

Evidence Act 2003

REPUBLIC OF KIRIBATI

(No. 5 of 2003)

I assent,

(Signed): Anote Tong

Beretitenti
19/12/2003

AN ACT TO CLARIFY AND DECLARE THE RULES CONCERNING THE
ADMISSIBILITY OF EVIDENCE FROM WITNESSES AND TO EXPEDITE THE
JUDICIAL CONSIDERATION OF CERTAIN DOCUMENTARY EVIDENCE

Commencement:

2003

Made by the Maneaba ni Maungatabu and assented to by the Beretitenti.

PART I - PRELIMINARY

Short Title

1. This Act may be cited as the Evidence Act 2003.

Spouses

2. (1) In any proceedings the wife or husband of the accused shall be competent to give evidence -

(a) subject to subsection (4) below, for the prosecution; and

(b) on behalf of the accused or any person jointly charged with the accused.

(2) In any proceedings the wife or husband of the accused shall, subject to subsection (4) below, be compellable to give evidence on behalf of the accused.

(3) In any proceedings the wife or husband of the accused shall, subject to subsection (4) below, be compellable to give evidence for the prosecution or on behalf of any person jointly charged with the accused if and only if -

(a) the offence charged involves or includes an assault, or injury or a threat of injury, to the wife or husband of the accused or a person who was at the time of the offence under the age of sixteen or of anyone dependent upon or residing at the time of the offence with either one or both of the spouses; or

(b) the offence charged is a sexual offence alleged to have been committed against a person defined in paragraph (a) above; or

(c) the offence charged consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a) or (b) above.

(4) Where a husband and wife are jointly charged with an offence neither spouse shall at the trial be competent or compellable by virtue of subsections (1), (2) or (3) of this section to give evidence in respect of that offence unless that spouse is not, or is no longer, liable to be convicted of that offence at the trial as a result of pleading guilty or for any other reason.

(5) In any proceedings a person who has been but is no longer married to the accused, or is in that person's apprehension irreconcilably separated from the accused, shall be competent and compellable to give evidence as if that person and the accused had never been married.

(6) Where in any proceedings the age of any person at any time is material for the purposes of subsection (3) above, his age at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or to have been his age at that time.

(7) In subsection (3)(b) above "sexual offence" means an offence under the Penal Code Act c.67 Part XVI.

(8) The failure of the wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

(9) For the purposes of this section the terms "husband", "wife" and "married" shall be deemed to refer to the parties to, and to a relationship in the nature of marriage. The phrase "relationship in the nature of marriage" includes persons married by legally recognized office, a common law marriage, and a domestic partnership in which a male and a female reside together in a union recognized by local custom, or demonstrating by way of their joint care of children, or by stable longevity of the union, as having the character of a marriage.

Evidence of children

3. (1) Where, in any legal proceedings, any child under the age of fourteen years called as a witness does not in the opinion of the court understand the nature of an oath or affirmation, his or her evidence may be received, though not given upon oath or affirmation, if, in the opinion of the court, that witness is possessed of sufficient intelligence to justify the reception of the evidence, and understands the duty of speaking the truth.

(2) If any child whose evidence is received by virtue of this section gives false evidence in such circumstances that he would if the evidence had been given on oath, have been guilty of perjury he shall be guilty of a misdemeanour offence.

Statements made by witness before board or commission not to be used against witness

4. No statement made by any person in answer to any question before any board or commission empowered under any Act to summon witnesses shall (except in case of a charge against such person for perjury committed to him in making such statement) be admissible in evidence in any proceedings civil or criminal against him, nor be made the ground of any prosecution action or suit against him; and a certificate signed by the chairman of such board or commission or body or by the sole commissioner or by such person that such statement was made in answer to any such question or in the course of any inquiry before such board commission body or person shall be conclusive evidence that the same was so made.

