N.R.C.D. 323
EVIDENCE ACT, 1975

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N.R.C.D. 323
EVIDENCE ACT, 19751(1)

AN ACT to provide for the general rules of evidence and for other matters relating to the giving of evidence in Courts of competent jurisdiction.

PART ONE

General Rules

1. Questions of law

(1) A question of law including but not limited to the admissibility of evidence and the construction of this Act, shall be decided by the Court.

(2) The determination of the law of an organisation of states to the extent that the law is not part of the law of Ghana, or of the law of a foreign state or sub-division of a foreign State, is a question of fact which

shall be determined by the Court.

(3) The determination whether a party has met the burden of producing evidence on a particular issue is a question of law which shall be determined by the Court.

(4) Where the Court determines that a party has not met the burden of producing evidence on a particular issue the Court shall, as a matter of law determine the issue against that party.

2. Questions of fact

(1) Except as otherwise provided in this or any other enactment in a jury trial a question of fact shall be decided by the jury.

(2) Subsection (1) does not preclude the Court from summing up the evidence to the jury, or from commenting on the weight or credibility of the evidence but the Court shall make it clear to the jury that they are to determine the weight and credibility of the evidence themselves and are not bound by the Court's summary or comments.

(3) In a trial without a jury, a question of fact shall be decided by the Court.

3. Preliminary facts

(1) For the purposes of this section and of section 4 a **"preliminary fact"** is a fact on which depends

(*a*) the admissibility of evidence,

(*b*) or the inadmissibility of evidence, the qualification or disqualification of a person to be a witness, or

(*c*) the existence or non-existence of a privilege.

(2) The Court shall determine the existence or non-existence of a preliminary fact.

(3) A ruling on the admissibility or the inadmissibility of evidence, the qualification or disqualification of a person to be a witness, or the existence or non-existence of a privilege implies a finding of fact which is prerequisite to it and unless otherwise provided by an enactment a separate formal finding of fact is not necessary.

(4) A party, and as regards a claim of privilege, the person claiming the privilege, may present evidence and arguments relevant to a determination under subsection (2).

(5) In making a determination under subsection (2), the Court

(*a*) may hear the evidence and arguments and announce its determination in the absence of the jury, and

(*b*) shall hear the evidence and arguments and announce its determination in the absence of the jury if the determination concerns a matter admissible only under section 120 relating to confession.

(6) Unless otherwise provided by this Act, the Court may admit evidence which requires proof of preliminary facts without prior proof of the preliminary facts on the condition that the preliminary facts will be proved later in the course of the trial, but the conditionally admitted evidence shall be disregarded if the Court determines that the preliminary facts were not proved.

4. Preliminary facts in issue

(1) Where a preliminary fact is a fact in issue in the action,

(*a*) the Court or jury, as the tribunal of fact shall not be bound by the Court's determination of the existence or non-existence of the preliminary fact, and

(*b*) a determination by the tribunal of fact that differs from the Court's determination of the existence or non-existence of the preliminary fact shall not affect a ruling admitting or excluding evidence or require the tribunal of fact to disregard an admitted evidence.

(2) Subsection (1) shall not be construed as precluding the introduction of evidence relevant to the weight or credibility of admitted evidence or to preclude the tribunal of fact from considering that evidence.

5. Erroneous admission or exclusion of evidence

(1) A finding, verdict, judgment or decision shall not be set aside, altered or reversed on appeal or review because of the erroneous admission of evidence unless the erroneous admission of evidence resulted in a substantial miscarriage of justice.

(2) In determining whether an erroneous admission of evidence resulted in a substantial miscarriage of justice, the Court shall consider

(*a*) whether the trial court relied on that inadmissible evidence, and

(*b*) whether an objection to, or a motion to exclude or to strike out, the evidence could and should have been made at an earlier stage in the action, and

(*c*) whether the objection or motion could and should have been so stated as to make clear the ground or grounds of the objection or motion, and

(*d*) whether the admitted evidence should have been excluded on one of the grounds stated in connection with the objection or motion, and

(*e*) whether the decision would have been otherwise but for the erroneous admission of evidence.

(3) A finding verdict, judgment or decision shall not be set aside altered or reversed on appeal or review because of the erroneous exclusion of evidence unless,

(*a*) the substance of the excluded evidence was made known to the Court by the questions asked, by an offer of proof, or by any other means, and

(*b*) the Court which decides on the effect of the error also determines that the excluded evidence should have been admitted and that the erroneous exclusion of the evidence resulted in a substantial miscarriage of justice.

6. Objections to evidence

(1) In an action, and at every stage of the action, an objection to the admissibility of evidence by a party affected by that evidence shall be made at the time the evidence is offered.

(2) An objection to the admissibility of evidence shall be recorded and ruled upon by the Court as a matter of course.

(3) Where a document is produced and tendered in evidence and rejected by the Court, it shall be marked by the Court as having been tendered and rejected.

7. Corroboration

(1) Corroboration consists of evidence from which a reasonable inference can be drawn which confirms in a material particular the evidence to be corroborated and connects the relevant person with the crime, claim or defence.

(2) Evidence may, in proper circumstances, be corroborated by other independent evidence that requires corroboration.

(3) Unless otherwise provided by this or any other enactment, corroboration of admitted evidence is not necessary to sustain a finding of fact or verdict.

(4) A finding, verdict, judgment or decision shall not be set aside, altered or reversed on appeal or review on the sole ground that the Court failed to caution itself or the jury as to the danger of acting on the uncorroborated evidence unless the Appellate Court is satisfied that the failure resulted in a substantial miscarriage of justice.

(5) This section does not preclude the Court or a party from commenting on the danger of acting on the uncorroborated evidence, or commenting on the weight and credibility of admitted evidence, or preclude the tribunal of fact from considering the weight and credibility of admitted evidence.

8. Exclusion of evidence

Evidence that would be inadmissible if objected to by a party may be excluded by the Court on its own motion.

9. Judicial notice

(1) This section governs the taking of judicial notice of facts in issue or facts which are relevant to facts in issue.

(2) Judicial notice can be taken only of facts which are

(*a*) so generally known within the territorial jurisdiction of the Court, or

(*b*) so capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned,

that the facts are not subject to reasonable dispute.

(3) Judicial notice may be taken whether requested or not.

(4) Judicial notice shall be taken if requested by a party and the requesting party

(*a*) gives each adverse party fair notice of the request through the pleadings or otherwise, and

(*b*) supplies the necessary sources and information to the Court.

(5) A party is entitled, on timely request, to an opportunity to present to the Court information relevant to the propriety of taking judicial notice and the meaning of the fact to be noticed.

(6) Judicial notice may be taken at any stage of the action.

(7) In an action tried by jury the Court may, and upon a timely request shall, instruct the jury to accept as conclusive the facts which have been judicially noticed.

PART TWO

Burden of Proof

10. Burden of persuasion defined

(1) For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.

(2) The burden of persuasion may require a party

(*a*) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(*b*) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt.

11. Burden of producing evidence defined

(1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.

(2) In a criminal action, the burden of producing evidence, when it is on the prosecution as to a fact which is essential to guilt, requires the prosecution to produce sufficient evidence so that on the totality of the evidence a reasonable mind could find the existence of the fact beyond a reasonable doubt.

(3) In a criminal action, the burden of producing evidence, when it is on the accused as to a fact the converse of which is essential to guilt, requires the accused to produce sufficient evidence so that on the totality of the evidence a reasonable mind could have a reasonable doubt as to guilt.

(4) In other circumstances the burden of producing evidence requires a party to produce sufficient evidence which on the totality of the evidence, leads a reasonable mind to conclude that the existence of the fact was more probable than its non-existence.

12. Proof by a preponderance of the probabilities

(1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities.

(2) **"Preponderance of the probabilities"** means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence.

13. Proof of crime

(1) In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt.

(2) Except as provided in section 15 (*c*), in a criminal action, the burden of persuasion, when it is on the accused as to a fact the converse of which is essential to guilt, requires only that the accused raise a reasonable doubt as to guilt.

14. Allocation of burden of persuasion

Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence that party is asserting.

15. Burden of persuasion in particular cases

Unless it is shifted,

(*a*) the party claiming that a person has committed a crime or wrongdoing has the burden of persuasion on that issue;

(*b*) the party claiming that a person did not exercise a requisite degree of care has the burden of persuasion on that issue;

(*c*) the party claiming that a person including that party is or was insane or of unsound mind has the burden of persuasion on that issue.

16. Instructions on burden of persuasion

The Court shall, on a proper occasion, instruct the jury as to which party bears the burden of persuasion on each issue and as to whether that burden requires a party

(*a*) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(*b*) to establish the existence or non-existence of a fact by a preponderance of the probabilities, or by proof beyond a reasonable doubt.

17. Allocation of burden of producing evidence

Except as otherwise provided by law,

(*a*) the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof;

(*b*) the burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact.

PART THREE

Presumptions

18. Presumption and inference defined

(1) A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action.

(2) An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action.

(3) A presumption is either conclusive or rebuttable.

19. Prima facie evidence

An enactment providing that a fact or group of facts is prima facie evidence of another fact creates a rebuttable presumption.

20. Effect of rebuttable presumptions

A rebuttable presumption imposes upon the party against whom it operates the burden of producing evidence and the burden of persuasion as to the non-existence of the presumed fact.

21. Applying rebuttable presumptions

In an action where proof by a preponderance of the probabilities is required,

(*a*) a rebuttable presumption requires the tribunal of fact to assume the existence of the presumed fact, unless the party against whom the presumption operates proves that the non-existence of the presumed fact is more probable than its existence;

(*b*) when evidence is not introduced contrary to the existence of the presumed fact, the question of the existence of the presumed fact depends upon the existence of the basic facts that give rise to the presumption and is determined as follows:

(i) if reasonable minds would necessarily agree that the evidence renders the existence of the basic facts more probable than not, the Court shall find, or direct the jury to find, in favour of the existence of the presumed fact; or

(ii) if reasonable minds would necessarily agree that the evidence does not render the existence of the basic facts more probable than not, the Court shall find, or direct the jury to find, against the existence of the presumed fact; or

(iii) if reasonable minds would not necessarily agree as to whether the evidence renders the existence of the basic facts more probable than not, the Court shall find, or submit the matter to the jury with an instruction that it shall find, in favour of the existence of the presumed fact if it finds from the evidence that the existence of the basic facts is more probable than not, but otherwise, it shall find against the existence of the presumed fact;

(*c*) where evidence is introduced contrary to the existence of the presumed fact, when reasonable minds would necessarily agree that the evidence renders the existence of the basic facts that give rise to the presumption more probable than not, the question of the existence of the presumed fact is determined as follows:

(i) if reasonable minds would necessarily agree that the evidence renders the non-existence of the presumed fact more probable than not, the Court shall find, or direct the jury to find, against the existence of the presumed fact; or

(ii) if reasonable minds would necessarily agree that the evidence does not render the non-existence of the presumed fact more probable than not, the Court shall find, or direct the jury to find, in favour of the presumed fact; or

(iii) if reasonable minds would not necessarily agree as to whether the evidence renders the non-existence of the presumed fact more probable than not, the Court shall find, or submit the matter to the jury with an instruction that it shall find, in favour of the existence of the presumed fact unless it finds from the evidence that the non-existence of the presumed fact is more probable than its existence, in which case it shall find against the existence of the presumed fact;

(*d*) where evidence as to the existence of the basic facts that give rise to the presumption is of a nature that reasonable minds would not necessarily agree whether their existence is more probable than not and evidence as to the non-existence of the presumed fact is such that they would not necessarily agree that its non-existence is more probable than not, the Court shall

find, or submit the matter to the jury with an instruction that it shall find, in favour of the existence of the presumed fact if it finds from the evidence that the existence of the basic facts is more probable than not and it does not find the non-existence of the presumed fact more probable than not, but otherwise it shall find against the existence of the presumed fact.

