VII

BURDEN OF PROOF

Burden of proof

101. (1) Whoever desires any court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

ILLUSTRATIONS

(a) *A* desires a court to give judgment that *B* shall be punished for a crime which *A* says *B* has committed.

A must prove that *B* has committed the crime.

(b) *A* desires a court to give judgment that he is entitled to certain land in the possession of *B* by reason of facts which he asserts and which *B* denies to be true.

A must prove the existence of those facts.

On whom burden of proof lies

102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

ILLUSTRATIONS

(a) *A* sues *B* for land of which *B* is in possession, and which, as *A* asserts, was left to *A* by the will of *C*, *B*'s father.

If no evidence were given on either side, *B* would be entitled to his possession.

Therefore the burden of proof is on *A*.

(b) *A* sues *B* for money due on a bond.

The execution of the bond is admitted, but *B* says that it was obtained by fraud, which *A* denies.

If no evidence were given on either side, *A* would succeed as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on *B*.

Burden of proof as to particular fact

103. The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

ILLUSTRATIONS

(a) *A* prosecutes *B* for theft and wishes the court to believe that *B* admitted the theft to *C*. *A* must prove the admission.

(b) *B* wishes the court to believe that at the time in question he was elsewhere. He must prove it.

Burden of proving fact to be proved to make evidence admissible

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

Evidence

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ILLUSTRATIONS

- (a) *A* wishes to prove a dying declaration by *B*. *A* must prove *B*'s death.
- (b) *A* wishes to prove by secondary evidence the contents of a lost document.
A must prove that the document has been lost.

Burden of proving that case of accused comes within exceptions

105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of those circumstances.

ILLUSTRATIONS

(a) *A* accused of murder alleges that by reason of unsoundness of mind he did not know the nature of the act.

The burden of proof is on *A*.

(b) *A* accused of murder alleges that by grave and sudden provocation he was deprived of the power of self control.

The burden of proof is on *A*.

(c) Section 325 of the Penal Code provides that whoever, except in the case provided for by section 335, voluntarily causes grievous hurt shall be subject to certain punishments.

A is charged with voluntarily causing grievous hurt under section 325.

The burden of proving the circumstances, bringing the case under section 335, lies on *A*.

Burden of proving fact especially within knowledge

106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

ILLUSTRATIONS

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) *A* is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

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

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

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

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

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

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

Burden of proof as to ownership

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

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

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

transaction is on the party who is in a position of active confidence.

ILLUSTRATIONS

(a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden of proving the good faith of the transaction is on the attorney

(b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Birth during marriage conclusive proof of legitimacy

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

Presumption that boy under thirteen cannot commit rape

113. It shall be an irrebuttable presumption of law that a boy under the age of thirteen years is incapable of committing rape.

Court may presume existence of certain fact

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

ILLUSTRATIONS

The court may presume—

(a) that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession;

(b) that an accomplice is unworthy of credit unless he is corroborated in material particulars;

- (c) that a bill of exchange accepted or endorsed was accepted or endorsed for good consideration;
- (d) that a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist is still in existence;
- (e) that judicial and official acts have been regularly performed;
- (f) that the common course of business has been followed in particular cases;
- (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;
- (h) that if a man refuses to answer a question which he is not compelled to answer by law, the answer if given would be unfavourable to him;
- (i) that when a document creating an obligation is in the hands of the obligor the obligation has been discharged.

But the court shall also have regard to such facts as the following, in considering whether the maxims do or do not apply to the particular case before it:

- (i) as to illustration (a)—a shopkeeper has in his till a marked ringgit soon after it was stolen and cannot account for its possession specifically but is continually receiving ringgit in the course of his business;
- (ii) as to illustration (b)—*A*, a person of the highest character is tried for causing a man's death by an act of negligence in arranging certain machinery. *B*, a person of equally good character, who also took part in the arrangement, describes precisely what was done and admits and explains the common carelessness of *A* and himself;
- (iii) as to illustration (b)—a crime is committed by several persons. *A*, *B* and *C*, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating *D*, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;
- (iv) as to illustration (c)—*A*, the drawer of a bill of exchange, was a man of business. *B*, the acceptor, was a young and ignorant person completely under *A*'s influence;
- (v) as to illustration (d)—it is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course;
- (vi) as to illustration (e)—a judicial act, the regularity of which is in question, was performed under exceptional circumstances;

- (vii) as to illustration (*f*)—the question is whether a letter was received. It is shown to have been posted, but the usual course of the post was interrupted by disturbances;
- (viii) as to illustration (*g*)—a man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feeling and reputation of his family;
- (ix) as to illustration (*h*)—a man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;
- (x) as to illustration (*i*)—a bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

CHAPTER VIII

ESTOPPEL

Estoppel

115. When one person has by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, otherwise than but for that belief he would have acted, neither he nor his representative in interest shall be allowed in any suit or proceeding between himself and that person or his representative in interest to deny the truth of that thing.