Protection to witnesses after giving incriminating evidence

5. (1) This section applies if a witness in any judicial proceedings objects to giving particular evidence on the ground that the evidence may tend to prove that the witness:
- (a) has committed an offence against or arising under a Kiribati law or a law of a foreign country; or
 - (b) is liable to a civil penalty.
- (2) Subject to subsection (5), if the court finds that there are reasonable grounds for the objection, the court shall require the witness to give that particular evidence, and shall inform the witness:
- (a) that, if he or she gives the evidence, the court will give a certificate under this section; and
 - (b) of the effect of such a certificate.
- (3) If the witness gives the evidence, the court shall cause the witness to be given a certificate under this section in respect of the evidence.
- (4) A court shall also give a witness a certificate under this section if-
- (a) the objection has been overruled; and
 - (b) grounds for the objection have subsequently in that hearing or on appeal, been shown to be properly advanced.
- (5) In any proceeding in a Kiribati court: -
- (a) evidence given by a person in which a certificate under this section has been given; and
 - (b) evidence of any information, document or thing obtained as a direct or indirect consequence of the person having given that evidence;
- cannot be used against the person. However, this does not apply to the hearing of an offence in which it is alleged that the evidence is false.
- (6) In a criminal proceeding, this section does not apply in relation to the giving of evidence by a defendant, being evidence that the defendant:
- (a) did an act the doing of which is a fact in issue; or
 - (b) had a state of mind the existence of which is a fact in issue.
- (7) A reference in this section to doing an act includes a reference to failing to do an act.

Witness may be questioned as to previous conviction

6. Except as hereinafter provided a witness may be questioned as to whether he has been convicted of any felony or other criminal offence; and upon being so questioned if he either denies the fact or refuses to answer, it shall be lawful for the party so questioning to prove such conviction.

Adverse witness may be contradicted by party calling witness

7. (1) A party producing a witness shall not be allowed to impeach the witness's credit by general evidence of bad character but may contradict him/her by other evidence, or may by leave of the court prove that

witness has made at other times a statement inconsistent with the present testimony. But before such proof can be given and cross examination thereon be permitted, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness; and the witness must be asked whether or not the witness has made such statement.

(2) In considering the leave necessary under subsection (1) the Court, may, among other things, consider:

- (a) whether the witness is an adverse or hostile witness to the party or the party's interest;
- (b) whether the inconsistency sought to be exposed relates to a matter material to the issues for determination.

Evidence of previous statement of witness

8. If a witness upon examination as to a former statement inconsistent with the witness' present testimony does not distinctly admit that the witness has made such statement, proof may be given that the witness did in fact make it. But before such proof can be given, the circumstances of the supposed statement sufficient to designate the particular occasion must be mentioned to the witness and who must be asked whether or not such statement was made.

Witness may be cross-examined as to written statements without producing them

9. A witness may be cross-examined as to previous statements made by the witness in writing or reduced into writing relative to the subject-matter of the cause or prosecution without such writing being shown to him. But if it is intended to contradict such witness by the writing, his attention must be called to those parts of the writing which are to be used for the purpose of so contradicting him; provided that it shall be competent for the court, at any time during any hearing, to require the production of the writing for inspection, and the court may thereupon may make such use of it, for the purposes of the hearing, as the court thinks fit.

Cross-examination as to credit

10. (1) If any question put to a witness upon cross-examination relates to a matter not relevant to the suit or proceeding except in so far as it affects the credit of the witness by injuring his character, it shall be the duty of the court to decide whether or not the witness shall be compelled to answer it, and the court may if it thinks fit warn the witness that he is not obliged to answer it.

(2) In exercising the discretion in subsection (1) above, and without restricting the discretion, the court shall consider that such questions,

- (a) 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) are improper if the imputation which they convey relates to matters so remote in time, or are of a character, that the truth of the imputation would not affect, or would affect in a slight degree only, the opinion of the court as to the credibility of the witness on the matter to which he testifies.
- (c) are improper if the imputation made against the witness' character is insignificant when compared to the level of importance or cogency of his evidence.

Corroboration requirements abolished

11. (1) It is not necessary that evidence on which a party relies be corroborated.

- (2) Subsection (1) does not affect the operation of a rules of law that requires corroboration with respect to the offence of perjury or a similar or related offence, or for the offence of high treason..
- (3) Despite any rule, whether of law or practice, to the contrary, but subject to the other provisions of this Act, if there is a jury, it is not necessary that the judge -
 - (a) warn the finder of facts that it is dangerous to act on uncorroborated evidence or give a warning to the same or similar effect; or
 - (b) give a direction relating to the absence of corroboration.

