

Zimbabwe

## Civil Evidence Act

### Chapter 8:01

Legislation as at 31 December 2016

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# Zimbabwe

## Civil Evidence Act Chapter 8:01

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**AN ACT to amend the law of evidence applicable to civil proceedings; and to provide for matters connected with or incidental to the foregoing.**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Civil Evidence Act *[Chapter 8:01]*.

#### 2. Interpretation

(1) In this Act—

“**civil proceedings**” means proceedings which are not criminal in nature and which are before the Supreme Court, the High Court, a magistrates court or any other court to which the strict rules of evidence apply;

“**computer**” means any device or apparatus, whether commonly called a computer or not, which by electromechanical, mechanical or other means is capable of receiving or absorbing data and instructions supplied to it, of processing the data according to mathematical or logical rules and, in compliance with such instructions, of storing the data before or after such processing, and of producing information derived from the data as a result of such processing, and includes any printing unit attached to such a device or apparatus;

“**court**” includes a tribunal;

“**document**” includes any record of information made in a permanent form;

“**give evidence**” includes to answer a question and to produce a thing in evidence;

“**Minister**” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“**statement**” includes any representation, whether made in words or figures or otherwise.

- (2) Any reference in this Act to evidence of a fact or to a record of a fact shall be construed as including evidence or a record, as the case may be, of a transaction or circumstance.
- (3) Any power conferred by this Act upon a court may be exercised, subject to any enactment by which the court is constituted, by the person presiding over the court.
- (4) Where any period for the giving of notice in terms of this Act is expressed in days, Saturdays, Sundays and public holidays shall not be counted as part of the period.

### 3. Application of Act

This Act shall apply only to civil proceedings.

## Part II – Competence and compellability of witnesses

### 4. Competence of witnesses generally

Except as otherwise provided in this Act or any other enactment, every person shall be competent to give evidence in any civil proceedings.

### 5. Incompetence due to mental disorder, liquor or drugs

No person who is—

- (a) suffering from any mental disorder or defect; or
- (b) under the influence of intoxicating liquor or drugs;

to such an extent that he is deprived of the proper use of his reason shall be competent to give evidence whilst he is so suffering or whilst he is so influenced.

### 6. Spouses: when competent and compellable

- (1) In this section—

“spouse” includes a party to a marriage contracted according to customary law, which—

- (a) has been solemnized under the Customary Marriages Act [*Chapter 5:07*]; or
  - (b) was registered on or after the 1st February, 1918, under the Native Marriages Act [*Chapter 79 of 1939*]; or
  - (c) being a marriage contracted outside Zimbabwe, is recognized as a valid marriage in the country in which it was contracted.
- (2) Except as otherwise provided in this section, the spouse of a party to civil proceedings shall be competent and compellable as a witness in those proceedings.
- (3) No person shall be compelled to disclose any communication, whether oral or in writing, made by him to his spouse or made to him by his spouse during their marriage.
- (4) Subsection (3) shall apply whether or not the marriage has been subsequently terminated by death or dissolved or annulled by order of a court.
- (5) No person shall be compelled to give any evidence which the spouse of that person could not be compelled to give.

## Part III – Privilege

### 7. Privilege from incrimination in respect of criminal proceedings, penalties or forfeiture

No person shall be compelled to give any evidence if the evidence would tend to expose him to—

- (a) criminal proceedings in respect of an offence against the law of Zimbabwe; or
- (b) proceedings for the recovery of any penalty or forfeiture in favour of the State in terms of any enactment in force in Zimbabwe

## 8. Privilege relating to legal profession

- (1) In this section—

“client”, in relation to a legal practitioner, means a person who consults or employs the legal practitioner in his professional capacity;

“confidential communication” means a communication made by such a method or in such circumstances that, so far as the person making it is aware, its contents are disclosed to no one other than the person to whom it was made;

“legal practitioner” means a person entitled to practise in Zimbabwe as a legal practitioner or entitled to practise outside Zimbabwe in an equivalent capacity;

“third party”, in relation to legal proceedings, means a person who is not a party to those proceedings.

- (2) No person shall disclose in evidence any confidential communication between—

- (a) a client and his legal practitioner or the legal practitioner’s employee or agent; or
- (b) a client’s employee or agent and the client’s legal practitioner or the legal practitioner’s employee or agent;

where the confidential communication was made for the purpose of enabling the client to obtain, or the legal practitioner to give the client, any legal advice.

- (3) No person shall disclose in evidence any confidential communication between a client, or his employee or agent, and a third party, where the confidential communication was made for the dominant purpose of obtaining information or providing information to be submitted to the client’s legal practitioner in connection with pending or contemplated legal proceedings in which the client is or may be a party.
- (4) No person shall disclose in evidence any confidential communication between a client’s legal practitioner, or his employee or agent, and a third party, where the confidential communication was made for the dominant purpose of obtaining information or providing information for the client’s legal practitioner in connection with pending or contemplated legal proceedings in which the client is or may be a party.
- (5) The privilege from disclosure specified in this section shall not apply—
- (a) if the client consents to disclosure or waives the privilege; or
  - (b) if the confidential communication was made to perpetrate a fraud, an offence or an act or omission rendering a person liable to any civil penalty or forfeiture in favour of the State in terms of any enactment in force in Zimbabwe; or
  - (c) after the death of the client, if the disclosure is relevant to any question concerning the intention of the client or his legal competence.
- (6) Any evidence given in contravention of this section shall be inadmissible.

