

# ORDER IN COUNCIL

**X  
2010**

ratifying a Projet de Loi

ENTITLED

## **The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009**

(Registered on the Records of the Island of Guernsey  
on the 5th August, 2010.)



2010

## ORDER IN COUNCIL



### IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

5<sup>th</sup> day of August, 2010 before Sir Geoffrey Rowland, Bailiff; present:- Stephen Edward Francis Le Poidevin, David Osmond Le Conte, John Ferguson, Stephen Murray Jones, Peter Sean Trueman Girard, Niall David McCathie, Esquires, and Margaret Ann Spaargaren, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 21<sup>st</sup> July, 2010, approving and ratifying a Projet de Loi entitled “The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009”, THE COURT, after the reading of the said Order in Council and after having heard Crown Advocate Robert Titterington, Contrôle Délégué thereon, ORDERED: -

1. That the said Order in Council be registered on the records of this Island;  
and
2. That an extract of this present Act, together with a copy of the said Order in Council be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney for registration on the records of that Island.



*At the Court at Buckingham Palace*

THE 21st DAY OF JULY 2010

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolutions of 24th February 2000, 31st May 2006 and 25th February 2009, the States of Deliberation at a meeting on 25th February 2009 approved a *Projet de Loi* entitled *The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009* and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 22nd June 2009 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Alderney. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction *The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009*, and to order that it shall have force of law in the Islands of Guernsey and Alderney.

"The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it".

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey and Alderney and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

*Judith Simpson*

# PROJET DE LOI

ENTITLED

## **The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009**

### ARRANGEMENT OF SECTIONS

#### *Admissibility of hearsay evidence*

1. Admissibility of hearsay evidence.

#### *Safeguards in relation to hearsay evidence*

2. Notice of proposal to adduce hearsay evidence.
3. Power to call witness for cross-examination on hearsay statement.
4. Considerations relevant to weighing of hearsay evidence.

#### *Supplementary provisions as to hearsay evidence*

5. Competence and credibility.
6. Previous statements of witnesses.
7. Evidence formerly admissible at common law.

#### *Privilege*

8. Privilege against incrimination.
9. Abolition of certain privileges.
10. Consequential amendments relating to privilege.

#### *Convictions, etc., as evidence in civil proceedings*

11. Convictions as evidence in civil proceedings.
12. Findings of adultery and paternity as evidence in civil proceedings.
13. Conclusiveness of convictions for purposes of defamation actions.

#### *Other Matters*

14. Proof of statements contained in documents.
15. Proof of records of business or public authority.
16. Admissibility and proof of Ogden Tables.
17. Provisions as to rules of court.
18. Rules of court with respect to expert reports and oral expert evidence.
19. Admissibility of expert evidence.
20. Evidence of foreign law.

*General*

21. Interpretation.
22. Savings and amendments to 1865 Law.
23. Power to make Ordinances on evidence etc.
24. Additional provision as to Ordinances.
25. Transitional provisions.
26. Citation.
27. Commencement.

## **The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009**

**THE STATES**, in pursuance of their Resolutions of the 24<sup>th</sup> February, 2000<sup>a</sup>, the 31<sup>st</sup> May 2006<sup>b</sup> and the 25<sup>th</sup> February 2009<sup>c</sup>, have approved the following provisions, which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey and Alderney.

### *Admissibility of hearsay evidence*

#### **Admissibility of hearsay evidence.**

**1.** (1) In civil proceedings, evidence shall not be excluded on the ground that it is hearsay.

(2) In this Law -

- (a) "**hearsay**" means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated, and
- (b) references to hearsay include hearsay of whatever degree.

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<sup>a</sup> Article V of Billet d'État No. VI of 2000.

<sup>b</sup> Article X of Billet d'État No. X of 2006.

<sup>c</sup> Article I of Billet d'État No. VII of 2009.

(3) Nothing in this Law affects the admissibility of evidence which is admissible by virtue of other enactments or under customary law.

(4) The provisions of sections 2 to 6 do not apply in relation to hearsay evidence admissible apart from this section, notwithstanding that it may also be admissible by virtue of this section.

*Safeguards in relation to hearsay evidence*

**Notice of proposal to adduce hearsay evidence.**

2. (1) A party proposing to adduce hearsay evidence in civil proceedings shall, subject to the following subsections, give to the other party or parties to the proceedings -

- (a) notice of that fact, and
- (b) at their request, such particulars of or relating to the evidence,

as is reasonable and practicable in the circumstances for the purpose of enabling the parties to deal with any matters arising from its being hearsay.