Unreliable evidence

12. (1) This section applies to evidence of a kind that may be unreliable, including:
 - (a) identification evidence;
 - (b) evidence the reliability of which may be affected by age, ill health (whether physical or mental), injury or the like;
 - (c) evidence given in a criminal proceeding by a witness, being a witness who might reasonably be supposed to have been criminally concerned in the events giving rise to the proceeding;
 - (d) evidence given in a criminal proceeding by a witness who is a prison informer.
- (2) If there is a jury and a party so requests, the judge is to -
 - (a) warn the jury that the evidence may be unreliable; and
 - (b) inform the jury of matters that may cause it to be unreliable; and
 - (c) warn the jury of the need for care in determining whether to accept the evidence and the weight to be given to it.
- (3) The judge need not comply with subsection (2) if there are good reasons for not doing so.
- (4) It is not necessary that a particular form of words be used in giving the warning or information.
- (5) This section does not affect any other power of the judge to give a warning to, or to inform the jury.

SPECIAL RULES OF EVIDENCE IN RELATION TO SEXUAL OFFENCES

Recent Complaint

13. Where, during any preliminary hearing for, or on the trial of any person for, an offence against Part XVI of the Penal Code Act, or for any other offence against the person of a sexual nature, evidence is given or a question is asked or a comment is made that tends to suggest an absence of complaint in respect of the alleged offence by the person upon whom the offence is alleged to have been committed, or to suggest delay by that person in making any such complaint, the Judge may tell the finder of fact that there may be good reasons why the victim of such an offence may refrain from or delay in making such a complaint.

Hearing Rules

14. Notwithstanding anything in this or any other Act or any rule of law to the contrary the following Rules

shall apply in relation to any hearings on a charge under the Penal Code Act, Part XVI or on any charge of a sexual nature, whether or not the examination or proceedings relate to any other charges against the same or any other person and whether or not it is alleged that there are aggravating circumstances:

- A. The court shall forbid any question as to and shall not receive evidence of the general reputation of the complainant with respect to chastity;
- B. Without the leave of the court -
 - (a) the complainant shall not be cross-examined as to her sexual activities other than with the accused; and
 - (b) no evidence shall be admitted as to the sexual activities of the complainant other than with the accused;
- C. The court shall not grant leave under Rule B unless -
 - (a) it is satisfied that the evidence has substantial relevance to facts in issue and it is a proper matter for cross-examination as to credit; or
 - (b) it is satisfied that the evidence has substantial relevance to the issue of appropriate sentence and the accused person has -
 - (i) prior to the preliminary examination signified in writing before a Magistrate his intention of pleading guilty to all sexual offences on which he is there charged; or
 - (ii) pleaded guilty to all such offences; or
 - (iii) been convicted of all such offences.
- D. Evidence that relates to or tends to establish the fact that the complainant was accustomed to engage in sexual activities other than with the accused shall not be regarded -
 - (a) as having a substantial relevance to the facts in issue by virtue of any inferences it may raise as to general disposition; or
 - (b) as being a proper matter for cross-examination as to credit in the absence of special circumstances by reason of which it would be likely materially to impair confidence in the reliability of the evidence of the complainant.
- E. An application for leave under Rule B -
 - (a) shall be made in the absence of the jury (if any) and, if the accused so requests, in the absence of the complainant;
 - (b) shall be determined after the court has allowed such submissions or other evidence as the court considers necessary for the determination of the application; and
 - (c) shall not be granted unless the court considers that the requirements of Rules C and D are satisfied but in that case may be granted provided that the court considers it desirable in the interests of justice so to do.
- F. The Court shall consider in each case where the complainant or any other witness is under 17 years of age, whether there is available the facility, and if so, the Court shall, for such witness, direct, unless it is shown to be contrary to fairness and the interests of justice, that this witness' evidence maybe given through closed circuit television or, alternately behind a screen, so that

the witness is protected against sight by and of the accused, but not the accused's counsel. And that all examinations of the witness thereafter should proceed through this medium, unless otherwise directed by the Court.