## 9. Privilege of confidential communications

- (1) In this section—

“confidential communication” means a communication made by such a method or in such circumstances that, so far as the person making it is aware, its contents are disclosed to no one other than the person to whom it was made;

“interested person”, in relation to a confidential communication, means a person, to whom, by whom, about whom or on whose behalf the confidential communication was made.

- (2) Without derogation from section eight, no person shall disclose in evidence any confidential communication if the court has directed that it should not be disclosed, the court being satisfied that its disclosure would cause harm to—
- (a) an interested person; or
  - (b) the relationship between interested persons; or
  - (c) any relationship similar to that referred to in paragraph (b);
- and that the harm would outweigh any prejudice to the parties or to the interests of justice that might be caused by the non-disclosure of the confidential communication.
- (3) In determining whether or not a confidential communication should or should not be privileged from disclosure in terms of subsection (2), a court shall have regard to—
- (a) the importance of the evidence in the proceedings; and
  - (b) the extent, if any, to which the contents of the confidential communication have already been disclosed; and
  - (c) whether an interested person has consented to the disclosure of the confidential communication; and
  - (d) the nature of the cause of action and the subject matter of the proceedings; and
  - (e) any means available to limit the publication of the evidence, whether in terms of the Courts and Adjudicating Authorities (Publicity Restriction) Act [Chapter 7:04] or otherwise.
- (4) Any evidence given in contravention of this section shall be inadmissible.

## 10. Privilege in public interest

- (1) A court may declare any evidence to be privileged in the public interest if the court is satisfied—
- (a) that it would be detrimental to the public interest for the evidence to be given; and
  - (b) that such detriment would outweigh any prejudice to the parties or to the interests of justice that might be caused by non-disclosure of the evidence.
- (2) No person shall give any evidence in civil proceedings if the court has declared the evidence to be privileged in the public interest in terms of subsection (1).
- (3) For the purpose of subsection (1), but without limiting it, public interest includes matters that relate to—
- (a) the security or defence of the State; or
  - (b) the proper functioning of the Government; or
  - (c) international relations; or
  - (d) confidential sources of information which are concerned with the enforcement or administration of the law; or
  - (e) the prevention or detection of offences or contraventions of the law.
- (4) For the purpose of determining whether or not any matter should be declared privileged in terms of subsection (1), and in weighing up the balance of interests referred to therein, the court shall have regard to—
- (a) the likely effect on the public interest if the matter concerned is disclosed; and
  - (b) the importance of the matter concerned in relation to the proceedings and the need to do justice to the parties; and

- (c) the nature of the cause of action and the subject matter of the proceedings; and
  - (d) any means available to limit the publication of the matter concerned, whether in terms of the Courts and Adjudicating Authorities (Publicity Restriction) Act [Chapter 7:04] or otherwise.
- (5) Any evidence given in contravention of this section shall be inadmissible.

## Part IV – Documentary evidence

### 11. Admissibility of copies of documents

Except as otherwise provided in this Act or any other enactment, a copy of a document shall not be admissible to prove the document's contents, unless—

- (a) all the parties to the civil proceedings concerned consent to the production of the copy; or
- (b) the court in its discretion permits the production of the copy, being satisfied that the original document—
  - (i) has been destroyed or is irretrievably lost; or
  - (ii) is in the possession of another party to the civil proceedings, who refuses to produce the original document; or
  - (iii) is in the possession of a person who cannot be required by law to produce the original; or
  - (iv) is outside Zimbabwe; or
  - (v) for any other good and sufficient cause, cannot reasonably or practicably be produced.

### 12. Public and official documents

In this section—

“public document” means a document—

- (a) which was made by a public officer pursuant to duty to ascertain the truth of the matters stated in the document and to make an accurate record thereof for public use; and
- (b) to which the public have a right of access;

“public officer” means a person holding or acting in a paid office in the service of the State or a local authority.

- (2) A copy of or extract from a public document which is proved to be a true copy or extract or which purports to be signed and certified as a true copy or extract by the official who has custody of the original, shall be admissible in evidence on its production by any person and shall be *prima facie* proof of the facts stated therein.
- (3) A copy of or extract from a document, other than a public document, which is in the custody of an official of the State by virtue of his office and which is proved to be a true copy or extract or which purports to be signed and certified as a true copy or extract by the official who has custody of the original, shall be admissible in evidence on its production by any person.
- (4) An official who has custody of a public or other document referred to in subsection (2) or (3) may refuse to produce the original of that document in evidence unless—
  - (a) a judge of the Supreme Court or the High Court orders its production; or
  - (b) the Minister or head of the Ministry responsible for its custody authorizes its production.