ILLUSTRATION

A intentionally and falsely leads *B* to believe that certain land belongs to *A* and thereby induces *B* to buy and pay for it.

The land afterwards becomes the property of *A* and *A* seeks to set aside the sale on the ground that at the time of the sale he had no title.

He may not be allowed to prove his want of title.

Estoppel of tenant and of licensee of person in possession

116. No tenant of immovable property, or person claiming through the tenant, shall during the continuance of the tenancy be permitted to deny that the landlord of that tenant had at the beginning of the tenancy a title to the immovable property; and no

person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that that person had a title to such possession at the time when the licence was given.

Estoppel of acceptor of bill of exchange, bailee or licensee

117. (1) No acceptor of a bill of exchange shall be permitted to deny that the drawer had authority to draw the bill or to endorse it.

(2) No bailee, agent or licensee shall be permitted to deny that the bailor, principal or licensor, by whom any goods were entrusted to any of them respectively was entitled to those goods at the time when they were so entrusted:

Provided that any such bailee, agent or licensee may show that he was compelled to deliver up any such goods to some person who had a right to them as against his bailor, principal or licensor, or that his bailor, principal or licensor wrongfully and without notice to the bailee, agent or licensee, obtained the goods from a third person, who has claimed them from that bailee, agent or licensee.

Explanation—The acceptor of a bill of exchange may deny that the bill was really drawn by the person by whom it purports to have been drawn.

CHAPTER IX

WITNESSES

Who may testify

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

Explanation—A mentally disordered person or a lunatic is not incompetent to testify unless he is prevented by his condition from understanding the questions put to him and giving rational answers to them.

Dumb witnesses

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

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

Parties to civil suits and wives and husbands

120. (1) In all civil proceedings the parties to the suit, and the husband or wife of any party to the suit, shall be competent witnesses.

(2) In criminal proceedings against any person the husband or wife of that person respectively shall be a competent witness.

(3) In criminal proceedings the accused shall be a competent witness in his own behalf, and may give evidence in the same manner and with the like effect and consequences as any other witness:

Provided that, so far as the cross-examination relates to the credit of the accused, the court may limit the cross-examination to such extent as it thinks proper, although the proposed cross-examination might be permissible in the case of any other witness.

Judges, Sessions Court Judges and Magistrates

121. No Judge and, except upon the special order of the High Court, no Sessions Court Judge or Magistrate shall be compelled to answer any questions as to his own conduct in court as Judge, Sessions Court Judge or Magistrate or as to anything which came to his knowledge in court as a Judge, Sessions Court Judge or Magistrate; but he may be examined as to other matters which occurred in his presence whilst he was so acting.

ILLUSTRATIONS

(a) *A*, on his trial before the High Court, says that a deposition was improperly taken by *B*, the committing Magistrate. *B* cannot be compelled to answer questions as to this except upon the special order of the High Court.

(b) *A* is accused before a Sessions Court of having given false evidence before *B*, a Sessions Court Judge. *B* cannot be compelled to say what *A* said except upon the special order of the High Court.

(c) *A* is accused of attempting to murder a police officer whilst on his trial before *B*, a Judge of the High Court. *B* may be examined as to what occurred.

Communications during marriage

122. No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall he be permitted to disclose any such communication unless the person who made it or his representative in interest consents, except in suits between married persons or proceedings in which one married person is prosecuted for any crime committed against the other.

Evidence as to affairs of State

123. No one shall be permitted to produce any unpublished official records relating to affairs of State, or to give any evidence derived therefrom, except with the permission of the officer at the head of the department concerned, who shall give or withhold permission as he thinks fit, subject, however, to the control of a Minister in the case of a department of the Government of Malaysia, and of the Chief Minister in the case of a department of a State Government.