22. Effect of certain presumptions in criminal actions

In a criminal action, a presumption operates against the accused as to a fact which is essential to guilt only if the existence of the basic facts that give rise to the presumption are found or otherwise established beyond a reasonable doubt, and, in the case of a rebuttable presumption, the accused need only raise a reasonable doubt as to the existence of the presumed fact.

23. Applying presumptions in jury trials

In a criminal action tried by jury,

(*a*) the Court shall not direct the jury to find a presumed fact against the accused if that fact is essential to guilt unless on the totality of the evidence a reasonable mind could not have a reasonable doubt as to the existence of the basic facts that give rise to the presumption, or as to the existence of the presumed fact;

(*b*) where the presumed fact is essential to guilt, the Court may submit the question of the existence of the presumed fact to the jury, if, on the totality of the evidence a reasonable mind could find both the existence of the basic facts that give rise to the presumption and the existence of the presumed fact beyond a reasonable doubt;

(*c*) where the presumed fact is not essential to guilt, the question of the existence of the presumed fact may be submitted to the jury if the basic facts that give rise to the presumption are established or otherwise supported by evidence sufficient to meet the burden of producing evidence;

(*d*) where the jury is asked to determine the existence of a presumed fact against the accused where that fact is essential to guilt, the Court shall instruct the jury to find against the existence of the presumed fact unless they find beyond a reasonable doubt

(i) the existence of the basic facts that give rise to the presumption, and

(ii) the existence of the presumed fact.

24. Conclusive presumptions

(1) Where the basic facts that give rise to a conclusive presumption are found or otherwise established in the action, evidence contrary to the conclusively presumed fact may not be considered by the tribunal of fact.

(2) Conclusive presumptions include, but are not limited to those provided in sections 25 to 29.

25. Facts recited in written instrument

(1) Except as otherwise provided by law, including a rule of equity, the facts recited in a written document are conclusively presumed to be true as between the parties to the document, or their successors in interest.

(2) Subsection (1) does not apply to the recital of consideration.

26. Estoppel by own statement or conduct

Except as otherwise provided by law, including a rule of equity, when a party has, by that party's own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon that belief, the truth of the thing shall be conclusively presumed against that party or the successors in interest of that party in proceedings between

(*a*) that party or the successors in interest of that party, and

(*b*) the relying person or successors in interest of that person.

27. Estoppel of tenant to deny title of landlord

Except as otherwise provided by law, including a rule of equity, against a claim by a tenant, the title of a landlord at the time of the commencement of their relation is conclusively presumed to be valid.

28. Estoppel of licensee to deny title of licensor

Except as otherwise provided by law, including a rule of equity, against a claim by a licensee of immovable property, the licensor is conclusively presumed to have a valid right to possession of the immovable property.

29. Estoppel of bailee, agent or licensee

(1) Except as otherwise provided by law, including a rule of equity, against a claim by a bailee, agent or licensee to whom movable property has been entrusted, the bailor, principal or licensor is conclusively presumed to have been entitled to the movable property at the time it was entrusted.

(2) For the purposes of subsection (1), the bailee, agent or licensee may show

(*a*) that the bailee, agent or licensee was compelled to deliver up the movable property to another person who had a right to it as against the bailor, principal or licensor, or

(*b*) that the bailor, principal or licensor wrongfully and without notice to the bailee obtained the movable property from a third person who has claimed it from the licensee, bailor or licensor.

30. Rebuttable presumptions

Rebuttable presumptions include, but are not limited to, those provided in sections 31 to 49 and 151 to 162.

31. Marriage

(1) A marriage which has been celebrated before witnesses is presumed to be valid.

(2) Subsection (1) applies whether or not the witnesses to the marriage are called as witnesses in the action.

(3) This section applies both to monogamous and polygamous marriages.

32. Children of a marriage

(1) A child born during the marriage of the mother is presumed to be the child of the person who is

the husband of the mother at the time of the birth.

(2) A child of a woman who has been married, born within three hundred days after the end of the marriage, is presumed to be a child of that marriage.

(3) This section applies both to monogamous and polygamous marriages.

33. Death after seven years absence

(1) Where a person has not been heard of for seven years despite diligent effort whether or not within that period, to find that person, that person is presumed to be dead.

(2) There is no presumption as to the particular time when that person died.

34. Simultaneous death

Subject to an enactment relating to succession to property, where two or more persons have died in circumstances in which it is uncertain which survived the other, the older is presumed to have predeceased the younger.

35. Owner of legal title is owner of beneficial title

The owner of the legal title to property is presumed to be the owner of the full beneficial title.

36. Transfer by trustee

A trustee or any other person whose duty it was to convey immovable property to a particular person, is presumed to have actually conveyed to that particular person when the presumption is necessary to perfect the title of the person or the successor in interest of that person.

37. Official duty regularly performed

(1) It is presumed that an official duty has been regularly performed.

(2) Subsection (1) does not apply to an issue as to the lawfulness of an arrest if it is found or otherwise established that the arrest was made without a warrant.

38. Ordinary consequences of voluntary act

(1) A person is presumed to intend the ordinary consequences of the voluntary act of that person.

(2) Subsection (1) is not applicable in a criminal action to establish specific intent where specific intent is an element of the crime charged.

39. Judicial jurisdiction

(1) A Court of Ghana, or a court of general jurisdiction in any other country or sub-division of a country, or a judge of that court, acting as a judge is presumed to have acted in the lawful exercise of its jurisdiction.

(2) Subsection (1) applies only where the jurisdiction of the court or the judge is not directly in issue.

40. Foreign law

The law of a foreign country is presumed to be the same as the law of Ghana.

41. Continuation

A thing or state of things which has been shown to be in existence within a period shorter than that within which that thing or state usually ceases to exist is presumed to be still in existence.

42. Full age and sound body

A person is presumed to be of full age and of sound body.

43. Thing delivered

(1) A thing delivered by a person to another person is presumed to have belonged to the person to whom it was delivered.

(2) In subsection (1), **"thing"** includes money.

44. Obligation delivered

An obligation delivered up to the debtor is presumed to have been paid.

45. Possession of order to pay or deliver

A person in possession of an order on that person for the payment of money, or the delivery of a thing, is presumed to have paid the money or delivered the thing accordingly.

46. Possession of obligation by creditor

An obligation possessed by the creditor is presumed not to have been paid.

47. Prior payment of rent

The payment of earlier rent or instalments is presumed from the receipt for the later rent or instalments.

48. Ownership

(1) The things which a person possesses are presumed to be owned by that person.

(2) A person who exercises acts of ownership over property is presumed to be the owner of it.

49. Partners, landlord and tenant, principal and agent

Persons acting as partners, landlord and tenant, or principal and agent are presumed to stand in that relationship to one another.

50. Inconclusive judgments

A judgment, when not conclusive, is presumed to determine or set forth the rights of the parties correctly, but there is no presumption that the facts essential to the judgment have been correctly decided.

PART FOUR

Relevancy

51. Relevant evidence admissible

(1) Relevant evidence is admissible except as otherwise provided by an enactment.

(2) Evidence is not admissible except relevant evidence.

52. Exclusion of relevant evidence

The Court may exclude relevant evidence if the probative value of the evidence is substantially outweighed by

(*a*) considerations of undue delay, waste of time, or needless presentation of cumulative evidence; or

(*b*) the risk that the admission of the evidence will create substantial danger of unfair prejudice or substantial danger of confusing the issues; or

(*c*) the risk, in a civil action, where a stay is not possible or appropriate, that the admission of the evidence will unfairly surprise a party who has not had reasonable grounds to anticipate that the evidence would be offered.

53. Evidence of character not admissible to prove conduct

Evidence of a person's character or a trait of the character of that person is not admissible to prove conduct in conformity with that character or trait of character on a specific occasion, except

(*a*) in a criminal action, evidence of the character or trait of the character of the accused when offered by the accused to prove the innocence of the accused, or by the prosecution to rebut the evidence previously introduced by the accused; or

(*b*) in a criminal action, evidence of the character or trait of the character of the victim of the alleged crime when offered by the accused to prove the conduct of the victim in connection with the alleged crime, or by the prosecution for the same purpose; or

(*c*) evidence of the character or a trait of the character of a witness or hearsay declarant when offered to support or attack the credibility of the witness or declarant;

(*d*) where character or a trait of character is an essential element of a charge, claim or defence.

54. Methods of proving character

(1) Except as provided in sections 83 to 85 relating to the credibility of a witness, and in subsection (2) of this section, in the circumstances in which evidence of the character or trait of the character of a person is admissible, the evidence may only be in the form of an opinion or evidence or reputation.

(2) Evidence of the character or a trait of the character of a person may not be in the form of specific instances of the person's conduct, except where the character or the trait of the character of that person is an essential element of a charge, claim or defence.

(3) Notwithstanding subsection (2), evidence of specific instances of the person's conduct, including the commission of a crime or civil wrong, may be admissible to show the facts as motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

55. Routine practice

(1) An otherwise admissible evidence of the routine practice of a person or of an organisation is admissible to prove conduct on a specified occasion in conformity with the routine practice.

(2) Routine practice may be proved by evidence in the form of an opinion or by evidence of specific conduct on specified occasions sufficient in number to support a finding of fact that the practice was routine.

56. Remedial and precautionary measures

(1) Where after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event.

(2) Subsection (1) does not require the exclusion of evidence of subsequent remedial or precautionary measures when offered for another purpose, in order to show ownership, control or feasibility of remedial or precautionary measures.

57. Offers to plead guilty, withdrawn pleas of guilty

Evidence of a plea of guilty, later withdrawn, or of an offer to plead guilty to the crime charged or any other crime is not admissible in a civil or criminal action involving the person who made the plea or offer.

PART FIVE

Witnesses

58. Competent persons

Except as otherwise provided by this Act, a person is competent to be a witness and a person is not disqualified from testifying to a matter.

59. Disqualification of witnesses

(1) A person is not qualified to be a witness if that person is

(*a*) incapable of coherent expression so as to be understood, directly or through interpretation by another person who can understand that person; or

(*b*) incapable of understanding the duty of a witness to tell the truth.

(2) A child or a person of unsound mind is competent to be a witness unless the child or that person is disqualified by subsection (1).

60. Personal knowledge required

(1) A witness may not testify to a matter unless sufficient evidence is introduced to support a finding that the witness has personal knowledge of the matter.

(2) Evidence to prove personal knowledge may, but need not consist of the testimony of the witness personally.

(3) A witness may testify to a matter without proof of personal knowledge if an objection is not raised by a party.

(4) This section is subject to section 112 relating to opinion testimony by expert witnesses.