PART II **PROOF OF DOCUMENTS AND OF FACTS BY DOCUMENTS**

Provisions to be additional

15. Any provision of this Part as to proving documents and as to proving facts by documents shall be in addition to and not in derogation of any power of proving documents or of proving facts by documents given by any other provision of this or any other provision of this or any other Act or existing at common law.

Provisions relating to evidence apply to all persons acting judicially

16. Whenever by this Act it is provided in effect that evidence or prima facie evidence may be given or may or shall be admissible such evidence or prima facie evidence may be given and shall be admissible before all courts and persons acting judicially.

Copies admissible without further proof of sealing, signing etc.

17. Whenever by this Act it is provided in effect that any certificate or any certified authenticated sealed stamped or signed copy may be given or shall or may be admissible in evidence the document purporting to be such certificate or copy except so far as is otherwise expressly provided may be given and shall be admissible in evidence without further proof and in particular without any proof of the judicial or official or other specified character of the person purporting to have attached or appended any seal stamp or signature and without any proof relating to any such seal stamp or signature or any combination thereof or relating to the handwriting of any person.

Effect of copies same as original

18. Whenever by this Act it is effectively provided that in lieu of an original document a copy or transcript of or extract from any document may be given or may be admissible in evidence, such copy, transcript or extract may on compliance with the conditions (if any) prescribed be given and shall be admissible in evidence in the same circumstances, to the same extent, and for the like purposes as the original would be if produced and proved in due course of law; and until it is proved not to be a true copy, extract or transcript, it shall be of equal validity with the original without any proof of the truth of such copy transcript or extract.

REPRODUCTIONS OF DOCUMENTS

Definitions

19. In this Division unless inconsistent with the context or subject matter –

"document" includes part of a document;

"machine-copy" in relation to a document means a copy made of the document by any machine wherein or process whereby an image of the contents of the document is reproduced from surface contact with the document or by the use of photo-sensitive material other than transparent photographic film;

"negative" in relation to a document means a transparent negative photograph used or intended to be used as a medium for reproducing the contents of the document and includes any transparent photographic made from surface contact with the original negative photograph;

"reproduction" in relation to a document means a machine-copy of the document or a print

made from a negative of the document and "to reproduce" and any derivatives thereof shall have a corresponding interpretation.

Admissibility of reproductions of business documents destroyed, lost or unavailable

20. (1) A reproduction of a document being a document made or used in the course of a business shall, be admissible in any proceedings as evidence of that document upon proof that it is a reproduction made in good faith of the document and that the document has been destroyed or lost, whether wholly or in part, or that it is not reasonably practicable to produce the document or to secure its production.
- (2) Without prejudice to any other mode of proof an affidavit or declaration purporting to have been made by a person at or about the time he made a machine-copy or a negative of a document -
- (a) stating his full name, address and occupation;
 - (b) identifying or describing the documents;
 - (c) stating the day upon which he made the machine-copy or negative, the condition of the document at that time with respect to legibility and the extent of any damage thereto;
 - (d) describing the machine or process by which he made the machine-copy or negative; and
 - (e) stating that the processing was properly carried out in the ordinary course of business by the use of apparatus and materials in good working order and condition with the object of reproducing the document;

shall be evidence, whether such person is available to be called as a witness or not, that the machine-copy or negative was made in good faith and is, or can be used, as a reproduction of the document.

Proof where document processed by independent processor

21. Where a person having the custody or control of a document delivers or causes the document to be delivered to another person (hereafter in this section called 'the processor') whose business is or includes the reproduction or photographing of documents for other persons and subsequently receives a machine-copy or negative of the document from the processor as to the making of the machine-copy or negative an affidavit or declaration made by such first-mentioned person at or about that time as to his custody or control of the document, its delivery to and return by the processor and his subsequent disposal of the document and the machine-copy or negative shall be admissible as evidence of the facts stated therein whether such first-mentioned person is available to be called as a witness or not.

Judicial notice

22. Where any Act or law requires a person acting judicially to take judicial notice of the seal or signature of any court, person or body corporate appearing on a document and a reproduction of that document is admitted in evidence pursuant to the provisions of this Division in any proceedings, the court or person acting judicially shall take judicial notice of the image of the seal or signature on the reproduction to the same extent as takes judicial notice of the seal or signature on the document.