(2) Rules of court may make provisions -

- (a) specifying classes of proceedings or evidence in relation to which subsection (1) does not apply, and
- (b) as to the manner in which (including the time within which) the duties imposed by subsection (1) are to be complied with in the cases where it does apply.

(3) Subsection (1) may be excluded by agreement of the parties, and the requirement to give notice may, in any case, be waived by the person to whom notice is required to be given.

(4) At any stage in the proceedings, the court may relieve a party from the requirements of subsection (1) if it considers it necessary or desirable to do so.

(5) Failure to comply with subsection (1), or with rules made under subsection (2)(b), does not affect the admissibility of the evidence but may be taken into account by the court -

- (a) in considering the exercise of its powers with respect to the course of proceedings and costs, and
- (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 4.

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

3. Rules of court may provide that where a party to civil proceedings adduces hearsay evidence of a statement made by a person and does not call that person as a witness, any other party to the proceedings may, with the leave of the court, call that person as a witness and cross-examine him on the statement as if -

- (a) he had been called by the first-mentioned party, and
- (b) the hearsay statement were his evidence in chief.



**Considerations relevant to weighing of hearsay evidence.**

4. (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings, the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following -

- (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness,
- (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated,
- (c) whether the evidence involves multiple hearsay,
- (d) whether any person involved had any motive to conceal or misrepresent matters,
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose,
- (f) whether the circumstances in which the evidence is adduced as hearsay suggest an attempt to prevent proper evaluation of its weight, and

- (g) any other circumstances which the court may, in the interests of justice, consider relevant.

*Supplementary provisions as to hearsay evidence*

**Competence and credibility.**

5. (1) Hearsay evidence shall not be admitted in civil proceedings if it is shown to consist of, or to be proved by means of, a statement made by a person who, when making the statement was not competent as a witness.

(2) For the purpose of subsection (1) "not competent as a witness" means suffering from such mental or physical infirmity, or lack of understanding, as would render a person incompetent as a witness in civil proceedings; but a child shall be treated as competent as a witness if he satisfies the requirement of sections 5(1)(a) and (b) of the Administration of Justice (Bailiwick of Guernsey) Law, 1991.<sup>d</sup>

(3) Where in civil proceedings hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness -

- (a) evidence which if he had been so called would be admissible for the purpose of attacking or supporting his credibility as a witness, is admissible for that purpose in the proceedings, and
- (b) evidence which tends to prove that, whether before or after he made the statement, he made any other

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<sup>d</sup> Order in Council No. I of 1991.

statement inconsistent with it, is admissible for the purpose of showing that he had contradicted himself,

Provided that evidence may not be given of any matter of which, if he had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

**Previous statements of witnesses.**

6. (1) The provisions of this Law as to hearsay evidence in civil proceedings also apply (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings, subject to the following provisions.

(2) A party who has called or intends to call a person as a witness in civil proceedings may only adduce evidence of a previous statement made by that person -

- (a) with the leave of the court, or
- (b) for the purpose of rebutting a suggestion that his evidence has been fabricated.

(3) Subsection (2) does not prevent a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead) from being adopted by a witness in giving evidence or treated as his evidence.

(4) Where, in any civil proceedings, Article 28 of the 1865 Law applies (*Déclarations faites hors de cour par témoin*), this Law does not authorise the adducing of evidence of a previous inconsistent or contradictory statement

except in accordance with that Article, or otherwise as the court may determine in the interests of justice.

This provision is without prejudice to any provision made by rules of court under section 3 (power to call witnesses for cross examination on hearsay statement).

(5) Nothing in this Law affects any rule of law as to the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in the proceedings.

(6) Nothing in this section prevents a statement of any description referred to above from being admissible by virtue of section 1 (admissibility of hearsay evidence) as evidence of the matters stated.

**Evidence formerly admissible at customary law.**

7. (1) In any civil proceedings a statement which, if this Law had not been passed, would by virtue of any rule of law mentioned in subsection (2) have been admissible as evidence of any fact stated therein, shall be admissible as evidence of that fact.

(2) The rules of law referred to in subsection (1) are those where in any civil proceedings -

- (a) an admission adverse to a party to the proceedings, whether made by that party or by another person, may be given in evidence against that party for the purpose of proving any fact stated in the admission,

- (b) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated therein,
- (c) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated therein, or
- (d) records (for example, the records of certain courts, Orders in Council, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated therein.