- (5) No person who is subpoenaed or otherwise required to produce in evidence an original document referred to in subsection (2) or (3) need comply with the subpoena or requirement unless there is shown to him an order of a judge of the High Court or Supreme Court, or a copy of such an order, requiring him to produce the document, or unless the Minister or head of the Ministry responsible for the document's custody authorizes the production.

### 13. Documents produced by computers

- (1) Subject to this section, a document produced by a computer shall be admissible as evidence of any fact stated therein if direct oral evidence of that fact would be admissible.
- (2) A document mentioned in subsection (1) shall be admissible if the party producing it proves that—
- (a) the document was produced by the computer during a period when the computer was used regularly to store or process information for the purposes of any activity regularly carried on over that period; and
  - (b) over that period information of the kind contained in the document, or of the kind from which the information in the document is derived, was regularly supplied to the computer in the ordinary course of that activity; and
  - (c) the information contained in the relevant part of the document reproduces or is derived from information supplied to the computer in the ordinary course of that activity; and
  - (d) throughout the material part of that period the computer was operating properly or, if it was not, its failure to do so would not have affected the production of the document or the accuracy of its contents.

- (3) Where over a period the function of storing or processing information for the purposes of any activity was regularly performed by—

- (a) two or more computers; or
- (b) one or more combinations of computers;

whether operating continuously or in succession over the period, all the computers shall be treated for the purposes of this section as constituting a single computer.

- (4) For the purpose of showing that a document is admissible under this section, a document which purports to be an affidavit and which—
- (a) identifies the document; and
  - (b) describes the manner in which the document was produced, giving sufficient information to show that it was produced by a computer in the circumstances described in subsection (2); and
  - (c) purports to be made by a person responsible for operating the computer by which or managing the activity for which the document was produced;

shall be admissible on its production by any person as *prima facie* proof of the facts stated therein:

Provided that it shall be sufficient for the matters referred to in paragraph (b) to be stated to the best of the deponent's knowledge and belief.

- (5) For the purposes of this section—
- (a) information shall be regarded as having been supplied to a computer if it is supplied to the computer in any form, whether on a disc, tape, card or otherwise, that may be received by the computer, and whether it is supplied directly or, with or without human intervention, by means of equipment the operation of which is compatible with the operation of the computer;

- (b) where information is supplied in the course of any activity with a view to its being stored or processed for the purpose of that activity by a computer that is not operated in the course of that activity, the information shall be regarded as having been supplied to the computer in the course of that activity;
  - (c) a document shall be regarded as having been produced by a computer whether it was produced by it directly or, with or without human intervention, by means of equipment the operation of which is compatible with the operation of the computer.
- (6) A document which is admissible under this section may be produced in evidence by any person who for the time being has custody of the document or is responsible for managing the activity for which the document was produced.

#### **14. Business records**

- (1) In this section—

“business” includes a trade, profession or calling or any other such occupation or activity.
- (2) A statement contained in a document shall be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible if—
  - (a) the document is or forms part of the records appertaining to or kept by or for a business or at any time formed part of such records; and
  - (b) the statement in the document was made, or may reasonably be supposed to have been made, in the ordinary course of or for the normal purposes of the business—
    - (i) by a person who had or may reasonably be supposed to have had personal knowledge of the fact concerned; or
    - (ii) on the basis of information supplied directly or indirectly by a person who had or might reasonably be supposed to have had personal knowledge of the fact concerned.
- (3) A document which is admissible under this section may be produced in evidence by any person who for the time being has custody of the document or is responsible for managing the business for which the document was produced.

#### **15. Endorsements made outside Zimbabwe on negotiable instruments**

- (1) In this section—

“endorsement” includes any stamp, signature, writing, inscription or other mark;

“financial business” means the business of any commercial bank, accepting house, confirming house, discount house, building society, savings bank or other financial institution;

“negotiable instrument” means any bill of exchange, letter of credit, cheque, draft or other document, whether negotiable or not, which has been drawn or issued inside or outside Zimbabwe and is intended to enable any person to obtain, directly or indirectly, any sum of money, whether in Zimbabwean or foreign currency.
- (2) Where there appears upon a negotiable instrument any endorsement that purports to have been made by a person or institution purporting to carry on financial business outside Zimbabwe, it shall be presumed, unless the contrary is proved, that the endorsement was made by that person or institution outside Zimbabwe and, if any date is specified in or in connection with the endorsement, that the endorsement was made on that date.

#### **16. Documents from designated countries**

- (1) In this section—

“designated country” means a country or territory declared to be a designated country in terms of subsection (4);

“document” includes an extract from a document.