Factors determining admissibility

23. For the purpose of deciding whether or not a reproduction of a document is admissible as evidence of the document under the foregoing provisions of this Division person acting judicially may draw any reasonable inference from the nature of the reproduction, the machine or process used in making the reproduction or the negative from which it was produced, or from any other circumstances, and it may reject the reproduction,

notwithstanding that the requirements of the above sections are satisfied with respect thereto, if for any reason it appears to be in the interests of justice that the reproduction should not be admitted in evidence.

Estimation of importance of reproduction rendered admissible

24. In estimating the weight to be attached to a reproduction rendered admissible as evidence by this section regard shall be had to the fact that if the person making an affidavit or declaration is not called as a witness there has been no opportunity to cross-examine him, and to all the circumstances from which any inference can reasonably be drawn as to -

- (a) the necessity for making the reproduction or negative or for destroying or parting with the document;
- (b) the accuracy or otherwise of the reproduction; and
- (c) any incentive to tamper with the document or to misrepresent the reproduction.

ADMISSIBILITY AND EFFECT OF DOCUMENTARY EVIDENCE

Saving

25. Nothing in this Division shall -

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

Admissibility of documentary evidence as to facts in issue

26. (1) In any legal proceeding where direct oral evidence of a fact would be admissible, a document containing a statement tending to establish that fact shall be admissible as evidence towards proof of that fact, if the document is, or forms part of a record relating to any business, and made in the course of that business from information supplied, (whether directly or indirectly), by persons who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in the information they supplied, and the person who supplied the information recorded in the statement in question is called as a witness in the proceeding.

(2) Sub-section (1) does not make a statement contained in a document admissible in any criminal proceeding if the statement was made in the course of or for the purposes of -

- (a) the investigation of facts constituting or being constituents of the alleged offence being dealt with in the proceeding;
- (b) an investigation which led to the discovery of facts constituting or being constituents of the alleged offence;
- (c) the preparation of a defence to a charge for any offence; or
- (d) the preparation of the case for the prosecution in respect of any offence.

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

- (4) Notwithstanding anything to the contrary in the foregoing provisions of this section, the condition that the maker of the statement or the person who supplied the information, be called as a witness need not be satisfied where -
- (a) he is dead, or unfit by reason of his bodily or mental condition to attend or testify as a witness;
 - (b) he is out of Kiribati or of an island group within Kiribati, where the proceeding is being heard and it is not reasonably practicable to secure his attendance;
 - (c) he cannot with reasonable diligence be found or identified;
 - (d) no party to the proceeding required the attendance of the witness; or
 - (e) the parties to the proceedings consent to his not being required to attend.
- (5) Notwithstanding anything to the contrary in paragraph (b) of sub-section (1) the condition that the person who supplied the information be called as a witness need not be satisfied where it cannot reasonably be supposed (having regard to the time which has elapsed since he supplied the information and to all the circumstances) that he would have any recollection of the matters dealt with in the information he supplied.
- (6) The court may at any stage of the proceeding, 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 sub-section (1) shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence, notwithstanding that the maker of the statement or the person who supplied the information (as the case may be) is available but is not called as a witness.
- (7) In deciding whether or not a person is fit to attend or to testify as a witness, the court may act on a certificate purporting to be a certificate of a legally qualified medical practitioner.
- (8) The court may in its discretion reject any statement or defer the admission of and subsequently reject any 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 then admitted or, as the case requires, should be admitted at all.

Admissibility of evidence concerning credibility of person responsible for statement

27. (1) Where in any legal proceeding a statement is given in evidence by virtue of section 26, but the person who made the statement or supplied the information recorded in it is not called as a witness in the proceeding -
- (a) any evidence which, if that person had been so called would be admissible for the purpose of destroying or supporting his credibility as a witness shall be admissible for that purpose in those proceedings;
 - (b) any evidence tending to prove that, whether before or after he made that statement or supplied that information, he made another statement or supplied other information (whether orally or in a document or otherwise) inconsistent therewith shall be admissible for the purpose of showing that he has contradicted himself;
 - (c) but nothing in paragraph (a) or (b) shall enable evidence to be given of any matter of which, if the person in question had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.
- (2) Where in any legal proceeding a statement is given in evidence by virtue of section 26, but the person who made the statement or supplied the information recorded in it is not called as a

witness in the proceeding any evidence proving that that person has been guilty of any offence shall be admissible in the proceedings to the same extent as if that person had been so called and on being questioned as to whether he had been convicted of an indictable or other offence had denied the fact or refused to answer the question.