(3) In any civil proceedings, a statement which tends to establish reputation or family tradition with respect to any matter and which, if this Law had not been passed, would have been admissible in evidence by virtue of any rule of law mentioned in subsection (4) -

- (a) is admissible in evidence in so far as it is not capable of being rendered admissible under section 2 (notice of proposal to adduce hearsay evidence) or 4 (considerations relevant to weighing of hearsay evidence) of this Law, and
- (b) if given in evidence (whether by virtue of paragraph (a) or otherwise) shall be admissible as evidence of the matter reputed or handed down,

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

(4) The rules of law referred to in subsection (3) are those where in any civil proceedings -

(a) evidence of a person's reputation is admissible for the purpose of establishing his good or bad character,

(b) evidence of reputation or family tradition is admissible for the purpose of -

(i) proving or disproving pedigree or the existence of the marriage, or

(ii) proving or disproving the existence of any public or general right or identifying any person or thing.

### *Privilege*

#### **Privilege against incrimination of self or spouse.**

8. (1) The right of a person in any legal proceedings, other than criminal proceedings, to refuse to answer any question or produce any document or thing if to do so might expose that person to proceedings for an offence or for the recovery of a penalty -

- (a) shall apply only as regards criminal offences under the law of Guernsey or the law of Alderney and penalties provided for by such laws, and
- (b) shall include a like right to refuse to answer any question or produce any document or thing, if to do so would tend to expose the husband or wife of that person to proceedings for any such criminal offence or for the recovery of any such penalty.

(2) In so far as any enactment conferring powers of inspection or investigation confers on a person any right otherwise than in criminal proceedings to refuse to answer any question or give any evidence tending to incriminate that person, subsection (1) shall apply to that right; and every such enactment shall be construed accordingly.

(3) In so far as any existing enactment provides that in any proceedings other than criminal proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate that person, that enactment shall be construed as providing also that in such proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate the husband or wife of that person.

(4) Where any existing enactment that -

- (a) confers any powers of inspection or investigation,
- (b) provides as mentioned in subsection (3), or

further provides that any answer or evidence given by a person shall not be admissible in evidence against that person in any proceedings or class of proceedings (whether criminal or not), that enactment shall be construed as providing also that any answer or evidence given by that person shall not be admissible in evidence against the husband or wife of that person in the proceedings or class of proceedings in question.

(5) In this section "**existing enactment**" means enactments passed before this Law.

**Abolition of certain privileges.**

9. The following rules of law are hereby abrogated -

- (a) the rule whereby, in any legal proceedings, a person cannot be compelled to answer any question or produce any document or thing if to do so would tend to expose him to a forfeiture,
- (b) the rule whereby, in any civil proceedings, a party to the proceedings cannot be compelled to produce any document relating solely to his own case and in no way tending to impeach that case or support the case of any opposing party,

but the rule in paragraph (a) shall not be abrogated in relation to criminal proceedings.



**Consequential amendments relating to privilege.**

10. (1) Section 1(3) of the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949<sup>e</sup> (which confers powers with respect to the taking of evidence before certain tribunals of enquiry and provides that a witness before any such tribunal shall be entitled to the same privileges and immunities as if he were a witness before the Royal Court), shall have effect as if after the word "witness" in the second place where it occurs, there were inserted the words "in civil proceedings" and, so far as it applies to Guernsey, any other existing enactment, which in relation to any tribunal, investigation or inquiry confers on persons required to answer questions or give evidence any privilege described by reference to the privileges of witnesses in proceedings before any court shall, unless the contrary intention appears, be construed as referring to the privileges of witnesses in civil proceedings before that court.

(2) Section 8(5) applies for the purposes of this section as it applies for the purposes of section 8.

*Convictions, etc., as evidence in civil proceedings*

**Convictions as evidence in civil proceedings.**

11. (1) In any civil proceedings, the fact that a person has been convicted of an offence by or before any court in Guernsey or Alderney or by a court martial there or elsewhere shall, (subject to subsection (3)) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence -

- (a) whether he was so convicted upon a plea of guilty or otherwise, and

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<sup>e</sup> Ordres en Conseil Vols. XIV, p. 45 and XXIV, p. 185.

- (b) whether or not he is a party to the civil proceedings;

but no conviction other than a subsisting one shall be admissible in evidence under this section.