- (2) Subject to subsection (3), any document purporting to have been prepared, attested, certified, compiled or executed in a designated country shall be admissible in evidence as if it had been prepared, attested, certified, compiled or executed, as the case may be, in Zimbabwe.
- (3) Where a document is admissible in evidence only if it has been prepared, attested, certified, compiled or executed by a particular person or by a person holding a particular office, possessing a particular qualification, performing a particular function or engaged in a particular activity, a similar document emanating from a designated country shall not be admissible in terms of subsection (2) unless it appears to have been prepared, attested, certified, compiled or executed, as the case may be, by an equivalent person in the designated country concerned.
- (4) The Minister may, by order in a statutory instrument—
  - (a) declare any country or territory to be a designated country for the purposes of this section;
  - (b) declare that any person or class of persons in a designated country is equivalent to any person or class of persons in Zimbabwe, whether such equivalence relates to his or their office, qualification, function or activity or otherwise:

Provided that an omission by the Minister to make a declaration in terms of this paragraph shall not preclude a court from determining for itself whether or not any person in a designated country is equivalent to a person in Zimbabwe.

## 17. Translations of documents

- (1) Subject to subsections (2) and (3), where it is necessary to produce in evidence a translation of a document into the English language, the translation shall be admissible on its production by any person entitled to produce the original document, if the translation is accompanied by a document which purports to be an affidavit made by a person who states in it that—
  - (a) he undertook the translation; and
  - (b) the translation is a true and accurate translation of the document to the best of his ability;and thereupon the translation shall be presumed to be true and accurate, unless the contrary is proved.
- (2) Any party wishing to produce a translation of a document in terms of subsection (1) shall serve a copy of the translation on every other party to the proceedings in the time and manner required in terms of rules of court.
- (3) Where a party does not accept the accuracy of a translation served on him in terms of subsection (2), he shall immediately give notice of that fact to the party intending to produce the translation, who shall thereafter be required to prove the accuracy of the translation by admissible evidence.

## 18. Disputed handwriting

Comparison of any disputed handwriting with any handwriting proved to be genuine may be made by any witness, and such writings and the evidence of any witness with respect to them may be adduced to prove the genuineness or otherwise of the handwriting in dispute.

## 19. Refreshing memory from documents

- (1) Subject to this section, any witness, whilst giving evidence, may refresh his memory from any document, where it is proved that the document was made by him or was made on his instructions

or was first read by him, at a time when his recollection of the facts set out in the document could reasonably be supposed to be fresh in his mind.

- (2) A document mentioned in subsection (1) shall not be referred to by a witness unless the witness is able to produce the document in the court.
- (3) Where a witness has refreshed his memory from a document in terms of subsection (1) any opposing party may inspect the document and may cross-examine the witness upon it, but that party shall not be required to produce the document in evidence unless he has cross-examined the witness on parts of the document to which the witness did not refer when refreshing his memory.
- (4) Where a document mentioned in subsection (1) has been produced in evidence, any statement by the witness concerned which is contained in that document shall be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

## 20. Proof of certain matters by affidavit

- (1) In this section—

“registered person” means a medical practitioner or any other person registered in terms of the Health Professions Act [Chapter 27:19];

*[definition amended by Act 6/2000]*

“scientific examination or process” means an examination or process which requires knowledge of or skill in any branch of bacteriology, chemistry, physics, microscopy, astronomy, mineralogy, anatomy, biology, haematology, histology, pharmacology, toxicology, physiology, ballistics, geography, the identification of fingerprints, palm-prints or foot-prints or any other science.

- (2) Where oral evidence would be admissible to prove either or both the following—

- (a) any fact ascertainable by a scientific examination or process;
- (b) any opinion relating to a fact referred to in paragraph (a);

a document which purports to be an affidavit made by a person who states in it that—

- (a) he is qualified to carry out the scientific examination or process and indicating the nature of his qualifications; and
- (b) he ascertained the fact by means of the scientific examination or process and additionally, or alternatively, that he arrived at an opinion stated in the document;

shall be admissible, subject to subsection (12), on its production by any person as *prima facie* proof of that fact or opinion.

- (3) Without derogation from subsection (2), where oral evidence would be admissible to prove one or more of the following—

- (a) any fact ascertained by a registered person in the course of his duties;
- (b) that any treatment was administered or other thing was performed or done by a registered person in the course of his duties;
- (c) any opinion of a registered person relating to a fact, treatment or thing referred to in paragraph (a) or (b);

a document which purports to be affidavit made by a person who states in it that—

- (i) he is or was a registered person of a class specified in the affidavit; and

- (ii) in the performance or his duties as a registered person he ascertained the fact, administered the treatment or performed or did the thing concerned and additionally, or alternatively, that he arrived at an opinion stated in the document;

shall be admissible, subject to subsection (12), on its production by any person as *prima facie* proof of that fact or of the administration of that treatment or of the performance or doing of that thing, or of that opinion, as the case may be.