Admissibility of statements produced by computers

28. (1) In any legal proceeding where direct oral evidence of a fact would be admissible, any statement contained in a document produced by a computer and tending to establish that fact shall be admissible as evidence of that fact, if it is shown that the conditions mentioned in sub-section (2) are satisfied in relation to the statement and computer in question.

(2) The said conditions are -

- (a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by any person;
- (b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;
- (c) that throughout the material part of that period the computer was operating properly or, if not, that any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and
- (d) that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(3) Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in paragraph (a) of sub-section (2) was regularly performed by computers, whether -

- (a) by a combination of computers operating over that period; or
- (b) by different computers operating in succession over that period; or by different combinations of computers operating in succession over that period; or
- (c) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers -
- (d) all the computers used for that purpose during that period shall be treated as constituting a single computer; and references to a computer shall be construed accordingly.

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

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

relevant device or the management of the relevant activities (whichever is appropriate);

(e) shall be evidence of any matter stated in the certificate;

and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

- (5) Any person who in a certificate tendered in evidence by virtue of sub-section (4) wilfully makes a statement material in those proceedings which he knows to be false or does not believe to be true, shall be guilty of an offence and shall be subject to imprisonment for not more than two years or a fine or both.
- (6) For the purposes of this section -
- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
 - (b) where, in the course of activities carried on by any person, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
 - (c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.
- (7) The court may in its discretion reject any statement notwithstanding that the requirements of this section are satisfied with respect thereto, if for any reason it appears to it to be contrary to the interests of justice that the statement should be admitted.
- (8) Subject to sub-section (3), in this section "computer" means any device for storing or processing information, and any reference to information being derived from other information is a reference to its being derived therefrom by calculation, comparison or any other process.

Where a statement is to be given in evidence

29. Where in any civil or criminal proceeding a statement contained in a document is proposed to be given in evidence by virtue of section 25 or section 27 it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document, or the material part thereof, authenticated in such manner as the court may approve.

As to effect of the provisions on rules requiring corroboration

30. For the purpose of any rule of law or practice or in respect to a particular hearing the cautionary rule is applied, requiring evidence to be corroborated or regulating the manner in which uncorroborated evidence is to be treated, a statement rendered admissible as evidence by these documentary evidence provisions shall not be treated as corroboration of evidence given by the maker of the statement or the person who supplied the information from which the record containing the statement was made.

Proof of instrument to validity of which attestation is necessary

31. Subject as hereinafter provided, in any proceedings, whether civil or criminal, an instrument to the validity of which attestation is requisite may, instead of being proved by an attesting witness, be proved in the manner in which it might be proved if no attesting witness were alive provided that nothing in this section shall apply to the proof of wills or other testamentary documents.

BOOKS OF ACCOUNT

Definitions

32. In sections 33 to 37 unless inconsistent with the context or subject matter -

"Bank" means any person lawfully carrying on the business of bank under any law of Kiribati, and such foreign institute in the nature of a bank as to which the Court recognizes its general acceptance as that kind of institution;

"Book of account" includes ledger, day book, cash book, account book, and any other document used in the ordinary business of a bank, or in the ordinary course of any other business for recording the financial transactions of the business and also includes any document used in the ordinary course of any business to record production in, or stock in trade held for, the business;

"court" means a court in Kiribati on any level.

Entries in book of account to be evidence

33. Subject to the provisions of sections 32 to 37, in all legal proceedings -

- (a) an entry in a book of account shall be prima facie evidence of the matters transactions and accounts therein recorded; and
- (b) a copy of an entry in a book of account shall be prima facie evidence of the entry and of the matters transactions and accounts therein recorded; and
- (c) where in the ordinary course of business a copy of the original book of account has been made and retained as the ordinary book of account, and the original book of account has been destroyed, then an entry in the copy book of account shall be prima facie evidence of the matters transactions and accounts therein recorded.