61. Oath or affirmation required

Subject to an enactment or a rule of law to the contrary, a witness before testifying shall take an oath or affirmation that the witness will testify truthfully and a statement made by a witness without the oath or affirmation shall not be considered as evidence.

62. Cross-examination

(1) At the trial of an action, a witness can testify only if the witness is subject to the examination of the parties to the action, if they choose to attend and examine.

(2) Where a witness who has testified is not available to be examined by the parties to the action who choose to attend and examine, and the unavailability of the witness has not been caused by a party who seeks to cross-examine the witness, the Court may exclude the entire testimony or a part of the testimony as fairness requires.

(3) This section is subject to section 63 relating to certain statements of an accused.

63. Statement of accused

(1) An accused in a criminal action may make a personal statement in defence of the charge without first taking an oath or affirmation that the accused will testify truthfully and without being subject to the examination of the parties to the action.

(2) The statement by an accused is admissible to the same extent as if it had been made under oath or affirmation and subject to examination in accordance with sections 61 and 62.

(3) The fact that the evidence was given without oath or affirmation, or that there was no possibility of examination, may be considered in ascertaining the weight and credibility of the statement, and may be the subject of comment by the Court, the prosecution or the defence.

64. Interpreters

(1) A person called to interpret statements of a witness incapable of coherent expression so as to be understood directly by the tribunal of fact is qualified for that purpose if the Court is satisfied that the proposed interpreter can understand and interpret the expressions of the witness.

(2) A person who serves as an interpreter in an action is subject to the provisions of the Act relating to witnesses, but that person may be impeached only as to the ability to interpret and the accuracy of the interpretation.

65. Presiding justice disqualified as a witness

A justice sitting at the trial may not testify as a witness in that trial.

66. Competency of jurors

(1) A juror may not testify as a witness in the trial of the action in which that juror is sitting as a juror.

(2) Upon an issue of the validity of a verdict, a juror who participated in rendering that verdict may testify as any other witness, but the juror may not testify concerning the effect of a matter upon the determination of the verdict or concerning the mental processes by which the verdict was reached.

(3) Upon an issue of the validity of a verdict, a statement or an affidavit made by a juror who participated in rendering that verdict is not admissible to the extent that it concerns the effect of a matter upon the determination of the verdict or concerns the mental processes by which the verdict was reached.

67. Qualification as an expert

(1) A person is qualified to testify as an expert if, to the satisfaction of the Court, that person is an expert on the subject to which the testimony relates by reason of the special skill, experience or training of that person.

(2) Evidence to prove expertise may, but need not consist of the personal testimony of the witness.

68. Examination of witnesses

(1) The Court may, on its own motion or at the request of a party, call or recall a witness.

(2) The parties may cross-examine a witness called by the Court.

(3) The Court may ask questions of a witness, whether the witness was called by a party or the Court.

(4) A party may object to questions asked by the Court and to evidence obtained by the Court's questions at any time prior to the submission of the action to the tribunal of fact for determination.

(5) A juror or the jury may, through the Court, ask questions of a witness which the Court itself might ask and which the Court considers proper.

69. Mode and order of interrogation

The Court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to

(*a*) make the interrogation and presentation as rapid, as distinct, and as readily understandable as may be, and

(*b*) protect witnesses from being unduly intimidated, harassed or embarrassed.

70. Leading question

(1) A leading question is a question that suggests directly or indirectly the answer that the examining party expects or desires.

(2) The Court may, determine to what extent, and in what circumstances a party calling a witness shall be permitted, and a party not calling the witness shall be forbidden, to ask leading questions of the witness.

(3) Subject to the discretion of the Court,

(*a*) leading questions may not, if objected to by an adverse party, be asked in examination-in-chief, or in re-examination;

(*b*) leading questions may be asked as to matters which are introductory or undisputed, or which have, in the opinion of the Court, been already sufficiently proved;

(*c*) leading questions may be asked in cross-examination or examination by leave of the Court.

71. Cross-examination of non-adverse witness

The Court may treat the cross-examination of a witness by a party whose interest is not adverse to the party calling the witness as if it were an examination-in chief.

72. Adverse witness in a civil action

(1) Subject to the discretion of the Court, in a civil action a party, or a person whose relationship to a party makes the interest of that person substantially the same as a party, may be called by an adverse party and examined as if on cross-examination at any time during the presentation of evidence by the party calling the witness.

(2) Where the witness is cross-examined by the lawyer of that witness or by a party who is not adverse to the party with whom the witness is related, that examination shall be treated as if it were a re-examination.

73. Scope of re-examination

(1) Subject to the discretion of the Court, re-examination shall be directed to the explanation of matters referred to in cross-examination.

(2) A witness cannot be re-examined or otherwise further examined as to the same matter raised by the examining party on a previous examination without the leave of the Court, but the witness may be re-examined or otherwise further examined as to a new matter upon which the witness has been examined by another party to the action.

74. Examination as to writing

(1) In examining a witness concerning a writing, it is not necessary to show, read, or disclose to the witness a part of the writing.

(2) Where the witness is not a party, the parties to the action shall be given an opportunity, if they choose, to inspect the writing before a question concerning it is asked of the witness.

75. Prior inconsistent statement or conduct

In examining a witness concerning a statement or other conduct by the witness which is inconsistent with a part of the testimony of the witness at the trial, it is not necessary to disclose to the witness an information concerning the statement or other conduct.

76. Extrinsic evidence of prior inconsistent statement

Unless the Court otherwise determines, extrinsic evidence of a statement made by a witness which is inconsistent with a part of the testimony of the witness at the trial shall be excluded unless,

(*a*) the witness was so examined while testifying as to give the witness an opportunity to explain or to deny the statement; or

(*b*) the witness has not been excused from giving further testimony.

77. Writing used to refresh memory

(1) Where a witness, while or before testifying, uses a writing to refresh the memory of the witness with respect to a matter about which the witness testifies, the testimony on that matter shall be excluded if the writing is not produced at the trial unless the Court allows the testimony to stand.

(2) Where the writing is produced at the trial, an adverse party may, if that party chooses, inspect the writing, cross-examine the witness concerning it, and introduce in evidence those parts of it which relate to the testimony of the witness for the purpose of attacking the credibility of the witness or, if the writing is otherwise admissible, for any other purpose.

78. Exclusion of witnesses

(1) The Court, on its own motion or at the request of a party,

(*a*) may exclude from the courtroom a witness so that the witness cannot hear or see the testimony of other witnesses;

(*b*) may during a trial take the steps that it considers necessary and proper for preventing communication with or between witnesses who are within the court house or its precincts awaiting examination.

(2) Subsection (1) does not authorise the exclusion or sequestration of a party, a lawyer representing a party at the trial, or any other person shown by a party to be essential to the presentation of the case of that party.

79. Recall of witness

After a witness has been excused from giving further testimony in the action, the witness cannot be recalled without the leave of the Court.

80. Attacking or supporting credibility

(1) Except as otherwise provided by this Act, the Court or jury may, in determining the credibility of a witness, consider a matter which is relevant to prove or disapprove the truthfulness of the testimony of the witness at the trial.

(2) Matters which may be relevant to the determination of the credibility of the witness include, but are not limited to

(*a*) the demeanour of the witness;

(*b*) the substance of the testimony;

(*c*) the existence or non-existence of a fact testified to by the witness;

(*d*) the capacity and opportunity of the witness to perceive recollect or relate a matter about which the witness testifies;

(*e*) the existence or non-existence of bias, interest or any other motive;

(*f*) the character of the witness as to traits of honesty or truthfulness or their opposites;

(*g*) a statement or conduct which is consistent or inconsistent with the testimony of the witness at the trial;

(*h*) the statement of the witness admitting untruthfulness or asserting truthfulness.

81. A party may attack or support credibility

(1) The credibility of a witness or of a part of the testimony of a witness may be attacked or supported by the party calling the witness and any other party.

(2) Where, before a party calls the witness, that party has reasonable grounds to attack the credibility of the witness or of a part of the testimony of the witness, that party shall, out of the presence of the witness, notify the Court and every other party of the expectation, but, if the witness is a party the witness need not be notified.

82. Extrinsic evidence affecting credibility

Except as otherwise provided by this Act, to attack or support the credibility of a witness' evidence other than the testimony of the witness is admissible if relevant to prove or disprove the truthfulness of the testimony of the witness.

83. Character traits affecting credibility

(1) Subject to subsection (2), evidence of good character to support the credibility of a witness is not admissible unless evidence which impugns the good character of the witness has been admitted for the purpose of attacking the credibility of the witness.

(2) An accused in a criminal action may introduce evidence of good character to support the credibility of the accused, and unless the accused first introduces that evidence, the prosecution may not attack the credibility of the accused by introducing evidence, including evidence of a previous conviction, to impugn the good character of the accused.

(3) A witness may give an opinion of the character of another witness and may state whether or not the first witness would believe the statement of the other witness in question.

(4) For the purposes of attacking or supporting the credibility of a witness, evidence of the reputation of the witness is not admissible to prove traits of the character of the witness.

84. Specific instances of conduct affecting credibility

(1) Subject to subsection (2) of this section and to section 85, evidence of specific instances of conduct of a witness relevant only as tending to prove or disprove traits of the character of the witness is not admissible to attack or support the credibility of the witness.

(2) Subject to section 52 relating to limitations on relevant evidence and to section 69 relating to limitations on interrogation, specific instances of the conduct of a witness relevant only as tending to prove or disprove traits of the character of the witness may, for the purpose of attacking or supporting the credibility of the witness, be inquired into on cross-examination of the witness or on cross-examination of a witness who testifies to an opinion of the character of the witness in question.

85. Previous convictions affecting credibility

(1) For the purpose of attacking the credibility of a witness, a party may lead evidence by the examination of the witness or by record of the judgment that the witness has been convicted of a crime involving dishonesty or false statement, but shall not lead evidence as to a conviction for any other crime.

(2) Evidence as to a conviction shall not be led under subsection (1) if a period of more than ten years has elapsed since the date of conviction or the termination of the sentence imposed by the Court for that

conviction, whichever last occurs for that conviction.

(3) The pendency of an appeal against a conviction does not prevent the leading of evidence as to the conviction.

(4) Where evidence of a conviction is led, the pendency of an appeal against that conviction may also be led.

86. Reasonable grounds for impeachment

In attacking or supporting the credibility of a witness, a person may not ask a question which conveys an adverse imputation concerning the character of that witness unless that person has reasonable grounds for believing the imputation to be true.

PART SIX

Privileges

87. Application of this Part

(1) This Part shall apply in all proceedings notwithstanding the provisions of an enactment or of a rule of law which make rules of evidence inapplicable or of limited application in particular proceedings.

(2) For the purposes of this Part,

"proceeding" means any action, investigation, inquiry hearing, arbitration or fact-finding procedure, whether judicial, administrative, executive, legislative or not before a government body, formal or informal, public or private;

"presiding officer" includes the Court or the person authorised in the proceedings to rule on a claim of privilege.

88. Privilege recognised only as provided

(1) Except as otherwise provided in this Part or in any other enactment, a person does not have a privilege

(*a*) to refuse when duly subpoenaed to be a witness; or

(*b*) to refuse as a witness to disclose a matter; or

(*c*) to refuse as a witness to produce an object or a writing.

(2) Except as otherwise provided in this Part or in any other enactment, a person may not prevent any other person from being a witness, from disclosing a matter, or from producing an object or a writing.