Official communications

124. No public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by the disclosure:

Provided that the court may require the head of the department of the officer to certify in writing whether or not such disclosure would be detrimental to the public interest and, if the head of the department certifies that such disclosure would not be prejudicial to the public interest, then the officer shall disclose the communications.

Information as to commission of offences

125. No Sessions Court Judge, Magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue or the excise laws.

Explanation—“revenue officer” in this section means any officer employed in or about the business of any branch of the public revenue.

Professional communications

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

Provided that nothing in this section shall protect from disclosure—

- (a) any such communication made in furtherance of any illegal purpose;
- (b) any fact observed by any advocate in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.

(2) It is immaterial whether the attention of the advocate was or was not directed to the fact by or on behalf of his client.

Explanation—The obligation stated in this section continues after the employment has ceased.

ILLUSTRATIONS

(a) *A*, a client, says to *B*, an advocate: “I have committed forgery and I wish you to defend me.”

As the defence of a man known to be guilty is not a criminal purpose this communication is protected from disclosure.

(b) *A*, a client, says to *B*, an advocate: "I wish to obtain possession of property by the use of a forged deed on which I request you to sue."

This communication being made in furtherance of a criminal purpose is not protected from disclosure.

(c) *A*, being charged with embezzlement, retains *B*, an advocate, to defend him. In the course of the proceedings *B* observes that an entry has been made in *A*'s account book, charging *A* with the sum said to have been embezzled, which entry was not in the book at the commencement of his employment.

This being a fact observed by *B* in the course of his employment, showing that a fraud has been committed since the commencement of the proceedings, it is not protected from disclosure.

Section 126 to apply to interpreters, etc.

127. Section 126 shall apply to interpreters and the clerks or servants of advocates.

Privilege not waived by volunteering evidence

128. If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in section 126; and if any party to a suit or proceeding calls any such advocate as a witness, he shall be deemed to have consented to the disclosure, only if he questions the advocate on matters which but for such question he would not be at liberty to disclose.

Confidential communications with legal advisers

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

Production of title deeds of witness not a party

130. (1) No witness who is not a party to the suit shall be compelled to produce his document of title to any property, or any other document in virtue of which he holds any property as

pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such documents or some person through whom he claims.

(2) No witness who is a party to the suit shall be bound to produce any document in his possession or power which is not relevant or material to the case of the party requiring its production.

(3) No bank shall be compelled to produce its books in any legal proceeding to which it is not a party, except as provided by the law of evidence relating to banker's books.

Production of documents which another person having possession could refuse to produce

131. No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, except for the purpose of identification, unless the last mentioned person consents to their production, nor shall anyone who is entitled to refuse to produce a document be compelled to give oral evidence of its contents.

Witness not excused from answering on ground that answer will criminate

132. (1) A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit, or in any civil or criminal proceeding, upon the ground that the answer to that question will criminate or may tend directly or indirectly to criminate, him, or that it will expose, or tend directly or indirectly to expose, the witness to a penalty or forfeiture of any kind, or that it will establish or tend to establish that he owes a debt or is otherwise subject to a civil suit at the instance of the Government of Malaysia or of any State or of any other person.

(2) No answer which a witness shall be compelled by the court to give shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by that answer.

(3) Before compelling a witness to answer a question the answer to which will criminate or may tend directly or indirectly

to criminate him the court shall explain to the witness the purport of subsection (2).

Accomplice

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

Evidence of child of tender years

133A. Where, in any proceedings against any person for any offence, any child of tender years called as a witness does not in the opinion of the court understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth; and his evidence, though not given on oath, but otherwise taken and reduced into writing in accordance with section 269 of the Criminal Procedure Code [*Act 593*] shall be deemed to be a deposition within the meaning of that section:

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

Number of witnesses

134. No particular number of witnesses shall in any case be required for the proof of any fact.

CHAPTER X

EXAMINATION OF WITNESSES

Order of production and examination of witnesses

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

Court to decide as to admissibility of evidence

136. (1) When either party proposes to give evidence of any fact, the court may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the court shall admit the evidence if it thinks that the fact, if proved, would be relevant, and not otherwise.

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

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

ILLUSTRATIONS

(a) It is proposed to prove a statement about a relevant fact by a person alleged to be dead, which statement is relevant under section 32.