(2) In any civil proceedings in which, under this section, a person is proved to have been convicted of an offence by or before any court in Guernsey or Alderney or by a court martial there or elsewhere -

- (a) he shall be taken to have committed that offence unless the contrary is proved, and
- (b) without prejudice to any other admissible evidence received for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the indictment or charge on which the person is question was convicted, shall be admissible in evidence for that purpose.

(3) Nothing in this section prejudices the operation of section 13 of this Law or any other enactment where a conviction or a finding of fact in any criminal proceedings is, for the purposes of any other proceedings, made conclusive evidence of any fact.

(4) Where in any civil proceedings the contents of any document are admissible in evidence under subsection (2), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document, shall be admissible

in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

(5) In this section "**court martial**" means a court martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval Discipline Act 1957 and in relation to a court martial "**conviction**", means a finding of guilty which is, or falls to be treated as, the finding of the court and "**convicted**" shall be construed accordingly.

**Findings of adultery and paternity as evidence in civil proceedings.**

**12.** (1) In any civil proceedings -

- (a) the fact that a person has been found to have committed adultery in any matrimonial proceedings, and
- (b) the fact that a person has been found to be the father of a child in relevant proceedings before any court in Guernsey or Alderney or elsewhere or has been adjudged to be the father of a child in affiliation proceedings before any court in Guernsey or Alderney or elsewhere,

shall (subject to subsection (3)) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those civil proceedings, that he -

- (i) committed the adultery to which the findings relates or,

- (ii) as the case may be, is (or was) the father of that child,

whether or not he offered any defence to the allegation of adultery or paternity and whether or not he is a party to the civil proceedings.

No finding or adjudication other than a subsisting one shall be admissible in evidence under this section.

(2) In any civil proceedings in which, under this section, a person is proved to have been found guilty of adultery as mentioned in subsection (1)(a), or to have been found or adjudged to be the father of a child as mentioned in subsection (1)(b) -

- (a) he shall be deemed to have committed the adultery to which the finding relates, or as the case may be, to be (or have been) the father of that child, unless the contrary is proved, and
- (b) without prejudice to any other admissible evidence received for the purpose of identifying the facts on which the finding or adjudication was based, the contents of any document which was before the court, or which contains any pronouncement of the court, in the other proceedings in question shall be admissible in evidence for that purpose.

(3) Nothing in this section prejudices the operation of any enactment where a finding of fact in any matrimonial or affiliation proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(4) Section 11(4) of this Law shall apply for the purposes of this section as if the reference to subsection (2) were a reference to subsection (2) of this section.

(5) In this section -

**"affiliation proceedings"** means any action of affiliation,

**"relevant proceedings"** means any proceedings where the issue of paternity is being determined, and

**"matrimonial proceedings"** means matrimonial proceedings in the Royal Court or any division thereof or in the Magistrate's Court, of Guernsey, or in the Court of Alderney, or any appeal arising out of any such proceedings.

**Conclusiveness of convictions for purposes of defamation actions.**

13. (1) In an action for libel or slander in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in that action, proof that, at the time when that issue falls to be determined, he stands convicted of that offence shall be conclusive evidence that he committed that offence; and his conviction shall thus be admissible in evidence.

(2) In any action under subsection (1) where a person is proved to have been convicted of an offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the indictment or charge on which that person was convicted, shall, without prejudice to any other admissible evidence received for the purpose of identifying the facts on which the

conviction was based, be admissible in evidence for the purpose of identifying those facts.

(3) For the purposes of this section a person shall be taken to stand convicted of an offence if, but only if, there subsists against him a conviction of that offence by or before a court in Guernsey or Alderney or by a court martial there or elsewhere.

(4) Sections 11(4) and (5) shall apply for the purposes of this section as they apply for the purposes of section 11, but as if in section 11(4) the reference to subsection (2) were a reference to subsection (2) of this section.

(5) The provisions of this section shall apply for the purposes of any action begun after the passing of this Law, whenever the cause of action arose, but shall not apply for the purposes of any action begun before this Law comes into force or any appeal or other proceedings arising out of any such action.

#### *Other matters*

#### **Proof of statements contained in documents.**

14. (1) Where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved -

- (a) by the production of that document, or
- (b) whether or not that document is still in existence, by the production of a copy of that document or of the material part of it,

authenticated in such manner as the court may approve.