89. Waiver

(1) Except as otherwise provided in this section, a person who would otherwise have the privilege to refuse to disclose or to prevent any other person from disclosing a particular matter does not have a privilege, if that person or any other person while the holder of the privilege has voluntarily disclosed or consented to the disclosure of a significant part of that matter.

(2) A disclosure of a privileged matter where the disclosure itself is a privileged communication does not affect the right of a person to claim the privilege.

(3) A waiver of a joint privilege to refuse to disclose or to prevent any other person from disclosing a particular matter by a holder of the joint privilege does not affect the right of any other holder to claim the privilege.

90. Comment and inferences as to exercise of privilege

Where a privilege to refuse to disclose, or a privilege to prevent another from disclosing, a matter is claimed and allowed, the presiding officer, counsel or the parties may comment on the refusal or prevention, and the tribunal of fact may draw a reasonable inference from the refusal or prevention.

91. Determination and enforcement of privilege

(1) The presiding officer shall determine a claim of privilege in the manner provided in Part One of this Act.

(2) A person shall not be punished for failure to disclose or produce a matter claimed to be privileged unless that person has failed to comply with an order of court to disclose or produce the matter, or unless the presiding officer, by law, has the power to punish for contempt.

92. Disclosure of privileged information

(1) Subject to subsection (2), the presiding officer may not require disclosure of information claimed to be privileged in order to rule on the claim of privilege.

(2) Where a Court has to rule on a claim of privilege under section 105, 106 or 107 relating to State secrets, informants, and trade secrets and cannot do so without requiring disclosure of the information claimed to be privileged, the Court may require the person from whom disclosure is sought or a person authorised to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of any other persons, except the person authorised to claim the privilege and a person who the persons, except the person authorised to claim the privilege and the person who the person authorised to claim the privilege is willing to have present.

(3) Where the justice determines that the information is privileged, neither the justice nor any other person shall ever disclose, without the consent of a person authorised to permit disclosure, what was disclosed in the course of the proceedings in chambers.

93. Communications presumed confidential

Where a privilege is claimed to refuse to disclose or to prevent any other person from disclosing a confidential communication protected from disclosure under this Part, the communication is presumed to have been made in confidence and the opponent of the claim has the burden of persuasion to establish that the communication was not confidential.

94. Error in allowing privilege

A party may, on appeal or review, allege an error on a ruling disallowing a claim of privilege only if that party is the holder of the privilege.

95. Effect of error in disallowing privilege

Evidence of a statement or other disclosure of a privileged matter which was compelled to be disclosed in a proceeding by an erroneous ruling disallowing a claim of privilege is inadmissible against a holder of

the privilege in a later proceeding or in a re-hearing of the original proceeding.

96. Privilege of an accused

(1) The accused in a criminal action shall not be called as a witness and shall not be compelled to testify except on the application of the accused.

(2) Except as otherwise provided in this Act, an accused who testifies in a criminal action testifies on behalf of the accused, and is subject to examination in the same manner as any other witness.

(3) An accused in a criminal action does not have a privilege to refuse to submit to physical examination by the Court, or the tribunal of fact, or to refuse to do an act in the presence of the Court or tribunal for the purpose of identification other than to testify.

(4) Where an accused in a criminal action does not testify on behalf of the accused, the Court, the prosecution and the defence may comment upon the accused's failure to testify, and the tribunal of fact may draw a reasonable inference from the failure to testify.

97. Privilege against self-incrimination

(1) In any proceedings a person has a privilege to refuse to disclose a matter or to produce an object or a writing which will incriminate that person.

(2) A person does not have a privilege under subsection (1) where the Court thinks that it is necessary to the determination of an issue, to refuse

(*a*) to submit to physical examination for the purpose of discovering or recording the corporal features and other identifying characteristics, or the physical or mental condition of that person, or

(*b*) to furnish or to permit the taking of samples of body fluids or substances for analysis, or

(*c*) to speak, write, assume a posture, make a gesture, or do any other act for the purpose of identification.

(3) An accused in a criminal action who voluntarily testifies on behalf of the accused in the action does not have a privilege under subsection (1) to refuse to disclose a matter or produce an object or a writing which is relevant to an issue in the criminal action.

(4) A matter, an object or a writing will incriminate a person within the meaning of this Act if it

(*a*) constitutes, or

(*b*) forms an essential part of, or

(*c*) taken in connection with other matters already disclosed is a basis for a reasonable inference of,

a violation of the criminal laws of Ghana.

(5) Notwithstanding subsection (4), a matter, an object or a writing which would otherwise incriminate a person will not incriminate that person where that person has for a reason become permanently immune from punishment for a violation of the criminal laws of Ghana which may reasonably be inferred from that matter, object or writing.

98. Disclosure of things owned by another

A person does not have a privilege under section 97 to refuse to obey an order made by a Court to produce an object or writing under the control of that person constituting, containing or disclosing a matter which will incriminate that person, if by law any other person has a superior right to the object or writing ordered to be produced.

99. Required reports

(1) A person making a record, report or disclosure required by law does not have a privilege to refuse to disclose, or to prevent any other person from disclosing, the contents of the record, report or disclosure except as otherwise specifically provided by an enactment.

(2) A public officer or public entity to whom a record, report or disclosure is required by law to be made has a privilege to refuse to disclose the contents of the record, report or disclosure, if the law requiring it to be made prevents disclosure for the purpose in question.

100. Lawyer-client privilege

(1) For the purposes of this section and of sections 93, 101 and 102,

(*a*) a client is a person, including a public entity, an association or a body corporate, who or which directly or through an authorised representative seeks professional legal services from a lawyer;

(*b*) a representative of the client is a person having authority from the client to make to, or receive from, a lawyer confidential communications relating to professional legal services sought by the client;

(*c*) a representative of the lawyer is a person having authority from the lawyer to assist the lawyer in rendering professional legal services sought by the client;

(*d*) a communication is confidential if it is not intended to be disclosed, and is made in a manner reasonably calculated not to disclose its contents, to third persons other than those to whom disclosure is in furtherance of the client's interest in seeking professional legal services, or those reasonably necessary for the transmission of the communication.

(2) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication, reasonably related to professional legal services sought by the client, and made

(*a*) between the client or a representative of the client and the lawyer or a representative of the lawyer, or

(*b*) between the lawyer and a representative of the lawyer, or

(*c*) between the lawyer or a representative of the lawyer and a lawyer representing another person,

in a matter of common interest with the client or a representative of the lawyer.

(3) A client's privilege under subsection (2) may be claimed by

(*a*) the client; or

(*b*) the client's guardian or committee; or

(*c*) the personal representative of a deceased client; or

(*d*) the successor in interest of a client who was an artificial person; or

(*e*) the person who was the client's lawyer at the time of the communication, or the representative of the lawyer, but that person may not claim the privilege if there is no other person in existence who is authorised by paragraph (*a*), (*b*), (*c*) or (*d*) of this subsection to claim the privilege, or if that person is otherwise instructed to permit disclosure by a person so authorised.

101. Exceptions to lawyer-client privilege

A person does not have a privilege under section 100

(*a*) if, apart from the communication, sufficient evidence has been introduced to support a finding of fact that the services of the lawyer were sought or obtained to enable or aid a person to commit or plan to commit a crime or intentional tort; or

(*b*) as to a communication relevant to an issue between parties who claim an interest in property through the same deceased client of the lawyer; or

(*c*) as to a communication relevant to an issue of breach of duty by a lawyer to a client of the lawyer, or a client to the lawyer of the client; or

(*d*) as to a communication relevant to the formalities of the execution of a writing by a client, where the lawyer or a representative of the lawyer is an attesting witness to the execution of the writing; or

(*e*) as to a communication relevant to a matter of common interest between two or more clients, if the communication was made by any of them to a lawyer sought by them in common, when offered in a proceeding between any of the clients.

102. Work produced by a lawyer for a client

(1) A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, information obtained or work produced by the lawyer of that client or a representative of the lawyer in rendering professional legal services sought by the client.

(2) A client's privilege under subsection (1) may be claimed by

(*a*) the client; or

(*b*) the client's guardian or committee; or

(*c*) the personal representative of a deceased client; or

(*d*) the successor in interest of a client who was an artificial person; or

(*e*) the lawyer who personally or through a representative obtained the information, or produced work, or the representative of the lawyer, but that lawyer or the representative of that lawyer may not claim the privilege if there is no other person in existence who is authorised by paragraph (*a*), (*b*), (*c*) or (*d*) of this subsection to claim the privilege, or if that lawyer or the representative is otherwise directed to permit disclosure by a person so authorised.

(3) A Court may disallow a claim of privilege under subsection (1) where the information sought is not reasonably available from another source and the value of the information substantially outweighs the disadvantages caused by its disclosure.

103. Mental treatment

(1) A person has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication between that person and a physician or psychologist or any other persons who are participating in the diagnosis or treatment under the direction of the physician or psychologist where the communication was made for the purpose of diagnosis or treatment of a mental or an emotional condition.

(2) For the purposes of subsection (1), a communication is confidential if it is not intended to be disclosed to third persons other than those reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis or treatment under the direction of a physician or psychologist.

(3) A privilege under subsection (1) may be claimed by

(*a*) that person personally; or

(*b*) that person's guardian or committee; or

(*c*) that person's personal representative if that person is deceased; or

(*d*) the person who was the physician or psychologist or any other person who participated in the diagnosis or treatment under the direction of the physician or psychologist, unless that person is otherwise instructed to permit disclosure by a person authorised to claim the privilege by paragraph (*a*), (*b*), (*c*) or (*d*) of this subsection.

(4) A Court may disallow a claim of privilege under subsection (1) where

(*a*) in a proceeding to commit the person who was the patient the information sought is relevant to the determination of whether that person should be committed, or

(*b*) in a criminal or civil proceeding, the person claiming the privilege raises a matter relating to a mental or emotional condition, or

(*c*) a Court has ordered the person who was the patient to submit to an examination of the mental or emotional condition of that person by a physician or psychologist.

104. Religious advice

(1) A person has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication by that person to a professional minister of religion who is prevented from disclosing the communication by the code of the religion of that minister and has been consulted in a professional role as a spiritual adviser.

(2) For the purposes of subsection (1), a communication is confidential if made privately and not intended for further disclosure.

(3) A privilege under subsection (1) may be claimed by

(*a*) that person personally; or

(*b*) that person's guardian or committee; or

(*c*) that person's personal representative if that person is deceased; or

(*d*) the professional minister of religion to whom subsection (1) applies.

105. Compromise

(1) A person has a privilege to refuse to disclose, and to prevent any other person from disclosing, to the tribunal of fact, information concerning the furnishing, offering or accepting by that person or the authorised representative of that person, of a valuable consideration in compromising a claim which was disputed as to validity or amount, and information concerning conduct or statements made as an integral part of the compromise negotiations.

(2) A person does not have a privilege under subsection (1) if that person or the conduct or statements of the authorised representative relating to the compromise were made with the intention that they would not be privileged from disclosure to a tribunal of fact.

106. State secrets

(1) Except as otherwise provided by section 107 or by any other enactment, the Government has a privilege to refuse to disclose, and to prevent a person from disclosing, a State secret unless the need to preserve the confidentiality of the information is outweighed by the need for disclosure in the interests of justice.