The fact that the person is dead must be proved by the person proposing to prove the statement before evidence is given of the statement.

(b) It is proposed to prove by a copy the contents of a document said to be lost.

The fact that the original is lost must be proved by the person proposing to produce the copy before the copy is produced.

(c) *A* is accused of receiving stolen property, knowing it to have been stolen.

It is proposed to prove that he denied the possession of the property.

The relevancy of the denial depends on the identity of the property. The court may in its discretion either require the property to be identified before the denial of the possession is proved or permit the denial of the possession to be proved before the property is identified.

(d) It is proposed to prove a fact (*A*) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (*B*, *C* and *D*) which must be shown to exist before the fact (*A*) can be regarded as the cause or effect of the fact in issue. The court may either permit *A* to be proved before *B*, *C* or *D* is proved or may require proof of *B*, *C* and *D* before permitting proof of *A*.

Examination-in-chief, cross-examination and re-examination

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

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

(3) Where a witness has been cross-examined and is then examined by the party who called him, such examination shall be called his re-examination.

Order of examinations and direction of re-examination

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

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

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

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

Cross-examination of person called to produce a document

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

Witnesses to character

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

Leading questions

141. Any question suggesting the answer which the person putting it wishes or expects to receive or suggesting disputed facts as to which the witness is to testify, is called a leading question.

When leading questions may not be asked

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

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

When leading questions may be asked

143. (1) Leading questions may be asked in cross-examination, subject to the following qualifications:

- (a) the question may not put into the mouth of the witness the very words which he is to echo back again; and
- (b) the question may not assume that facts have been proved which have not been proved, or that particular answers have been given contrary to the fact.

(2) The court, in its discretion, may prohibit leading questions from being put to a witness who shows a strong interest or bias in favour of the cross-examining party.

Evidence as to matters in writing

144. Any witness may be asked whilst under examination whether any contract, grant or other disposition of property as to which he is giving evidence was not contained in a document, and if he says that it was, or if he is about to make any statement as to the contents of any document which in the opinion of the court ought to be produced, the adverse party may object to the evidence being given until the document is produced or until facts have been proved which entitle the party who called the witness to give secondary evidence of it.

Explanation—A witness may give oral evidence of statements made by other persons about the contents of documents if the statements are in themselves relevant facts.

ILLUSTRATION

The question is whether *A* assaulted *B*.

C deposes that he heard *A* say to *D*: “*B* wrote a letter accusing me of theft and I will be revenged on him.” The statement is relevant as showing *A*’s motive for the assault and evidence may be given of it though no other evidence is given about the letter.

Cross-examination as to previous statements in writing

145. (1) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question in the suit or proceeding in which he is cross-examined, without the writing being shown to him or being proved; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

(2) If a witness, upon cross-examination as to a previous oral statement made by him relevant to matters in question in the suit or proceeding in which he is cross-examined and inconsistent with his present testimony, does not distinctly admit that he made such statement, proof may be given that he did in fact make it; but before proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, shall be mentioned to the witness, and he shall be asked whether or not he made such statement.

Questions lawful in cross-examination

146. When a witness may be cross-examined he may, in addition to the questions hereinbefore referred to, be asked any questions which tend—

- (a) to test his accuracy, veracity or credibility;
- (b) to discover who he is and what is his position in life;
or
- (c) to shake his credit by injuring his character, although the answer to such questions might tend directly or

indirectly to criminate him, or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

Restrictions on evidence at trials for rape

146A. Notwithstanding anything in this Act, in proceedings in respect of the offence of rape, no evidence and no question in cross-examination shall be adduced or asked, by or on behalf of the accused, concerning the sexual activity of the complainant with any person other than the accused unless—

- (a) it is evidence that rebuts, or a question which tends to rebut, evidence of the complainant's sexual activity or absence thereof that was previously adduced by the prosecution;
- (b) it is evidence of, or a question on, specific instances of the complainant's sexual activity tending to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge; or
- (c) it is evidence of, or a question on, sexual activity that took place on the same occasion as the sexual activity that forms the subject matter of the charge, where that evidence or question relates to the consent that the accused alleges he believed was given by the complainant.

When witness to be compelled to answer

147. If any such question relates to a matter relevant to the suit of proceeding, section 132 shall apply thereto.

Court to decide when question shall be asked and when witness compelled to answer

148. (1) If any question relates to a matter not relevant to the suit or proceeding, except so far as it affects the credit of the witness by injuring his character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it does not think fit to compel him to answer the question, warn the witness that he is not obliged to answer it.