(2) It is immaterial for this purpose how many removes there are between a copy and the original.

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

**15.** (1) A document which is shown to form part of the records of a business or public authority may be received in evidence in civil proceedings without further proof.

(2) A document shall be taken to form part of the records of a business or public authority if there is produced to the court a certificate to that effect signed by an officer of the business or authority to which the records belong.

(3) For this purpose -

(a) a document purporting to be a certificate signed by an officer of a business or public authority shall be deemed to have been duly given by such an officer and signed by him, and

(b) a certificate shall be treated as signed by a person if it purports to bear a facsimile of his signature.

(4) The absence of an entry in the records of a business or public authority may be proved in civil proceedings by affidavit of an officer of the business or authority to which the records belong.

(5) In this section -

**"records"** means records in whatever form,

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

"**officer**" includes any person occupying a responsible position in relation to the relevant activities of the business or public authority or in relation to its records, and

"**public authority**" includes any public or statutory undertaking, any department of the States, and any person holding office under Her Majesty.

(6) The court may, having regard to the circumstances of the case direct that all or any of the provisions of this section do not apply in relation to a particular document or record, or description of documents or records.

**Admissibility and proof of Ogden Tables.**

**16.** (1) The actuarial tables (together with explanatory notes) for use in personal injury and fatal accident cases issued from time to time by the UK Government Actuary's Department are admissible in evidence for the purpose of assessing, in an action for personal injury, the sum to be awarded as general damages for future pecuniary loss.

(2) They may be proved by the production of a copy published by, or under the authority of, Her Majesty's Stationery Office, or in such other manner as the court may consider to be just and convenient.

(3) For the purposes of this section -



- (a) **"personal injury"** includes any disease and any impairment of a person's physical or mental condition, and
- (b) **"action for personal injury"** includes an action brought by virtue of the Fatal Accidents (Guernsey) Laws 1900 and 1961<sup>f</sup>.

**Provisions as to rules of court.**

17. (1) Any power to make rules of court regulating the practice or procedure of the court in relation to civil proceedings includes power to make such provision as may be necessary or expedient for carrying into effect the provisions of this Law.

(2) Any rules of court made for the purposes of this Law as it applies in relation to proceedings in the Royal Court or any division thereof, or in the Court of Alderney apply, except in so far as their operation is excluded by agreement, to arbitration proceedings to which this Law applies, subject to such modifications as may be appropriate.

Any question arising as to what modifications are appropriate shall be determined, in default of agreement, by the arbitrator or umpire, as the case may be.

**Rules of court with respect to expert reports and oral expert evidence.**

18. (1) Notwithstanding any enactment or rule of law by virtue of which documents prepared for the purpose of pending or contemplated civil proceedings or in connection with the obtaining or giving of legal advice are in

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<sup>f</sup> Ordres en Conseil Vols. III p.235 (Loi Relative à la Compensation qui pourra être accordée aux Familles de Personnes dont la Mort aura été causée par Accident) and XVIII p.283.

certain circumstances privileged from disclosure, provision may be made by rules of court -

- (a) for enabling the court in any civil proceedings to direct, with respect to medical matters or matters of any other class which may be specified in the direction, that the parties or some of them shall each by such date as may be so specified (or such later date as may be permitted or agreed in accordance with the rules) disclose to the other or others in the form of one or more expert reports the expert evidence on matters of that class which he proposes to adduce as part of his case at the trial, and
- (b) for prohibiting a party who fails to comply with a direction given in any such proceedings under rules of court made under paragraph (a) from adducing in evidence except with the leave of the court, any statement (whether of fact or opinion) contained in any expert report whatsoever in so far as that statement deals with matters of any class specified in the direction.

(2) Provision may be made by rules of court as to the conditions subject to which oral expert evidence may be given in civil proceedings.

(3) Without prejudice to the generality of subsection (2), rules of court made under that subsection may make provision for prohibiting a party who fails to comply with a direction given as mentioned in subsection (1)(b) from

adducing, except with the leave of the court, any oral expert evidence whatsoever with respect to matters of any class specified in the direction.

(4) Any rules of court made under this section may make different provision for different classes of cases, for expert reports dealing with matters of different classes, and for other different circumstances.

(5) References in this section to an expert report are references to a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence.

(6) Nothing in the foregoing provisions shall prejudice any power contained in any other enactment to make rules of court.

**Admissibility of expert opinion and certain expressions of non-expert opinion.**

19. (1) Subject to any rules of court made under this Law, where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence.