- (4) Without derogation from subsection (2), where oral evidence would be admissible to prove a fact relating to one or more of the following—
  - (a) the condition, efficiency, capability, design, dimensions or mass of any vehicle or part or accessory thereof;
  - (b) any damage alleged to have been caused to any vehicle or part or accessory thereof;
  - (c) the mass of any load alleged to have been carried on any vehicle;

a document which purports to be an affidavit made by a person who states in it that—

- (i) he is or was an inspector as defined in the Road Traffic Act [Chapter 13:11]; and
- (ii) in the performance of his duties as such an inspector he ascertained the fact by examining, testing, measuring or weighing the vehicle, part, accessory or load;

shall be admissible, subject to subsection (12), on its production by any person as *prima facie* proof of that fact.

- (5) Without derogation from subsections (2) and (3), where oral evidence would be admissible to prove the physical condition or identity of a deceased person or dead body while the person or body was in a hospital, clinic, nursing-home, mortuary or ambulance, a document which purports to be an affidavit made by a person who states in it that he is or was employed at or in connection with the hospital, clinic, nursing-home, mortuary or ambulance and further states any or more of the following facts—
  - (a) that in the performance of his duties he observed the physical characteristics of the deceased person or dead body described in the affidavit;
  - (b) that while the deceased person or dead body was in his care the person or body sustained the injuries described in the affidavit or sustained no injuries;
  - (c) that he identified, pointed out or handed over the deceased person or dead body to another person or left the deceased person or dead body in the care of another person;
  - (d) that the deceased person or dead body was pointed out or handed over to him or was left in his care by another person;

shall be admissible, subject to subsection (12), on its production by any person as *prima facie* proof of any such fact.

- (6) Where oral evidence would be admissible to prove the identity of a deceased person or dead body, a document which purports to be an affidavit made by a person who states in it that—
  - (a) he knew the deceased person in his lifetime; and
  - (b) he identified the deceased person or his body to another person;

shall be admissible, subject to subsection (12), on its production by any person as *prima facie* proof of those facts.

- (7) Where oral evidence would be admissible to prove the receipt, delivery, dispatch, custody, packing or marking of any article whatsoever, a document purporting to be an affidavit made by a person

who states in it that he is or was employed by the State or is or was a medical practitioner and, where appropriate, that—

- (a) in the performance of his duties as such he received such an article from or delivered or dispatched such an article to a person or place mentioned in the affidavit;
- (b) he had the custody of such an article during a period mentioned in the affidavit;
- (c) when he received, delivered or dispatched the article referred to in paragraph (a) or while it was in his custody, it was packed or marked in the manner described in the affidavit;

shall be admissible, subject to subsection (12), on its production by any person as *prima facie* proof of any such fact.

(8) Where oral evidence would be admissible to prove the correctness of any details set out in—

- (a) a consignment note executed for the purpose of transporting goods by a person who carries on business within Zimbabwe as a public carrier, whether by road, rail or air; or
- (b) a report prepared by an employee of a person referred to in paragraph (a) revealing a discrepancy between the goods dispatched on a consignment referred to in that paragraph and the goods that arrived at the destination specified in the consignment note;

a document which purports to be an affidavit made by a person who states it that he prepared the consignment note or report and that the details set out in the consignment note or report are correct, shall be admissible, subject to subsection (12), on its production by any person as *prima facie* proof of the correctness of those details.

(9) Where oral evidence would be admissible to prove that goods were delivered to a person who carries on business within Zimbabwe as a public carrier, whether by road, rail or air, a document which purports to be an affidavit made by a person who states in it that he delivered the goods or caused the goods to be delivered to the public carrier for transport by the public carrier shall be admissible, subject to subsection (12), on its production by any person as *prima facie* proof of that fact.

(10) Where oral evidence would be admissible to prove one or more of the following—

- (a) that a person or thing has or has not been registered or licensed or that a permit, certificate or authority has or has not been issued in respect of a person or thing;
- (b) any particulars of or connected with the registration or licensing of a person or thing or any permit, certificate or authority issued in respect of a person or thing;
- (c) that anything relating to the registration or licensing of a person or thing or to any permit, certificate or authority issued in respect of a person or thing, including its cancellation or suspension, has or has not been done;

a document which purports to be an affidavit made by a person who states in it that—

- (i) he has the custody or control of records relating to anything referred to in paragraph (a), whether done by himself or any other person; and
- (ii) from any examination of such records he has ascertained—
  - (A) that the person or thing concerned is or is not registered or licensed or that a permit, certificate or authority has or has not been issued to that person or thing;
  - (B) any particular referred to in paragraph (b);
  - (C) that anything referred to in paragraph (c) has or has not been done; as the case may be;

shall be admissible, subject to subsection (12), on its production by any person as *prima facie* proof of those facts.