(2) In exercising its discretion, the court shall have regard to the following considerations:

- (a) the questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (b) the questions are improper if the imputation which they convey relates to matters so remote in time or of such a character that the truth of the imputation would not affect or would affect in a slight degree the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (c) the questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence;
- (d) the court may, if it sees fit, draw from the witness's refusal to answer, the inference that the answer, if given, would be unfavourable.

Question not to be asked without reasonable grounds

149. No such question as is referred to in section 148 shall be asked unless the person asking it has reasonable grounds for thinking that the imputation which it conveys is well founded.

ILLUSTRATIONS

- (a) An advocate is instructed by another advocate or reliable source that an important witness is a professional gambler. This is a reasonable ground for asking the witness whether he is a professional gambler.
- (b) An advocate is informed by a person in court that an important witness is a professional gambler. The informant, on being questioned by the advocate, gives satisfactory reasons for his statement. This is a reasonable ground for asking the witness whether he is a professional gambler.
- (c) A witness of whom nothing whatever is known is asked at random whether he is a professional gambler. There are here no reasonable grounds for the question.

(d) A witness of whom nothing whatever is known, being questioned as to his mode of life and means of living gives unsatisfactory answers. This may be a reasonable ground for asking him if he is a professional gambler.

Procedure of court in case of question being asked without reasonable grounds

150. If the court is of opinion that any such question as is referred to in section 148 was asked without reasonable grounds, it may, if it was asked by an advocate, report the circumstances of the case to the High Court or other authority to which the advocate is subject in the exercise of his profession.

Indecent and scandalous questions

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

Questions intended to insult or annoy

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

Exclusion of evidence to contradict answers to questions testing veracity

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

Exception 1—If a witness is asked whether he has been previously convicted of any crime and denies it, evidence may be given of his previous conviction.

Exception 2—If a witness is asked any question tending to impeach his impartiality and answers it by denying the facts suggested, he may be contradicted.

ILLUSTRATIONS

(a) A claim against an underwriter is resisted on the ground of fraud.

The claimant is asked whether in a former transaction he had not made a fraudulent claim. He denies it.

Evidence is offered to show that he did make such a claim.

The evidence is inadmissible.

(b) A witness is asked whether he was not dismissed from a situation for dishonesty. He denies it.

Evidence is offered to show that he was dismissed for dishonesty.

The evidence is not admissible.

(c) *A* affirms that on a certain day he saw *B* at Malacca.

A is asked whether he himself was not on that day at Penang. He denies it.

Evidence is offered to show that *A* was on that day at Penang.

The evidence is admissible, not as contradicting *A* on a fact which affects his credit, but as contradicting the alleged fact that *B* was seen on the day in question in Malacca.

(d) *A* is tried for a rape on *B*. *B* is asked in cross-examination whether she has not had illicit intercourse with *C* and *D*. She denies it. Evidence is offered to show that she has had such intercourse with *C* and *D*. The evidence is not admissible.

In each of the cases in illustrations (c) and (d) the witness might, if the denial was false, be charged with giving false evidence.

(e) *A* is asked whether he has not said that he would be revenged on *B*, against whom he gives evidence. He denies it

He may be contradicted on the ground that the question tends to impeach his impartiality.

Question by party to his own witness

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

Impeaching credit of witness

155. The credit of a witness may be impeached in the following ways by the adverse party or, with the consent of the court, by the party who calls him:

- (a) by the evidence of persons who testify that they from their knowledge of the witness believe him to be unworthy of credit;
- (b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;
- (c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;
- (d) (*Deleted by Act A729*).

Explanation—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives shall not be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.

ILLUSTRATIONS

(a) *A* sues *B* for the price of goods sold and delivered to *B*. *C* says that he delivered the goods to *B*.

Evidence is offered to show that on a previous occasion he said that he had not delivered the goods to *B*.

The evidence is admissible.

(b) *A* is indicted for the murder of *B*.

C says that *B*, when dying, declared that *A* had given *B* the wound of which he died.

Evidence is offered to show that on a previous occasion *C* said that the wound was not given by *A* or in his presence.

The evidence is admissible.