Proof that book is a book of account

34. (1) An entry or a copy of an entry in a book of account shall not be admissible in evidence under this section unless it is first proved that the book was at the time of the making of the entry one of the ordinary books of account of the business to which it purports to relate and that the entry was made in the usual and ordinary course of that business.

- (2) Such proof may be given by a responsible person familiar with the books of account of the business and may be given orally or by an affidavit sworn or by a declaration made before any commissioner or person authorized to take affidavits or statutory declarations.

Verification of copy

35. (1) A copy of an entry in a book of account shall not be admissible evidence unless it is further proved that the copy has been examined with the original entry and is correct.

- (2) Such proof shall be given by some person who has examined the copy with the original entry and may be given either orally or by an affidavit sworn or by a declaration made before any commissioner or person authorized to take affidavits or statutory declarations.

Accounts which may be proved under this Act ordinarily to be so proved

36. A person carrying on any business or an employee of that person shall not in any legal proceeding to which the person is not a party, be compellable to produce any book of account the contents of which can be

proved hereunder, to appear as a witness to prove the matters transactions and accounts therein recorded, unless by order of a court or judge made for special cause.

Court may order that books of account or copies be made available

37. (1) On the application of any party to a legal proceeding a court may order that such party be at liberty to inspect and take copies of any entries in a book of account of any business for any of the purposes of such proceedings and may order that the person carrying on the business shall free of charge for the first ten folios and on payment of Twenty cents (\$0.20) for each additional folio prepared and deliver to such party a duly verified copy of such entries as may be required for evidence in such legal proceeding.
- (2) An order under this section may be made either with or without summoning the person carrying on the business or any other party and shall be served on the person carrying on the business three clear days before the same is to be obeyed unless the court otherwise directs.

OTHER DOCUMENTS

Proof of will and death

38. The probate of a will or codicil or letters of administration with the will or codicil annexed shall in all cases whatsoever and whether relating to real or personal estate or both real and personal estate be evidence of the original will or codicil and of the contents thereof. And every probate or letters of administration shall in all cases be prima facie evidence of the death and the date of the death of the testator or intestate.

Evidence of results of scientific tests

39. (1) Where an accused is before any justice or a magistrates' court facing any charge, it shall not be necessary, unless so directed by the justice or court, for any person who has made a scientific examination of any article or body to give evidence of the result of the examination, but a certificate apparently under the hand of that person and setting out particulars of his scientific qualifications, that he/she has made the examination, and the facts and conclusions he/she has arrived at, shall be prima facie evidence of the matters stated in the certificate.
- (2) The justice or court shall direct a person who has made a scientific examination of any thing, to give evidence of the result of the examination, if any person, who would have the right to cross-examine that person, makes application to the justice or court in that behalf; but no person who has not less than seven days previously been served with a copy of a certificate complying with sub-section (1), and notice in writing informing him that it is proposed to give the certificate in evidence, may make any such application without special leave being granted, unless he/she has, not less than three days previously, served upon the party proposing to give the certificate in evidence, notice in writing, that he/she requires the person who gave the certificate, to give evidence.

Proof of trial or conviction or acquittal for an indictable offence by certified copy

40. (1) In any legal proceeding, in order to prove the trial or conviction or acquittal in Kiribati of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person or a copy thereof; but a certificate purporting to contain the substance and effect only (omitting the formal part) of the information, or of the conviction, or of the acquittal for such offence, apparently signed by the officer having the custody of the records of the court where the determination was made, or by the deputy of such office, or by the officer for the time being acting in such capacity, shall be sufficient evidence of the said determination, without proof of the signature, or official character of the person appearing to have signed the same, or of the fact that he has the custody of such records; and the conviction shall be deemed to be a legal event unless the contrary is proved.

- (2) No fee shall be demanded or taken for any such certificate if the same is applied for by any prosecutor for the State, or by any person acting under the direction of a law officer, or by any person acting for the prisoner.