- (11) The court in which a document referred to in this section is produced may, of its own motion or at the request of a party to the civil proceedings concerned—
- (a) cause the person who made the document or any other person whose evidence appears to be necessary to give oral evidence in relation to any statement contained in the document; or
  - (b) cause written interrogatories to be submitted to the person referred to in paragraph (a) for his reply;
- and such interrogatories or any document purporting to be a reply to them shall be admissible in the proceedings concerned on their production by any person.
- (12) A document referred to in subsections (2) to (10) shall not be admissible in any civil proceedings unless—
- (a) the party intending to produce it has given every other party at least three days' notice of its intended production; or
  - (b) every other party consents to its production.
- (13) This section shall not be construed as limiting any provision of this Act or any other enactment under which any document is made admissible in evidence.

## **21. Photographs and plans**

- (1) A photograph or plan relating to any matter that is relevant to an issue in any civil proceedings shall be admissible at any stage of the proceedings, if—
- (a) a person upon whose indications or observations the photograph or plan was taken or prepared gives evidence, either before or after the photograph or plan is put in by the party tendering it, as to the nature or effect of his indications or observations; or
  - (b) the evidence of the person referred to in paragraph (a) is admitted by the parties to the proceedings.
- (2) Subsection (1) shall not be construed as preventing a photograph or plan being admitted in evidence under any other provision of this Act or under any other law.

## **Part V – Opinion evidence**

## **22. Expert and lay opinion evidence**

- (1) The opinion of a person who is an expert on any subject, that is to say, of a person who possesses special knowledge or skill in the subject, shall be admissible in civil proceedings to prove any fact relating to that subject which is relevant to an issue in the proceedings.
- (2) The opinion of a person who is not an expert as provided in subsection (1) shall be admissible to prove any fact relevant to an issue in civil proceedings if—
- (a) his opinion is based on what he saw, heard or otherwise perceived; and
  - (b) his opinion is helpful to a clear understanding of his evidence or to the determination of that issue.
- (3) A court shall not be bound by the opinion of any person referred to in subsection (1) or (2), but may have regard to the person's opinion in reaching its decision.

## 23. Medical reports

A medical practitioner who has prepared a report after his examination of any person or body may read and put in his report in any civil proceedings, and the report so read and put in shall be admissible in those proceedings, subject to any other provision of this Act or any other law.

## Part VI – Judicial notice

## 24. Judicial notice

- (1) A court shall take judicial notice of the following—
  - (a) the law of Zimbabwe; and
  - (b) decisions of the High Court or the Supreme Court, if reported or recorded in citable form; and
  - (c) any enactment published in or as a supplement to the *Gazette*; and
  - (d) any other matter whatsoever which, in terms of rules of court or any other enactment, the court is required to accept as correct or of which it is required to take judicial notice.
- (2) Subsection (1) shall apply without prejudice to Part VII of the Interpretation Act [Chapter 1:01].
- (3) A court may and, if the necessary information is supplied, shall take judicial notice of any fact which is not subject to reasonable dispute in that it is—
  - (a) generally known among reasonably informed people in Zimbabwe or within the area of jurisdiction of the court; or
  - (b) capable of accurate and ready determination by resort to sources whose accuracy can not reasonably be questioned.

## 25. Foreign law

- (1) A court shall not take judicial notice of the law of any foreign country or territory, nor shall it presume that the law of any such country or territory is the same as the law of Zimbabwe.
- (2) Any person who, in the opinion of the court, is suitably qualified to do so on account of his knowledge or experience shall be competent to give expert evidence as to the law of any foreign country or territory, whether or not he has acted or is entitled to act as a legal practitioner in that country or territory.
- (3) In considering any issue as to the law of any foreign country or territory, a court may have regard to—
  - (a) any finding or decision purportedly made or given in any court of record in that country or territory, where the finding or decision is reported or recorded in citable form; and
  - (b) any written law of that country or territory; and
  - (c) any decision given by the High Court or the Supreme Court as to the law of that country or territory.
- (4) The law of any foreign country or territory shall be taken to be in accordance with a finding or decision mentioned in paragraph (a) of subsection (3), unless the finding or decision conflicts with another such finding or decision on the same question.
- (5) For the purposes of paragraph (a) of subsection (3), a finding or decision shall be taken to be reported or recorded in citable form only if it is reported or recorded in writing in a report, transcript or other document which, if the report, transcript or document had been prepared in



connection with legal proceedings in Zimbabwe, could be cited as an authority in legal proceedings in Zimbabwe.

## **Part VII – Admissibility of certain evidence**

### **26. Irrelevant evidence inadmissible**

Evidence that is irrelevant or immaterial and cannot lead to the proving or disproving of any point or fact in issue shall not be admissible.