Questions tending to corroborate evidence of relevant fact admissible

156. When a witness whom it is intended to corroborate gives evidence of any relevant fact, he may be questioned as to any other

circumstances which he observed at or near to the time or place at which the relevant fact occurred, if the court is of opinion that the circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact to which he testifies.

ILLUSTRATION

A, an accomplice, gives an account of a robbery in which he took part. He describes various incidents, unconnected with the robbery, which occurred on his way to and from the place where it was committed.

Independent evidence of these facts may be given in order to corroborate his evidence as to the robbery itself.

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

157. In order to corroborate the testimony of a witness, any former statement made by him whether written or verbal, on oath, or in ordinary conversation, relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

What matters may be proved in connection with proved statement relevant under section 32 or 33

158. Whenever any statement relevant under section 32 or 33 is proved, all matters may be proved either in order to contradict or to corroborate it, or in order to impeach or confirm the credit of the person by whom it was made, which might have been proved if that person had been called as a witness and had denied upon cross-examination the truth of the matter suggested.

Refreshing memory

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

(2) The witness may also refer to any such writing made by any other person and read by the witness within the time aforesaid, if, when he read it, he knew it to be correct.

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(3) Whenever the witness may refresh his memory by reference to any document, he may, with the permission of the court, refer to a copy of that document:

Provided the court is satisfied that there is sufficient reason for the non-production of the original.

(4) An expert may refresh his memory by reference to professional treatises.

Testimony to facts stated in document mentioned in section 159

160. A witness may also testify to facts mentioned in any such document as is mentioned in section 159 although he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

ILLUSTRATION

A book-keeper may testify to facts recorded by him in books regularly kept in the course of business if he knows that the books were correctly kept, although he has forgotten the particular transactions entered.

Right of adverse party as to writing used to refresh memory

161. Any writing referred to under section 159 or 160 must be produced and shown to the adverse party if he requires it; such party may, if he pleases, cross-examine the witness thereupon.

Production of documents and their translation

162. (1) A witness summoned to produce a document shall, if it is in his possession or power, bring it to court notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court.

(2) The court, if it sees fit, may inspect the document unless it refers to affairs of State, or take other evidence to enable it to determine on its admissibility.

(3) If for such a purpose it is necessary to cause any document to be translated, the court may, if it thinks fit, direct the translator to keep the contents secret unless the document is to be given in evidence, and if the translator disobeys the direction, he shall be held to have committed an offence under section 166 of the Penal Code.

Giving as evidence of document called for and produced on notice

163. When a party calls for a document which he has given the other party notice to produce, and the document is produced and inspected by the party calling for its production, he is bound to give it as evidence if the party producing it requires him to do so and if it is relevant.

Using as evidence of document production of which was refused on notice

164. When a party refuses to produce a document which he has had notice to produce, he may not afterwards use the document as evidence without the consent of the other party or the order of the court.

ILLUSTRATION

A sues *B* on an agreement, and gives *B* notice to produce it. At the trial *A* calls for the document, and *B* refuses to produce it. *A* gives secondary evidence of its contents. *B* seeks to produce the document itself to contradict the secondary evidence given by *A*, or in order to show that the agreement is not stamped. He may not do so.

Judge's power to put questions or order production

165. The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form at any time, of any witness or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that—

- (i) the judgment must be based upon facts declared by this Act to be relevant and duly proved;
- (ii) this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which the witness would be entitled to refuse to answer or produce under sections 121 to 131 if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with the primary evidence of any document, except in the cases hereinbefore excepted.

Power of jury or assessors to put questions

166. In cases tried by jury or with assessors the jury or assessors may put any questions to the witnesses through or by leave of the Judge, which the Judge himself might put and which he considers proper.

CHAPTER XI

IMPROPER ADMISSION AND
REJECTION OF EVIDENCE

No new trial for improper admission or rejection of evidence

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

LAWS OF MALAYSIA**Act 56****EVIDENCE ACT 1950**

LIST OF AMENDMENTS

Amending law	Short title	In force from
L.N. 332/58	Federal Constitution (Modification of Laws) (Ordinances and Proclamations) Order 1958	13-11-1958
P.U.(A) 261/1971	Evidence Ordinance (Extension) Order 1971	01-11-1971
P.U.(A) 280/1971	Corrigendum to P.U.(A) 261/1971	01-11-1971
P.U.(A) 239/1974	Revision of Laws (Evidence Act) Order 1974	01-11-1971
Act A324	Criminal Procedure Code (Amendment and Extension) Act 1976	01-01-1976
Act A354	Constitution (Amendment) Act 1976	27-08-1976
P.U.(A) 357/1980	Subordinate Courts Act (Extension) Order 1980	01-06-1981
Act A729	Evidence (Amendment) Act 1989	05-05-1989
Act A851	Evidence (Amendment) Act 1993	16-07-1993
Act A978	Evidence (Amendment) Act 1997	31-01-1997