(2) It is hereby declared that where a person is called as a witness in any civil proceedings, a statement of opinion by him on any relevant matter on which he is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him, is admissible as evidence of what he perceived.

(3) In this section "**relevant matter**" includes an issue in the proceedings in question.

**Evidence of foreign law.**

20. (1) In civil proceedings, a person who is suitably qualified to do so on account of his knowledge or experience, is competent to give expert evidence as to the law of any country or territory outside Guernsey or Alderney, or of any part thereof, irrespective of whether he has acted or is entitled to act as a legal practitioner there.

(2) For the avoidance of doubt, where more than one person gives expert evidence under subsection (1) and a dispute or conflict arises between the evidence given, the presiding judge shall decide which evidence is to be preferred in determining the proceedings.

(3) Where any question as to the law of any country or territory outside Guernsey or Alderney, or of any part thereof, with respect to any matter has been determined (whether before or after the passing of this Law) in any such proceedings as are mentioned in subsection (5), then in any civil proceedings (not being proceedings before a court which can take judicial notice of the law of that country, territory or part with respect to that matter) -

- (a) any finding made or decision given on that question in the first-mentioned proceedings shall, if reported or recorded in citable form, be admissible in evidence for the purpose of proving the law of that country, territory or part with respect to that matter, and
- (b) if that finding or decision, as so reported or recorded, is adduced for that purpose, the law of that country, territory or part with respect to that matter shall be taken to be in accordance with that finding or decision unless the contrary is proved:

Provided that paragraph (b) shall not apply in the case of a finding or decision which conflicts with another finding or decision on the same question adduced under this subsection in the same proceedings.

(4) A party to any civil proceedings shall not be permitted to adduce any finding or decision under subsection (3) unless he has -

- (a) given notice that he intends to do so, pursuant to rules of court given to every other party to the proceedings, or
- (b) obtained the leave of the court.

(5) The proceedings referred to in subsection (3) are the following, whether civil or criminal, namely -

- (a) proceedings at first instance in any of the courts in Guernsey or Alderney,
- (b) appeals arising out of proceedings mentioned in paragraph (a),
- (c) proceedings before the Judicial Committee of the Privy Council on appeal (whether to Her Majesty in Council or to the Judicial Committee as such) from a decision of any court outside Guernsey or Alderney.

(6) For the purposes of this section, a finding or decision on any such question as is mentioned in subsection (3) shall be taken to be reported or

recorded in citable form, if, but only if, it is reported or recorded in writing in a report, transcript or other document which, if that question had been a question as to the law of Guernsey, or the law of Alderney, could be cited as an authority in legal proceedings in Guernsey or Alderney.

*General*

**Interpretation.**

**21.** (1) In this Law -

"**civil proceedings**" includes, in addition to civil proceedings in any of the ordinary courts of law -

- (a) civil proceedings before any other tribunal, being proceedings in relation to which the strict rules of evidence apply,
- (b) an arbitration or reference, whether under an enactment or not, and
- (c) without limitation and for the avoidance of doubt, administrative proceedings,

but does not include civil proceedings in relation to which the strict rules of evidence do not apply,

"**court**" in relation to an arbitration or reference, means the arbitrator or umpire and, in relation to proceedings before a tribunal (not being one of the ordinary courts of law), means the tribunal, and "**rules of court**" shall be construed accordingly,

**"customary law"** includes common law,

**"department"** means any department, council or committee of the States of Guernsey, or the States of Alderney, howsoever called or styled,

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

**"enactment"** means any Law, Ordinance or subordinate legislation,

**"hearsay"** shall be construed in accordance with section 1(2),

**"information"** includes data, however recorded,

**"judge"** means -

- (a) the Bailiff, Deputy Bailiff, Lieutenant Bailiff or any Judge of the Royal Court, or
- (b) the Chairman of the Court of Alderney,

**"legal proceedings"** includes an arbitration or reference, whether under an enactment or not,

**"the 1865 Law"** means the Law entitled "Loi relative aux Preuves" registered on 8<sup>th</sup> July, 1865, as amended<sup>g</sup>,

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

**"the original statement"**, in relation to hearsay evidence, means the underlying statement (if any) by -

- (a) in the case of evidence of fact, a person having personal knowledge of that fact, or
- (b) in the case of evidence of opinion, the person whose opinion it is,

**"rule of law"** includes any rule of customary or common law,

**"States"** means the States of Guernsey,

**"statement"** means any representation of fact or opinion, however made, and

**"subordinate legislation"** means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect.

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<sup>g</sup> Ordres en Conseil Vol. I, p. 422; Vol. III, p. 248; Vol. XVII, p. 272; Vol. XVIII, p. 75.