(2) A State secret is information considered confidential by the Government, which has not been officially disclosed to the public, and which it would be prejudicial to the security of the State or injurious to the public interest to disclose.

(3) The Government's privilege under subsection (1) may be claimed only by a Minister of the Government responsible for administering the subject matter to which the State secret relates, or by a person authorised in writing by the Minister to claim the privilege.

(4) In an action in a Court where the Government's privilege under subsection (1) is claimed, other than for an official document, the Court shall act in accordance with article 135 of the Constitution.

107. Informants

(1) The Government has a privilege to refuse to disclose and to prevent any other person from disclosing, the identity of a person who has supplied the Government with information purporting to reveal the commission of a crime or a plan to commit a crime.

(2) The Government does not, under subsection (1), have a privilege to refuse to disclose a communication from a person except to the extent necessary to protect the identity of the person from disclosure.

(3) The Government's privilege under subsection (1) may be claimed by a person authorised by the Government to claim the privilege.

(4) The Government does not have a privilege under subsection (1) where the identity of the informant has been disclosed to the public by the Government, or the informant, or if the informant appears as a witness in Court in an action to which the communication of the informant relates.

(5) Where the Government claims its privilege under this section and the circumstances indicate a reasonable probability that the informant can give testimony necessary to a fair determination of guilt or innocence, in a criminal action the Court may on its own motion and shall on the motion of the accused dismiss the action.

108. Trade secrets

(1) The owner of a trade secret or a person authorised by the owner of a trade secret has a privilege to refuse to disclose, and to prevent any other person from disclosing, the trade secret unless the value of the disclosure of the trade secret substantially outweighs the disadvantages caused by its disclosure.

(2) In making a determination as to the existence or otherwise of the privilege the presiding officer shall consider

(*a*) whether the trade secret is adequately protected by patent, trade-mark, copyright or any other law, and

(*b*) whether adequate protection can be provided by disclosure of the trade secret in chambers or in any other appropriate manner.

(3) Where disclosure of a trade secret is required, a Court on its own motion or at the request of a party, may take an appropriate action to protect the trade secret from further disclosure or unauthorised usage.

109. Political vote

A person has a privilege to refuse to disclose how that person cast a vote at a public election or referendum conducted by secret ballot unless sufficient evidence has been introduced to support a finding of fact that the vote was cast illegally.

110. Marital communications

(1) A person has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made between that person and the spouse of that person during their marriage.

(2) A communication is confidential if it is not intended to be disclosed, and made in a manner reasonably calculated not to disclose its contents, to a third person.

(3) This section applies to both monogamous and polygamous marriages.

PART SEVEN

Opinion

111. Lay opinion

(1) A witness who is not testifying as an expert may give testimony in the form of an opinion or inference only if

(*a*) the opinion or the inference concerns matters perceived by the witness, and

(*b*) the testimony in the form of an opinion or inference is helpful to the witness in giving a clear statement, or is helpful to the Court or tribunal of fact in determining an issue.

(2) The matter on which the witness bases the opinion or inference need not be disclosed before the witness states the opinion or inference, unless the Court otherwise determines, but the witness may be examined by a party concerning the basis for the opinion or inference and the witness shall then disclose that basis.

112. Expert opinion

Where the subject of the testimony is sufficiently beyond common experience that the opinion or inference of an expert will assist the Court or tribunal of fact in understanding evidence in the action or in determining an issue, a witness may give testimony in the form of an opinion or inference concerning a subject on which the witness is qualified to give expert testimony.

113. Basis of expert opinion

(1) A witness who is testifying as an expert may base an opinion or an inference on matters perceived by or known to the witness because of the expertise or on matters assumed by the witness to be true for the purpose of giving the opinion or inference.

(2) The matters on which a witness who is testifying as an expert bases an opinion or an inference need not be admissible in evidence.

(3) The matters on which a witness who is testifying as an expert bases an opinion or an inference need not be disclosed before the witness states the opinion or inference unless the Court otherwise determines, but the witness may be examined by a party concerning the basis for the opinion or inference and the witness shall then disclose that basis.

114. Court experts

(1) In an action the Court may, at any time, on its own motion or at the request of a party, appoint a court expert to inquire into and report upon a matter on which an expert opinion or inference would be admissible under section 112.

(2) Unless otherwise ordered by the Court, the report of the Court expert shall be made to the Court in writing together with the number of copies that the Court may require and the Court shall make one copy of the report available to each party.

(3) The report of the Court expert is admissible to the same extent as the testimony of any other expert witness and shall to that extent be deemed to be in evidence without formal introduction by the Court or a party.

(4) Whether called as a witness by the Court or a party, the Court expert may be cross-examined by the party calling the Court expert and by any other party.

(5) The Court expert shall if possible be a person agreed between the parties, and failing agreement shall be nominated by the Court.

(6) The matters to be submitted to the Court expert shall if possible be agreed between the parties and the Court, and failing agreement shall be settled by the Court.

(7) The Court expert may conduct the experiments and test that the Court expert considers appropriate and may communicate with the parties to arrange for the attendance of a person or the provision of samples or information or any similar matter, and failing agreement between the parties and Court expert as to any of these matters, they shall be determined by the Court.

(8) The Court expert appointed under this section is entitled to reasonable remuneration as determined by the Court.

(9) The remuneration of the Court expert shall be taxed as costs to the parties.

(10) Where it is necessary or appropriate to pay the Court expert any or all of the remuneration to

which the Court expert is entitled before costs are taxed without prejudice to the ultimate taxation of costs, and unless otherwise ordered by the Court,

(*a*) in a civil action, each party shall contribute a proportionate share of that remuneration and are jointly and severally liable for the whole remuneration, and

(*b*) in a criminal action, the prosecution shall contribute the whole remuneration.

115. Opinion on ultimate issue

Testimony in the form of an opinion or inference admissible under section 111 or 112 shall not be inadmissible because the opinion or inference concerns an ultimate issue to be decided by the tribunal of fact.

PART EIGHT

Hearsay

116. Hearsay defined

For the purposes of this Part,

(*a*) a statement is an oral or written expression or conduct of a person intended by that person as a substitute for oral or written expression;

(*b*) a declarant is a person who makes a statement;

(*c*) hearsay evidence is evidence of a statement other than a statement made by a witness while testifying in the action at the trial, offered to prove the truth of the matter stated;

(*d*) a hearsay statement is a statement, evidence of which is hearsay evidence;

(*e*) unavailable as a witness means that the declarant is

(i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the statement of the witness is relevant; or

(ii) disqualified as a witness from testifying to the matter; or

(iii) dead or unable to attend or to testify at the trial because of a then existing physical or mental condition; or

(iv) absent from the trial, and the Court is unable to compel the attendance of the declarant by its process; or

(v) absent from the trial and the proponent of the statement of the declarant has exercised reasonable diligence but has been unable to procure the attendance of the declarant by the court's process; or

(vi) in a position that the declarant cannot reasonably be expected in the circumstances (including the lapse of time since the statement was made) to have a recollection of matters relevant to determining the accuracy of the statement in question;

(*f*) **"available as a witness"** means that the declarant is available as a witness.

117. Hearsay not admissible

Hearsay evidence is not admissible except as otherwise provided by this Act or any other enactment or by the agreement of the parties.

118. First-hand hearsay

(1) For the purposes of section 117, evidence of a hearsay statement is admissible if

(*a*) the statement made by the declarant would be admissible had it been made while testifying in the action and would not itself be hearsay evidence, and

(*b*) the declarant is

(i) unavailable as a witness, or

(ii) a witness or will be a witness, subject to cross-examination concerning the hearsay statement, or

(iii) available as a witness and the party offering the evidence has given reasonable notice to the Court and to every other party of the intention to offer the hearsay statement at the trial and that notice gave sufficient particulars (including the contents of the statement to whom it was made and if known when and where) to afford a reasonable opportunity to estimate the value of the statement in the action.

(2) In a criminal action where the prosecution offers evidence under paragraph (*b*) (iii) of subsection (1), the evidence shall not be admissible if an accused has given reasonable notice to the Court and to the prosecution that the accused objects to its admission.

(3) This section does not preclude the prosecution from offering the evidence under any other paragraph of subsection (1) or under any other provision of this Act.

(4) In a criminal action, evidence of a hearsay statement made by an accused is not admissible under subsection (1) when offered by the accused unless the accused is, or will be, a witness subject to cross-examination concerning the hearsay statement.

(5) Evidence of a hearsay statement offered under paragraph (*b*) (i) of subsection (1) is not admissible if the declarant is unavailable as a witness because the exemption, preclusion, disqualification, death, inability absence or failure of recollection of the declarant was brought about by the wrongdoing of the proponent of the statement for the purpose of preventing the declarant from attending or testifying.

119. Admissions

Evidence of a hearsay statement is not made inadmissible by section 117 if the statement is offered against a party, and

(*a*) the declarant is a party to the action either as an individual or in a representative capacity, or

(*b*) the party against whom it is offered has manifested the adoption of, or the belief in the truth of, the statement, or

(*c*) the party against whom it is offered had authorised the declarant to make a statement concerning the subject matter of the statement, or

(*d*) the declarant was an agent or employee of the party against whom it is offered and the statement concerns a matter within the scope of the declarant’s agency or employment and was made before the termination of the agency or employment, or

(*e*) the declarant made the statement while participating in a conspiracy to commit a crime or

civil wrong and in furtherance of that conspiracy.

120. Confessions

(1) In a criminal action, evidence of a hearsay statement made by an accused admitting a matter which

(*a*) constitutes, or

(*b*) forms an essential part of, or

(*c*) taken together with other information already disclosed by the accused is a basis for an inference of,

the commission of a crime for which the accused is being tried in the action is not admissible against the accused unless the statement was made voluntarily.

(2) Evidence of a hearsay statement is not admissible under subsection (1) if the statement was made by the declarant while arrested, restricted or detained by the State unless the statement was made in the presence of an independent witness,2(2) who

(*a*) can understand the language spoken by the accused,

(*b*) can read and understand the language in which the statement is made,

and where the statement is in writing the independent witness shall certify in writing that the statement was made voluntarily in the presence of the independent witness and that the contents were fully understood by the accused.

(3) Where the accused is blind or illiterate, the independent witness

(*a*) shall carefully read over and explain to the accused the contents of the statement before it is signed or marked by the accused, and

(*b*) shall certify in writing on the statement that the independent witness had so read over and explained its contents to the accused and that the accused appeared perfectly to understand it before it was signed or marked.

(4) For the purposes of this section, a statement that was not made voluntarily includes, but is not limited to a statement made by the accused if

(*a*) the accused when making the statement was not capable because of a physical or mental condition of understanding what the accused said or did; or

(*b*) the accused was induced to make the statement by being subjected to cruel or inhuman conditions, or by the infliction of physical suffering upon the accused by a public officer or by a person who has a direct interest in the outcome of the action, or by a person acting at the request or direction of a public officer or that interested person; or

(*c*) the accused was induced to make the statement by a threat or promise which was likely to cause the accused to make the statement falsely, and the person making the threat or promise was a public officer, or a person who has a direct interest in the outcome of the action, or a person acting at the request or direction of a public officer or the interested person.

(6) In a criminal action tried by a jury a party may not, in the presence of the jury, offer to prove a hearsay statement under this section.