LAWS OF MALAYSIA

Act 56

EVIDENCE ACT 1950

LIST OF SECTIONS AMENDED

Section	Amending authority	In force from
Long title	P.U.(A) 261/1971	01-11-1971
2	P.U.(A) 261/1971	01-11-1971
	Act A851	16-07-1993
3	P.U.(A) 261/1971	01-11-1971
6	P.U.(A) 261/1971	01-11-1971
10	P.U.(A) 261/1971	01-11-1971
17	P.U.(A) 261/1971	01-11-1971
23	P.U.(A) 261/1971	01-11-1971
25	P.U.(A) 261/1971	01-11-1971
	Act A324	01-01-1976
26	P.U.(A) 261/1971	01-11-1971
	Act A324	01-01-1976
27	P.U.(A) 261/1971	01-11-1971
	Act A324	01-01-1976
28	P.U.(A) 261/1971	01-11-1971
	Act A324	01-01-1976
29	P.U.(A) 261/1971	01-11-1971

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Section	Amending authority	In force from
	Act A324	01-01-1976
30	P.U.(A) 261/1971	01-11-1971
	Act A324	01-01-1976
31A	Act A851	16-07-1993
	Act A978	31-01-1997
32	P.U.(A) 261/1971	01-11-1971
	Act A851	16-07-1993
36	P.U.(A) 261/1971	01-11-1971
37	P.U.(A) 261/1971	01-11-1971
50	P.U.(A) 261/1971	01-11-1971
54	P.U.(A) 261/1971	01-11-1971
57	L.N. 332/1958	13-11-1958
	P.U.(A) 261/1971	01-11-1971
60	Act A851	16-07-1993
62	Act A851	16-07-1993
63	Act A851	16-07-1993
65	P.U.(A) 261/1971	01-11-1971
66	P.U.(A) 261/1971	01-11-1971
73A	P.U.(A) 261/1971	01-11-1971
	P.U.(A) 239/1974	01-11-1971
74	L.N. 332/1958	13-11-1958
	P.U.(A) 261/1971	01-11-1971
78	L.N. 332/1958	13-11-1958
	P.U.(A) 261/1971	01-11-1971

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Section	Amending authority	In force from
78A	Act A851	16-07-1993
79	L.N. 332/1958	13-11-1958
	P.U.(A) 261/1971	01-11-1971
81	P.U.(A) 261/1971	01-11-1971
	P.U.(A) 280/1971	01-11-1971
83	L.N. 332/1958	13-11-1958
	P.U.(A) 261/1971	01-11-1971
85	P.U.(A) 261/1971	01-11-1971
86	P.U.(A) 261/1971	01-11-1971
90	P.U.(A) 261/1971	01-11-1971
90A	Act A851	16-07-1993
90B	Act A851	16-07-1993
90C	Act A851	16-07-1993
91	P.U.(A) 261/1971	01-11-1971
100	P.U.(A) 261/1971	01-11-1971
105	P.U.(A) 261/1971	01-11-1971
123	L.N. 332/1958	13-11-1958
	P.U.(A) 261/1971	01-11-1971
124	P.U.(A) 261/1971	01-11-1971
125	P.U.(A) 261/1971	01-11-1971
126	P.U.(A) 261/1971	01-11-1971
127	P.U.(A) 261/1971	01-11-1971
128	P.U.(A) 261/1971	01-11-1971
130	P.U.(A) 261/1971	01-11-1971

Section	Amending authority	In force from
132	P.U.(A) 261/1971	01-11-1971
133A	P.U.(A) 261/1971	01-11-1971
146A	Act A729	05-05-1989
149	P.U.(A) 261/1971	01-11-1971
150	P.U.(A) 261/1971	01-11-1971
155	Act A729	05-05-1989
162	P.U.(A) 261/1971	01-11-1971