Mode of proving previous convictions in other countries

41. In any legal proceeding, in order to prove a conviction out of Kiribati of any person, a certificate purporting to contain the substance and effect only (omitting the formal part) of the conviction, purporting to be signed by the officer having the custody of the records of the court where the offender was convicted, or by the deputy of such officer, or by the officer for the time being acting in such first-mentioned capacity, shall be sufficient evidence of such conviction without proof of the signature or official character of the persons signing such certificate, and without any further proof as to the custody of such records; and the conviction shall be deemed to be a legal event unless the contrary is proved.

Evidence of previous misdemeanour determination

42. In any legal proceeding, in order to prove a previous misdemeanour conviction or acquittal –

- (a) a document purporting to be a copy of any such determination apparently certified by the proper officer of the court to which such conviction has been returned; or
- (b) a document proved to be a true copy of such conviction; or
- (c) the register kept pursuant to the provisions of the Magistrates Ordinance, or a certificate apparently signed by the Registrar, or acting clerk, or assistant clerk of the court at which such register is kept, purporting to contain a true copy of an extract from such register, showing entry of such conviction;

shall be sufficient evidence of such conviction, without proof of the signature or official character of the person appearing to have signed any such document or certificate or of the statement that the register is kept at such court; and the conviction shall be deemed to be a legal event unless the contrary is proved.

THE EVIDENCE ACT 2003

EXPLANATORY NOTES

There is a need for an up to date Evidence Act for Kiribati, because the present evidence law is stuck with the pre 1961 U K law. There has been significant progress in legal thinking about admissible evidence; there have been remarkable advances in copying, computer and telecommunications technology; new attitudes have developed about the reliability of the word of young people and women; new social circumstances have produced different kinds of anti-social behaviour. All of these changes since 1961 require new kinds of rules for the admission of evidence in Courts. The U K has modernised its statutory evidence law, but these changes do not affect Kiribati law because the date of receipt of U K law here is 1961.

The Act deals with the following subjects in the following ways:

1. Married persons, including those that the community accepts as being in a relationship like marriage, only have to give evidence for or against each other, if the other spouse is charged with an offence of personal violence against the spouse or a member of the family.
2. A child who is too young to give evidence under oath, may still be entitled to give evidence in Court, where the Court determines that the child understands the need to speak the truth.
3. A person obliged by statute law to give evidence to a Commission or other tribunal, is protected against that evidence being used against the person later, in Court.

4. A person who is obliged to give evidence in Court may object that the evidence to be given might incriminate that person. Presently the law allows the person to withhold the evidence. The Act would require the evidence to be given, but the evidence could not later be used against the witness in another proceeding. This would both ensure that relevant evidence is produced, and it would protect a witness from self-incrimination.
5. Sections 6, 7, 8, 9, and 10, clarify the procedure to be adopted by questioners in Court, when it is sought to show that a witness might not be telling the truth.
6. Section 11 abolishes the judge-made rule that requires corroboration, or independent evidence, when the Court is asked to rely on the evidence of accomplices in any criminal case, or of complainants in sexual offence cases. The abolition of the rule would allow a court to convict without such corroboration; but the Court would still be entitled to treat such evidence with caution.
7. Sections 13 & 14 give some protection to primarily female and younger witnesses in sexual offence cases, where these persons are called upon to give evidence about what happened to them, or what they saw happen to another. There is a greater frequency of these kinds of serious case before the Court. We have now out grown certain attitudes to women and young witnesses in sexual offence cases that would allow wide questioning about matters outside the actual offending, which questioning would not be permitted in other cases. These sections bring Kiribati law into line with other leading Commonwealth law that seeks to avoid perpetuating discriminatory treatment of women.
8. The balance of the Act deals with the admissibility of business records, photocopies, computer print outs, faxes, e mails and other records. These provisions recognise the general reliability of such documents and records; and the sections attempt to overcome the old English judicial attitude against reading anything in Court which is not an original document. Such an attitude is no longer realistic. The Act would continue to afford the judges a discretion to refuse to consider a particular document if it was felt to be unreliable.
9. The draft Act has been circulated to the Chief Justice, and to qualified lawyers in Kiribati. Any comments from these persons have been considered in the drafting and revising of the Act.

Titabu Tabane
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30 July 2003