(7) Where a party offers to prove a hearsay statement under this section the Court shall in the absence of the jury, determine the admissibility of the statement as provided in section 3.

(8) A determination by the Court under subsection (7), that a statement is admissible shall not preclude the jury from determining that the statement is not to be believed.

121. Former testimony

Evidence of a hearsay statement is not made inadmissible by section 117 if it consists of testimony given by the declarant as a witness in an action or in a deposition taken according to law for use in an action, and when the testimony was given or the deposition was taken the declarant was examined by a party with interests and motives identical with, or similar to, the party against whom the evidence is offered in the present action.

122. Past recollection recorded

Evidence of a hearsay statement is not made inadmissible by section 117 if

(*a*) the statement is contained in a writing and constitutes a record of what was perceived by a witness who is present and subject to cross-examination; and

(*b*) the statement would have been admissible if made by the witness while testifying; and

(*c*) at a time when the matter recorded was recently perceived and clear in the memory of the witness, the witness recognised the written statement as an accurate record of what the witness had perceived or the witness stated what the witness perceived and the written statement, by whomever or however made, correctly sets forth what the witness stated.

123. State of mind

Evidence of a hearsay statement is not made inadmissible by section 117 if the statement states the declarant's existing state of mind, emotion or physical sensation, and is not a statement of the declarant's memory or belief of a fact offered to prove the truth of the fact remembered or believed.

124. Other relevant issues

Evidence of a hearsay statement is not made inadmissible by section 117 if the statement was made

(*a*) while the declarant was perceiving the event or condition which the statement narrates or describes or explains or immediately after the event or condition; or

(*b*) while the declarant was under the stress caused by the perception of the declarant of the event or condition which the statement narrates or describes or explains.

125. Business records

(1) Evidence of a hearsay statement contained in a writing made as a record of an act, event, condition, opinion or diagnosis is not made inadmissible by section 117 if

(*a*) the writing was made in the regular course of a business;

(*b*) the writing was made at or near the time the act or event occurred, the condition existed, the opinion was formed, or the diagnosis was made; and

(*c*) the sources of the information and the method and time of preparation indicate that the statement contained in the writing is reasonably trustworthy.

(2) Evidence of the absence from records of a business of a record of an alleged act, event or

condition is not made inadmissible by section 117 when offered to prove the non-occurrence of the act or event, or the non-existence of the condition, if

(*a*) it was the regular course of that business to make records of those acts, events or conditions at or near the time the act or event occurred or the condition existed and to preserve those records; and

(*b*) the sources of information and method and time of preparation of the records of that business show that the absence of a record is a reasonably trustworthy indication that the act or event did not occur or that the condition did not exist.

(3) For the purpose of this section, **"business"** includes a type of regularly conducted activity, business, profession occupation, governmental activity, or operation of an institution whether carried on for profit or not.

(4) A hearsay statement admissible in evidence under this section is not made inadmissible by the fact that it is not based on the personal knowledge of the declarant.

126. Official records

(1) Evidence of a hearsay statement contained in writing made as a record of an act, event or condition is not made inadmissible by section 117 if

(*a*) the writing was made by and within the scope of duty of a public officer;

(*b*) the writing was made at or near the time the act or event occurred or the condition existed; and

(*c*) the sources of information and method and time of preparation indicate that the statement contained in the writing is reasonably trustworthy.

(2) Evidence of a hearsay statement contained in a writing made by the public officer who is the official custodian of the records in a public office reciting diligent search and failure to find a record, is not made inadmissible by section 117.

(3) A hearsay statement admissible in evidence under this section is not made inadmissible by the fact that it is not based on the personal knowledge of the declarant.

127. Judgments

(1) Evidence of a final judgment in a criminal action of a Court adjudging a person guilty of a crime is not made inadmissible by section 117 when offered to prove a fact essential to the judgment.

(2) Evidence of a final judgment of a Court is not made inadmissible by section 117 when offered by a judgment debtor to prove a fact which was essential to the judgment in an action in which the judgment debtor seeks

(*a*) to recover partial or total indemnity or exoneration for money paid or liability incurred because of the judgment; or

(*b*) to enforce a warranty to protect the judgment debtor against the liability determined by the judgment; or

(*c*) to recover damages for breach of a warranty substantially the same as the warranty determined by the judgment to have been breached.

(3) Where the liability, obligation or duty of a person other than a party is in issue in an action,

evidence of a final judgment of a Court against that person is not made inadmissible by section 117 when offered to prove that liability obligation or duty.

(4) A judgment offered in evidence and admissible under this section is not made inadmissible by the fact that the judgment is an opinion or is not based on personal knowledge.

128. Family history

(1) Evidence of a hearsay statement by a declarant concerning the birth, marriage, divorce, relationship by blood, marriage or adoption, ancestry or any other similar fact of the family history of the declarant is not made inadmissible by section 117, and will not be made inadmissible by the fact that the declarant did not have any means of acquiring personal knowledge of the matter declared if the statement was made before the controversy arose over the fact of family history.

(2) Evidence of a hearsay statement concerning the birth, death, marriage, divorce, relationship by blood, marriage or adoption, ancestry or any other similar fact of the family history of a person other than the declarant is not made inadmissible by section 117 if the statement was made before the controversy arose concerning the fact of family history and

(*a*) the declarant was related to the other person by blood, marriage or adoption; or

(*b*) the declarant was otherwise so intimately associated with the other person's family as to be likely to have had accurate information concerning the matter declared.

(3) Evidence of entries in a family bible or other family book, family portrait, and inscriptions on a building, a tombstone and the like is not made inadmissible by section 117 when offered to prove the birth, death, marriage, divorce, relationship by blood, marriage or adoption, ancestry or any other similar fact of family history of a member of the family by blood, marriage or adoption.

(4) Evidence of reputation among members of a family is not made inadmissible by section 117 when offered to prove the truth of the matter reputed if the reputation concerns the birth, death, marriage, divorce, relationship by blood, marrige or divorce, ancestry or any other similar fact of the family history of a member of the family by blood, marriage or adoption.

129. Boundaries and community history

Evidence of reputation in a community given by a person with personal knowledge of the reputation is not made inadmissible by section 177 if

(*a*) the reputation concerns boundaries of, or customs affecting, land in the community and the reputation arose before the controversy concerning the boundary or custom; or

(*b*) the reputation concerns an event of the general history of the community and the event was of importance to the community.

130. Deeds and ancient writings

(1) Evidence of a hearsay statement contained in a deed of conveyance or a will or any other writing purporting to affect an interest in movable or immovable property is not made inadmissible by section 117 if

(*a*) the matter stated was relevant to the purpose of the writing;

(*b*) the matter stated would be relevant to an issue as to an interest in the property; and

(*c*) the dealings with the property since the statement was made have not been inconsistent with

the truth of the statement.

(2) Evidence of a hearsay statement is not made inadmissible by section 117 if the statement is contained in a writing more than twenty years old and the statement has since been acted upon as true by persons having an interest in the matter.

131. Reputation concerning character

Evidence of a person's general reputation with reference to the character or a trait of the character of that person at a relevant time in a group with which that person regularly associated is not made inadmissible by section 117 when offered to prove the truth of the matter reputed.

132. Reference works

(1) A published treatise, periodical or pamphlet on a subject of history, literature science or art is not made inadmissible by section 117 when offered to prove the truth of a matter stated in that document if the Court takes judicial notice, or a witness expert in the subject testifies, that the author of the statement in the writing is recognised in that field as an expert in the subject.

(2) Evidence of a hearsay statement, other than an opinion, contained in a tabulation, list, directory, register or any other published data compilation is not made inadmissible by section 117 if the compilation is generally used and relied upon as accurate in the regular course of a business as defined in section 125 (3).

133. Credibility of declarant

Where hearsay evidence is admitted,

(*a*) evidence of a statement or other conduct by the declarant that is inconsistent with the declarant's hearsay statement is not inadmissible for the purpose of attacking the credibility of the declarant though the declarant did not have an opportunity to explain or deny the inconsistency because the declarant was not called as a witness, and

(*b*) any other evidence offered to attack or support the credibility of the declarant is admissible if it would have been admissible had the declarant been a witness in the action.

134. Examination of declarant

(1) The declarant of a hearsay statement admitted in evidence may be called and examined, as if under cross-examination concerning the statement, by a party adverse to the party who introduced the statement.

(2) Subsection (1) does not apply if the declarant is

(*a*) a witness who has testified in the action concerning the subject matter of the statement; or

(*b*) a party; or

(*c*) a person whose relationship to a party makes the interest of that person substantially the same as that of a party.

(3) Subsection (1) does not apply if the statement is hearsay evidence admissible only under section 119, 120, 121, or 127.

(4) Hearsay evidence that is otherwise admissible is not made inadmissible by this section because the declarant who made the statement is unavailable for examination under this section.

135. Discretionary exclusion if declarant available

In a criminal action tried by a jury, the Court may exclude evidence admissible only under sections 121, 123, 124, 128 and 130 if the circumstances in which the statement was made indicate that it is not reasonably trustworthy and the declarant is available as a witness.

PART NINE

Authentication and Identification

136. Authentication

(1) Where the relevancy of evidence depends upon its authenticity or identity, and the authentication or identification is required as a condition precedent to admission, that requirement is satisfied by evidence or any other showing which is sufficient to support a finding that the matter in question is what its proponent claims.

(2) Permissible means of authentication or identification include, but are not limited to, those provided in sections 137 to 161.

137. Authentication by admission

Authentication may be by evidence that the party against whom it is offered has at any time admitted its authenticity or identify or acted upon it as authentic.

138. Authentication by statute

Authentication or identification may be by any of the means provided by an enactment or the Rules of Court.

139. Authentication by testimony of witness with knowledge

Authentication or identification may be by testimony that a matter is what its proponent claims.

140. Authentication by non-expert opinion on handwriting

To authenticate or identify handwriting, a witness who is not an expert on handwriting may state an opinion whether the handwriting is that of the alleged writer if the Court is satisfied that the witness has personal knowledge of the handwriting of the alleged writer.

141. Authentication by comparison by Court or witness

Authentication or identification of a signature, handwriting, seal or finger impression may be by a comparison made by a witness or by the Court with a specimen which has been proved to the satisfaction of the Court to be genuine.

142. Voice identification

To identify a voice, whether heard directly or through mechanical or electronic transmission or recording, a witness who is not an expert on voice identification may state an opinion whether the voice is that of the alleged speaker if the Court is satisfied that the witness has at any time heard the voice in

circumstances connecting it with the alleged speaker.

143. Identification by telephone

A person may be identified by evidence that a telephone call was made to a number reputed to be that of the person in question, if

(*a*) the call was to a place of business and the conversation related to business reasonably transacted with that person over the telephone, or

(*b*) circumstances, including self-identification, show the person answering to be the one called.

144. Authentication by distinctive characteristics

Authentication or identification may be by evidence of distinctive characteristics, appearance, contents, substance or internal patterns.

145. Authentication by reply

Authentication or identification of a communication, whether written or otherwise, may be by evidence that the communication was received in response to a communication sent to the alleged author of the communication in question.

146. Ancient documents

Authentication or identification of a writing may be by evidence that the writing

(*a*) is in a condition which does not create a suspicion concerning its authenticity;

(*b*) was in a place where, if authentic, it might be expected to be; and

(*c*) is at least twenty years old at the time it is offered.