### **27. First-hand hearsay evidence**

- (1) Subject to this section evidence of a statement made by any person, whether orally or in writing or otherwise, shall be admissible in civil proceedings as evidence of any fact mentioned or disclosed in the statement, if direct oral evidence by that person of that fact would be admissible in those proceedings.
- (2) Evidence of a statement referred to in subsection (1) shall be admissible even where the person who made the statement is called as a witness in the proceedings concerned.
- (3) If a statement referred to in subsection (1)—
  - (a) is not contained in a document, no evidence of the statement shall be admissible unless it is given by a person who saw, heard or otherwise perceived the statement being made;
  - (b) is contained in a document, no evidence of the statement shall be admissible except the document itself, or a copy of the document if such copy is admissible in terms of this Act or any other law.
- (4) In estimating the weight, if any, to be given to evidence of a statement that has been admitted in terms of subsection (1), the court shall have regard to all the circumstances affecting its accuracy or otherwise and, in particular, to—
  - (a) whether or not the statement was made at a time when the facts contained in it were or may reasonably be supposed to have been fresh in the mind of the person who made the statement; and
  - (b) whether or not the person who made the statement had any incentive, or might have been affected by the circumstances, to conceal or misrepresent any fact.
- (5) This section shall not be construed as limiting any provision of this Act or any other law providing for the admissibility of statements made by persons who are not called as witnesses to testify to such statements.

### **28. Evidence in previous legal proceedings**

- (1) Where a person has previously—
  - (a) given evidence; or
  - (b) made an affidavit that was produced in evidence;

in any legal proceedings, whether civil or criminal, and he has died or cannot be found or compelled to give evidence or for some other good and sufficient cause cannot reasonably be called to give evidence in or make an affidavit for the purposes of any subsequent civil proceedings, a document which purports to be—

- (i) a transcript of his evidence or a copy of his affidavit, as the case may be, in the former legal proceedings; and

- (ii) certified by the official having custody of the record of the former legal proceedings as a true transcript of the evidence or copy of the affidavit, as the case may be,

shall be admissible on its production by any person as evidence of the fact stated therein.

- (2) Subsection (1) shall apply even if the evidence concerned was not recorded verbatim and the transcript of the evidence was taken from notes made by the person presiding at the proceedings.

## 29. Evidence of future rights

- (1) A person who alleges that he will become entitled to a right which will not be enforceable until the occurrence of a future event may apply to the High Court, or to any magistrates court which will have jurisdiction to determine or enforce his alleged right, for an order allowing evidence that may be material in establishing or enforcing his alleged right to be taken on oath before a judge or magistrate, as the case may be, and the court may grant the application on such conditions, whether as to the nature of the evidence that may be taken or otherwise, as it thinks fit.
- (2) Evidence taken pursuant to an order in terms of subsection (1) shall be admissible, subject to this Act, in any subsequent proceedings brought to determine or enforce the alleged right concerned, if the parties to those subsequent proceedings are the same as the parties to the application in terms of subsection (1) or are the successors in title or legal representatives of those parties:

Provided that, if any person whose evidence was taken is available to give evidence in the subsequent proceedings, the court may refuse to admit his evidence as so taken.

- (3) A document which purports to be a transcript of evidence given by a person pursuant to an order in terms of subsection (1), and which purports to be certified as a true transcript by the official having custody of the record of the proceedings at which the evidence was taken, shall be admissible on its production by any person as evidence of the facts stated therein.
- (4) Subsection (3) shall apply even if the evidence concerned was not recorded verbatim and the transcript of the evidence was taken from notes made by the judge or magistrate before whom the evidence was taken.

## 30. Taking of evidence in advance of hearing

- (1) Where a party to proceedings that have been commenced has reason to believe that a person who may give material evidence in the proceedings will not be available to do so, whether through absence from Zimbabwe or for any other reason, the party may apply to the court before which the proceedings have been commenced for an order allowing that person's evidence to be taken by the court in advance of the trial or hearing, and the court may grant the application on such conditions, whether as to the nature of the evidence that may be taken or otherwise, as it thinks fit.

- (2) Evidence taken pursuant to an order in terms of subsection (1) shall be admissible, subject to this Act, in the proceedings concerned:

Provided that, if the person whose evidence was taken is available to give evidence in the proceedings, the court may refuse to admit his evidence as so taken.

- (3) A document which purports to be a transcript of evidence given by a person pursuant to an order in terms of subsection (1), and which purports to be certified as a true transcript by the official having custody of the record of the proceedings at which the evidence was taken, shall be admissible on its production by any person as evidence of the facts stated therein.
- (4) Subsection (3) shall apply even if the evidence concerned was not recorded verbatim and the transcript of the evidence was taken from notes made by the person before whom the evidence was taken.