(2) For the avoidance of doubt it is hereby declared that in any enactment references to a person's husband or wife do not include references to a person who is no longer married to that person.

(3) A reference in this Law to any other enactment is, unless the context otherwise requires, a reference thereto as amended, re-enacted (with or without modification), extended or applied, whether by or under any other enactment.

(4) References to giving evidence in sections 8(4) and 22(1) are references to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(5) The provisions of the Interpretation (Guernsey) Law, 1948<sup>h</sup> shall apply to the interpretation of this Law.

**Savings and amendments to the 1865 Law.**

**22.** (1) Nothing in this Law shall prejudice the operation of any enactment or rule of law which provides that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings.

(2) Nothing in this Law shall prejudice -

(a) any power of a court, in any legal proceedings, to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion, or

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<sup>h</sup> Ordres en Conseil Vol. XIII, p. 355.

- (b) the operation of any agreement (whenever made) between the parties to any legal proceedings as to the evidence which is to be admissible (whether generally or for any particular purpose) in those proceedings.

(3) Nothing in this Law affects the exclusion of evidence on grounds other than that it is hearsay.

This applies whether the evidence falls to be excluded in pursuance of any enactment or rule of law, for failure to comply with rules of court or an order of the court, or otherwise.

(4) Nothing in this Law affects the proof of documents by means other than those specified in section 14 or 15.

(5) In the 1865 Law -

- (a) Article 30 is repealed,
- (b) in Article 35, insert after "le contenu de la pièce" the words "excepté dans les cas spéciaux reconnus par la loi", and
- (c) Article 36 has effect subject to the provisions of this Law.

(6) For the avoidance of doubt, the States may, in accordance with sections 23 and 24, make further amendments to the 1865 Law.

**Power to make Ordinances in relation to evidence etc.**

23. (1) The States may by Ordinance make provision for and in relation to evidence in civil proceedings.

(2) Without prejudice to the generality of subsection (1), an Ordinance under this section may make provision for and in relation to -

- (a) the matters which are to constitute evidence and the extent to which evidence is admissible,
- (b) the manner and way in which evidence is adduced,
- (c) the requirements to be satisfied before evidence may be adduced,
- (d) the circumstances in which evidence shall or may be excluded,
- (e) the weight to be given to any evidence,
- (f) the evidential means by which matters may be proved,
- (g) the procedural requirements and safeguards relating to the receipt of evidence,
- (h) the taking of evidence anywhere in Guernsey or Alderney or elsewhere, for use in civil proceedings in Guernsey or Alderney or elsewhere,

- (i) the attendance, competence and compellability of witnesses.

**Additional provision as to Ordinances.**

**24.** (1) An Ordinance under this Law shall be made by the States after consultation with the Policy and Finance Committee of the States of Alderney (where the Ordinance is to have effect in Alderney).

(2) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder,
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment), and
- (c) may delegate to the Royal Court, or the Court of Alderney, power to provide by rules of court for any matter for which provision may be made by Ordinance and in any such case the provisions of paragraphs (a) and (b) and subsection (3) shall apply as if –
  - (i) for the expressions "Ordinance" or "an Ordinance" (wherever appearing) there were substituted "rules of court", and

- (ii) for the expression "a subsequent Ordinance" (in paragraph (a)) there were substituted "subsequent rules of court".

(3) Any power conferred by or under this Law to make an Ordinance may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions,

- (iv) different provision for Guernsey and Alderney

(4) Without prejudice to the generality of the foregoing provisions, an Ordinance under this Law may make such provision of any extent as might be made by Projet de Loi other than any provision which provides that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

**Transitional provisions.**

**25.** (1) Subject to subsection (2), the provisions of this Law shall not apply in relation to proceedings begun before commencement.

(2) Transitional provisions for the application of the provisions of this Law to proceedings begun before commencement may be made by rules of court or practice directions.

**Citation.**

**26.** This Law may be cited as The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009.

**Commencement.**

**27.** This Law shall come into operation on a date or dates to be appointed by Ordinance of the States; and such an Ordinance may appoint different days for different provisions and different purposes.

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