147. Authentication by process or system

Authentication or identification may be by evidence describing a process or system used to produce a result and showing that the result is accurate.

148. Authentication of public reports and records

Authentication or identification of a writing may be by evidence that

(*a*) the writing is a public record, report, statement or data compilation and is from an office of a public entity in Ghana; or

(*b*) the writing is one authorised by law to be recorded or filed and has in fact been recorded or filed in an office of a public entity in Ghana and is from an office of a public entity in Ghana where items of that nature are regularly kept.

149. Business records

(1) Authentication or identification of writings made or kept in the regular course of a business may be by the testimony of a representative of the business who is responsible for keeping the records or familiar with them even though the representative did not make the writing or see it made.

(2) For the purpose of subsection (1), **"business"** includes every type of regularly conducted activity,

business, profession, occupation, governmental activity, or operation of an institution, whether carried on for profit or not.

150. Attested writings

(1) An attested writing that is not required by law to be attested may be authenticated in the same manner as any other writing, and the testimony of an attesting witness is not required.

(2) An attested writing, other than a will or testamentary writing, that is required by law to be attested may be authenticated in the same manner in which it might be authenticated if an attesting witness is not alive.

151. Public publications

Books, pamphlets, gazettes or other publications purporting to be printed or published by a public entity are presumed to be authentic.

152. Law reports and treatises

Printed and published books of statutes or reports of the decisions of the Courts of a country, and books proved to be commonly admitted in those Courts as evidence of the law of that country are presumed to be authentic.

153. Maps and charts

The maps or charts made under the authority of a public entity, and not made for the purpose of a litigated question, are presumed to be authentic and correct.

154. The *Gazette*

The Proclamations, acts of State, whether legislative or executive, nominations, appointments, and other official communications appearing in the *Gazette* are prima facie evidence of a fact of a public nature which they are intended to notify

155. Reference books

A reference book, text or treatise which is produced for inspection by the Court if in the condition which does not create a suspicion concerning its authenticity is presumed to be written and published at the time and place it purports to have been.

156. Newspapers and periodicals

Printed materials purporting to be newspapers or periodicals are presumed to be authentic.

157. Signs and labels

Inscriptions, signs, tags or labels purporting to have been affixed in the course of business and indicating ownership, control or origin are presumed to be authentic.

158. Acknowledged writings

Writings accompanied by a certificate of acknowledgment bearing the signature and seal of a notary public in Ghana or other officer in Ghana authorised by law to take acknowledgments are presumed to be

authentic.

159. Seals

A seal is presumed to be genuine and its use authorised if it purports to be the seal of

(*a*) Ghana, or of a Ministry, Department, officer or agency of Ghana;

(*b*) a public entity in Ghana or a Department, officer or agency of a public entity;

(*c*) a State recognised by Ghana or a Ministry, Department officer or agency of that State;

(*d*) a public entity in a State recognised by Ghana or a Department, officer or agency of that public entity;

(*e*) a Court in Ghana or a Court in a State recognised by Ghana;

(*f*) an international public entity or a department, officer or agency of that public entity;

(*g*) a notary public or a commissioner for oaths in Ghana.

160. Domestic official signatures

A signature is presumed to be genuine and authorised if it purports to be the signature, affixed in the official capacity, of

(*a*) a public officer of Ghana;

(*b*) a public officer of a public entity in Ghana;

(*c*) a notary public or a commissioner for oaths in Ghana.

161. Foreign official signatures

(1) A signature is presumed to be genuine and authorised if it purports to be the signature, affixed in an official capacity, of an official of an international public entity or a State or a public entity in a State recognised by Ghana and the writing to which the signature is affixed is accompanied by a certification of the genuineness of the signature and official position of the person who executed the writing.

(2) The certification must be signed and sealed by a diplomatic agent of Ghana or of a Commonwealth country who is assigned or accredited to that country.

(3) If reasonable opportunity is given to the parties to investigate the authenticity of a foreign official signature, the Court may, for good cause shown, order that it be treated as presumptively authentic without a certification.

162. Copies of writings in official custody

A copy of a writing is presumed to be genuine if it purports to be a copy of a writing which is authorised by law to be recorded or filed, and has in fact been recorded or filed in an office of a public entity or which is a public record, report statement or data compilation if

(*a*) an original or an original record is in an office of a public entity where items of that nature are regularly kept, and

(*b*) the copy is certified to be correct by the custodian or other person authorised to make the certification where the certification must be authenticated.

PART TEN

Writings

163. Original writings

(1) An original of a writing is the writing itself or a copy intended to have the same effect by the person executing or issuing it.

(2) An original of a writing which is a photograph includes the photographic film, a positive, negative or photographic plate of the film or a print made from the photographic film.

(3) Where information contained in a writing is stored in a manner not readable by sight, as in a computer or a magnetic tape, a transcription readable by sight and proved to the satisfaction of the Court to accurately reflect the stored information is an original of that writing.

164. Duplicates

A duplicate of a writing is

(*a*) a copy produced by a technique which ensures an accurate reproduction of the original;

(*b*) a copy produced by the same impression, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording or by chemical reproduction, but does not include a copy reproduced after the original by manual handwriting or typing.

165. Evidence of content of a writing

Except as otherwise provided by this Act or any other enactment evidence other than an original writing is not admissible to prove the content of a writing.

166. Duplicate treated as original

A duplicate of a writing is admissible to the same extent as an original of that writing, unless

(*a*) a genuine question is raised as to the authenticity of the original or the duplicate, or

(*b*) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

167. Original lost

Evidence other than an original writing is admissible to the same extent as an original to prove the content of a writing if the originals are lost or have been destroyed, unless the loss or destruction resulted from the fraudulent act of the proponent of the evidence.

168. Originals unavailable by judicial means

Evidence other than an original writing is admissible to the same extent as an original to prove the content of a writing, if the original can not be obtained by an available judicial procedure, or if the persons having control of an original after receiving judicial process compelling production do not produce it.

169. Original under control of an opponent

(1) Evidence other than an original writing is admissible to the same extent as an original to prove the content of a writing, if at a time when an original was under the control of the opponent of the evidence, the opponent was given express or implied notice by the pleadings or otherwise, that the content of the writing would be a subject of proof at the hearing, and on request at the hearing the opponent does not produce it.

(2) Though a writing requested by one party is produced by another and is inspected by the party calling for it, the party calling for the writing is not obliged to introduce it as evidence in the action.

170. Collateral writings

Evidence other than an original writing is admissible to the same extent as an original to prove the content of a writing if the content of the writing is not closely related to a controlling issue in the action.

171. Voluminous writings

(1) Evidence other than an original writing is admissible to the same extent as an original to prove the content of a writing if the originals consist of numerous accounts of other writings which cannot conveniently be examined in Court and the fact to be proved is the general result of the whole.

(2) The Court may require that the accounts or other writings be produced in Court or be produced for inspection or copying by an adverse party.

172. Immovable writings

Evidence other than an original writing is admissible to the same extent as an original to prove the content of a writing if the original is of a nature that it can not be easily moved.

173. Admitted writings

Evidence other than an original of a writing is admissible to the same extent as an original to prove the content of a writing if the contents of the writing have been admitted by the opponent of the evidence in writing or by testimony in the action.

174. Copy treated as original

A copy of a writing is admissible to the same extent as an original to prove the content of a writing if an original and the copy have been produced at or before the hearing and made available for inspection and comparison by the Court and the adverse parties.

175. Copies of official writings

(1) A copy of a writing which is authorised by law to be filed or recorded and has in fact been filed or recorded in an office of a public entity or which is a public record, report, statement or data compilation is admissible to the same extent as an original to prove the content of the writing if

(*a*) an original or an original record is in an office of a public entity where items of that nature are regularly kept; and

(*b*) the copy is certified to be correct by the custodian or other person authorised to make the certification, and that certificate is authenticated or the copy is testified to be a correct copy

by a witness who has compared it with an original.

(2) Where a copy which complies with subsection (1) cannot be obtained by the exercise of reasonable diligence, other evidence of the content of the writing is admissible to the same extent as an original.

176. Bankers books

(1) A copy of a record made in the ordinary course of business by a bank is admissible to the same extent as an original to prove the content of the writing if the copy is testified to be a correct copy by a witness who has compared it with an original.

(2) Evidence that the record was made in the regular course of business or that the copy is a correct copy may be given by oral testimony or affidavit by a representative of the bank.

(3) A representative of a bank in an action to which the bank is not a party shall not be compelled to produce the original records of the bank or to appear as a witness concerning them unless the Court finds that fairness requires that compulsion.

(4) The Court may, on application, order a bank to allow a party to inspect or copy any records of the bank which concern the action, provided that reasonable advance notice is given to the bank.

(5) For the purposes of this section, a bank is a business registered in Ghana as a bank.

177. Extrinsic evidence affecting the contents of a writing

(1) Except as otherwise provided by the rules of equity, terms set forth in a writing intended by the party or parties to the writing as a final expression of intention or agreement with respect to those terms may not be contradicted by evidence of a prior declaration of intention, of a prior agreement or of a contemporaneous oral agreement or declaration of intention, but may be explained or supplemented,

(*a*) by evidence of consistent additional terms unless the Court finds the writing to have been intended also as a complete and exclusive statement of the terms of the intention or agreement, but a will and a registered writing conveying immovable property shall be deemed to be a complete and exclusive statement of the terms of the intention of agreement; and

(*b*) by a course of dealing or usage of trade or by course of performance.

(2) Subsection (1) does not preclude the admission of evidence relevant to the interpretation of terms in a writing.

(3) For the purposes of subsection (1),

(*a*) **"a course of dealing"** means a sequence of previous conduct between parties to a particular transaction which can fairly be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct;

(*b*) **"a usage of trade"** means a practice or method of dealing in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question;

(*c*) **"course of performance"** means, in respect only of a contract which involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, a manner of performance accepted or acquiesced in without objection.

PART ELEVEN

Miscellaneous

178. Application

(1) This Act applies in an action, whether civil or criminal, and to privileges as provided in section 87.

(2) In applying this Act, and in particular in determining whether and to what extent to exercise its power under section 8, the Court shall have special regard to the fair application of this Act in respect of a party not represented by a lawyer.

(3) A rule of law which provides that acts in derogation of the common law shall be narrowly construed does not apply to this Act.

(4) This Act shall be interpreted and applied so as to achieve a consistent law of evidence and the most just, expeditious and least costly administration of the law.

179. Interpretation

(1) In this Act, unless the context otherwise requires,

"action" includes a suit, proceeding or any other matter conducted before a Court;

"an incompetent" is a person under a disability imposed by law;

"burden of persuasion" has the meaning assigned to it in section 10 (1);

"burden of producing evidence" has the meaning assigned to it in section 11 (1);

"character" means a person's generalised disposition made up of the aggregate of the traits, including traits of honesty, peacefulness, temperance, skill or care of that person and their opposites;

"committee" means a person, committee or other representative authorised by law to protect the person or property or both of an incompetent, and to act for the incompetent in matters affecting the person or property or both of the incompetent;

"conduct" includes active and passive behaviour, both verbal and non-verbal;

"Court" includes the Superior Court of Judicature and the other court which constitute the Judiciary;

"crime" has the meaning assigned to it in section 1 of the Criminal Code, 1960 (Act 29);

"enactment" means an enactment including this Act;

"essential facts" are facts which must be established to make out a cause of action or defence as determined by substantive law;

"evidence" means testimony, writings, material objects, or any other things presented to the senses that are offered to prove the existence or non-existence of a fact:

"Justice" includes a Justice of a superior court of record, a chairman of a Regional Tribunal, a member or members of a Court conducting a trial and a Magistrate;

"law" includes constitutional, statutory, decisional law and the common law within the meaning of article 11 of the Constitution;

"perceive" means to acquire knowledge through one's own senses;

"proof" means the establishment by evidence of a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court;

"public entity" includes a State, a political sub-division of a State, an organisation or association of States and a public authority or an agency of the public authority;

"public officer" means an officer, agent, employee or other representative of a public entity acting in the course of duty as officer, agent, employee or representative of the public entity;

"relevant evidence" means evidence including evidence relevant to the credibility of a witness or hearsay declarant, which makes the existence of a fact which is of consequence to the determination of the action more or less probable than it would be without the evidence;

"routing practice" means a regular response to a repeated specific situation;

"tribunal of fact" includes a trier of fact and

(*a*) the jury, and

(*b*) the Court when the Court is trying an issue of fact other than one relating to the admissibility of evidence;

"writing" includes handwriting, typewriting, printing, photostating, photographing, mechanical or electronic recording, and any other means of recording upon a tangible thing, a form of communication or representation, including letters, words, pictures, sounds or symbols, or combinations of those things.

(2) In this Act, unless the context otherwise requires,

"cross-examination" means the examination of a witness other than by the party who called the witness;

"examination by leave of the Court" means a further examination which the Court allows;

"examination-in-chief" means the first examination of a witness by the party who called the witness;

"re-examination" means the examination of a witness by the party who called the witness after the witness has been cross-examined.

180. Repeal and amendments

Spent.3(3)

181. Commencement

Spent.4(4)

Schedule

ENGLISH STATUTES CEASING TO APPLY

[Section 180 (1)]

Witnesses Act, 1806 (46 Geo. 3, c. 37);

Evidence Act, 1851 (14 and 15 Vict., c. 99);

Evidence Amendment Act, 1853 (16 and 17 Vict., c. 83);

Common Law Procedure Act, 1854 (17 and 18 Vict., c. 125);

Evidence Further Amendment Act, 1869 (32 and 33 Vict., c. 68).

EVIDENCE ACT, 1975 5(5)
MEMORANDUM

1. The Evidence Act has been prepared as part of the programme of law reform, and follows the detailed recommendations of the Law Reform Commission. The law of evidence is at present in a highly unsatisfactory state, being derived in large measure from old English common law which is excessively complex, difficult to ascertain, sometimes based on uncertain principles, and often unsuitable for application in Ghanaian circumstances. Furthermore, the recent improvements made by Statute law in the English rules of evidence have never applied in Ghana. It has therefore become a matter of urgent necessity for the rules of evidence applied in Ghana to be rationalised, simplified and presented in a coherent, accessible form. The Act replaces the common law and most of the Statute law relating to evidence, and provides a comprehensive set of rules which will greatly assist in the administration of justice. This Memorandum summarises in general terms some of the important reforms made by the Act, and the Law Reform Commission intends to publish a detailed analysis and explanation of the provisions of the Act in due course. In accordance with section 19 of the Interpretation Act, 1960, such a commentary, when published, may be used as an aid to the construction of the Act.

2. The Act first states a number of general rules of evidence, including those relating to questions of law and fact and preliminary facts. Section 5 provides that where evidence has been omitted or excluded in error, the decision of the trial court will not generally be upset unless the error has resulted in a substantial miscarriage of justice. This is to eliminate frivolous appeals and relieve against retrials for inconsequential errors. Section 6 provides that objections to the admissibility of evidence must be made at the time the evidence is offered and that the court must record and rule on such objections. This is designed to reduce subsequent doubts and disputes and to provide a complete record of objections. Sections 5 and 6 make clear that inadmissible evidence must usually be objected to at the trial. Otherwise objection will not be tolerated on appeal.

3. Section 7 defines corroboration, and further states that evidence may in proper circumstances be corroborated by other independent evidence that requires corroboration. This settles the question concerning the use of suspect evidence.

4. Section 8 codifies the Court's discretionary power to exclude evidence in certain circumstances. Section 9 deals with the scope and limitations of judicial notice.

5. Part Two of the Act refers to what has commonly been called the "burden of proof" although this ambiguous expression is avoided as a technical expression in the Act. Instead, sections 10 and 11 provide convenient terminology for distinguishing between the risk of non-production of evidence and the risk of non-persuasion.

6. The provisions relating to presumptions (Part Three) are designed to simplify a rather confused area of the law. The Act distinguishes presumptions (defined as a mandatory connection between basic and assumed facts) from mere inferences (permissible but not mandatory connections between basic and assumed facts). Other devices which in the past have been called presumptions are treated separately. For

instance, section 15 deals with various rules allocating the burden of persuasion which have sometimes been spoken of as presumptions on the pleadings. These rules, however, are no longer called presumptions.

7. Section 21 (dealing with procedure in applying rebuttable presumptions in a trial requiring proof by a preponderance of probabilities) appears complicated at first glance. The tests of sufficiency and certainty of belief follow those laid down in sections 10 to 12. It is also helpful to bear in mind that the subdivisions of (*b*) and (*c*) into (i), (ii) and (iii) separate situations in which in a jury trial, the Court would be entitled to direct a jury to find a fact (i) and (ii) from those in which the Court must leave the find of fact to the jury (iii). In other words, (iii) deals with the case where there is a genuine dispute as to the existence of the basic facts or the presumed facts.

8. Section 21 (*b*) deals with the situation where no evidence is introduced contrary to the existence of the presumption and the only controversy is as to the existence of the basic facts that give rise to the presumption. In this situation, if the basic facts are found to exist, the presumed fact must be found.

9. Section 21 (*c*) deals with the situation where the basic facts are established and the only controversy is as to whether the evidence introduced by the opponent to rebut the presumption is sufficient to do so.

10. Section 21 (*d*) deals with the doubly indeterminate case where there is a genuine issue both as to whether the presumption applies (are the basic facts made out?) and if so, whether the presumption has been rebutted (is the non-existence of the presumed fact more probable than not?).

11. The provisions relating to relevancy (Part Four) limit its meaning to the existence of a logical connection, based on human understanding and experience between the evidence offered and the fact to be proved – section 51 (1) Matters of remoteness, redundancy prejudice, confusion, surprise, waste of time and other matters of policy are dealt with separately as matters which at times indicate that evidence, even though relevant, ought to be excluded.

12. One such relevant matter which is often excluded for policy reasons is character evidence. To simplify analysis, the Act separates the issue of the use of disposition may be proved.

13. Part Five of the Act deals with witness. Section 58 abolishes all pre-existing common law disqualifications for witnesses and provides that, subject to the exceptions provided in the Act, every person is competent to be a witness and no person is disqualified from testifying to any matter. Section 59 identifies the circumstances in which a person is not qualified to be witness. The remaining provisions of that Part deal with requirements for testifying the examination of witnesses, the exclusion of witnesses, credibility and related matters.

14. Part Six reforms the law relating to privileges. Section 87 applies the provisions of the Act relating to privileges to all “proceedings” defined in the section to cover a wide range of activities (including administrative, executive and legislative activities) before a government body. Thus these provisions are not restricted to proceedings before a Court.

15. Section 88 abolishes all existing common law privileges. The only privileges which will now be recognised are those specified in the Act or in any other enactment. The Act accordingly re-enacts in statutory language many of the pre-existing privileges, but some (such as the privilege to refuse to produce documents of title) are not retained. A person will now be both a competent and a compellable witness for or against his spouse (although confidential marital communications are privileged from disclosure by section 110 of the Act). Several new privileges are also created (see, for example, section 103 relating to mental treatment, section 104 relating to religious advice and section 105 relating to

compromise).

16. Section 92 allows a Court to require disclosure in matters relating to State secrets, informants and trade secrets for the purpose of evaluating a claim of privilege in respect of any such matters.

17. Section 102 clarifies the law on the subject of privilege for information obtained or work done by a lawyer in the course of rendering legal services for his client, particularly in cases where the information or work is not communicated to the client or derived from private, confidential communications.

18. Section 103 creates a new patient-physician privilege in relation to mental treatment. It is limited to communications made for the purpose of diagnosis or treatment of a mental or emotional condition.

19. Section 117 makes clear that parties can agree to the admission of otherwise inadmissible hearsay evidence.

20. Section 118 involves a radical reform of the law of hearsay evidence, which has previously been one of the most complex and confused areas of the law of evidence. First hand hearsay evidence is now made admissible subject to the conditions set out in the section.

21. Section 178 contains a number of general provisions relating to the application of the Act. Subsection (2) directs the Court to have special regard to the fair application of the Act in respect of a party not represented by lawyer. Subsection (3) ensures that the common law doctrines replaced by the Act do not restrict its interpretation. Subsection (4) directs the Court to construe the Act as a consistent body of law, taking from it as a whole the policy which is to guide the construction of any one section. Where there is no overall policy guidance to be found in the Act as a whole the Courts are directed to resolve doubts not by reference to the old common law or to foreign law but so as to achieve a consistent law of evidence and the most just, expeditious and least costly administration of the law.

22. Section 181 provides that the Act will not come into force until 1st January, 1976. This is intended to give the Courts and the legal profession a reasonable time to become acquainted with the provisions of the Act, and also to enable any comments and suggested modifications of its provisions to be considered before it comes into operation.

Endnotes

1 (Popup - Footnote)

1. This Act was issued as the Evidence Decree, 1975 (N.R.C.D. 323) made on the 18th day of April, 1975, notified in the *Gazette* on 22nd April, 1975, and came into force on the 1st day of October, 1979 by virtue of section 2 of the Evidence and Commercial Procedure (Amendment) Decree, 1979 (S.M.C.D. 237) made on the 9th day of May, 1979, and notified in the *Gazette* on 28th May, 1979.

2 (Popup - Footnote)

2. Amended by the Evidence and Criminal Procedure (Amendment) Decree, 1979 (S.M.C.D. 237) by the deletion of the words "(other than a police officer or member of the Armed Forces) approved by the accused" - and revised.

3 (Popup - Footnote)

3. The provision reads:

"(1) The English statutes specified in the Schedule to this Decree shall cease to apply in Ghana.

(2) The Supreme Court (Civil Procedure) Rules, 1954 (L.N. 140A) are hereby amended—

(*a*) by the revocation of rules 1, 4, 21, 28, and 50 to 84 of Order 37,

(*b*) by the revocation of Order 37A."

4 (Popup - Footnote)

4. The provision reads:

"(1) This Decree shall come into force on the first day of January 1976 and shall apply to all trials commenced thereafter.

(2) For the purposes of this section—

(*a*) a trial commences when the first evidence is admitted; and

(*b*) a re-trial is a new and separate trial.

(3) If an appeal is taken from a trial which commenced before the first day of January, 1976 the Appellate Court shall apply the law applicable at the commencement of the trial."

5 (Popup - Footnote)

5. N.R.C.D. 323, made on the 18th day of April, 1975 and notified in the Gazette on 22nd April, 1975.