### 31. Proof of previous criminal conviction

- (1) In this section—
- “military court” has the meaning assigned to the term in section 2 of the Defence Act [Chapter 11:02].
- (2) Subject to this section, where it is relevant in civil proceedings to prove that a person committed a criminal offence or did or omitted to do anything referred to in subsection (3), the fact that he has been convicted of that offence by any court in Zimbabwe or by a military court in Zimbabwe or elsewhere shall be admissible in evidence for the purpose of such proof.
- (3) Where it is proved in any civil proceedings that a person has been convicted of a criminal offence, it shall be presumed unless the contrary is shown—
- (a) that he did all acts necessary to constitute the offence; or
  - (b) where the offence is constituted by an omission to do anything, that he omitted to do that thing;
- as the case may be.
- (4) Evidence of a criminal conviction—
- (a) shall not be adduced for the purposes of this section if the conviction is the subject of an appeal in terms of any law, until the appeal has been finally determined or has lapsed or been withdrawn or abandoned;
  - (b) may be adduced for the purposes of this section even if the convicted person has subsequently been pardoned.
- (5) For the purposes of proving in civil proceedings that a person was convicted of a criminal offence, a document which—
- (a) purports to be a copy of the record of the criminal proceedings concerned or a copy of any part of the record which shows that the person was convicted of the offence; and
  - (b) is proved to be a true copy of the original record or part thereof or purports to be signed and certified as a true copy by the official having custody of the original record;
- shall be admissible on its production by any person as *prima facie* proof that the person concerned was convicted of that offence:
- Provided that this subsection shall not preclude the admission of any other evidence to prove that the person committed the offence.

### 32. Proof of previous inconsistent statement

- (1) Any party to civil proceedings may prove that a witness who has given evidence in the proceedings has previously made a statement inconsistent with his testimony, whether or not the previous statement was made on oath and whether or not the witness has been declared hostile:
- Provided that, before the previous inconsistent statement is proved, the witness shall be asked whether or not he made the statement and shall be given sufficient particulars of the statement to enable him to identify the occasion on which it was made.
- (2) Where a previous inconsistent statement has been proved in terms of subsection (1) or has been admitted by the witness who made it, then, depending on all the circumstances, the court may give credence to the previous statement or to the witness’s testimony or may disbelieve both.

### 33. Evidence of character or reputation of party

No evidence as to the character or reputation of any party to civil proceedings shall be admissible except—

- (a) in any claim for damages where the character or reputation of the party is relevant to any fact in issue or the amount of damages; or
- (b) in the determination of the paternity of a person, where the character or reputation of the father or mother is relevant to any fact in issue; or
- (c) where the credibility of the party as a witness is impugned or put in issue; or
- (d) in any case where the award or order is dependent on the good behaviour of any person; or
- (e) in any case where it is relevant to show a course of conduct.

### 34. Evidence of similar facts

No evidence as to facts similar to those in issue shall be admissible in any civil proceedings except where—

- (a) the inference sought to be drawn from that evidence is sufficiently cogent to prove the fact in issue and goes further than showing a general disposition, habit, propensity, tendency or similarity or possession of a state of mind; and
- (b) the evidence is not unfair or oppressive to a party to the proceedings; and
- (c) the evidence does not raise collateral issues incapable of ready determination.

### 35. Proof of public office

- (1) A statement by a person that he holds a particular public office shall be admissible in evidence and shall be *prima facie* proof that he holds that office.
- (2) A signature on a document purporting to be the signature of a person holding public office shall be regarded as a statement for the purposes of subsection (1).

### 36. Admissions

- (1) An admission as to any fact in issue in civil proceedings, made by or on behalf of a party to those proceedings, shall be admissible in evidence as proof of that fact, whether the admission was made orally or in writing or otherwise.
- (2) Subject to subsection (3), in determining whether or not any fact in issue in civil proceedings has been proved, the court shall give such weight to any admission proved to have been made in respect of that fact as the court considers appropriate, bearing in mind the circumstances and manner in which the admission was made.
- (3) It shall not be necessary for any party to civil proceedings to prove any fact admitted on the record of the proceedings.
- (4) It shall not be competent for any party to civil proceedings to disprove any fact admitted by him on the record of the proceedings:

Provided that this subsection shall not prevent any such admission being withdrawn with leave of the court, in which event the fact that the admission was made may be proved in evidence and the court may give such weight to the admission as the court considers appropriate, bearing in mind the circumstances in which it was made and withdrawn.

### 37. Evidence admissible by agreement

Any evidence of any nature whatsoever shall be admissible if all the parties to the civil proceedings concerned agree to its admission:

Provided that this section shall not limit the power of the court, whether in terms of this Act or otherwise, to exclude any evidence.

### 38. Video and audio tapes and similar material

(1) In this section—

“recording material” means any magnetic tape or wire, disc or similar article or material on or by means of which sounds or sounds and pictures may be recorded.

(2) Recording material shall be admissible as evidence of the things recorded thereon.

(3) In estimating the weight, if any, to be given to anything recorded on recording material, a court shall have regard to all the circumstances affecting its accuracy or otherwise and, in particular, to—

- (a) whether or not the recording has been or may have been edited or interfered with in any way and, if it has, whether the editing or interference has materially affected its accuracy or authenticity;
- (b) whether or not the recording is original or a copy and, if it is a copy—
  - (i) the reason why the original recording has not been tendered in evidence; and
  - (ii) whether or not the copy may safely be relied on;
- (c) any independent evidence which may verify the things recorded on the recording material.

## Part VIII – Books and documents of financial institutions

### 39. Interpretation in Part VIII

In this Part—

“**book of account**”, in relation to a financial institution, means any ledger, day-book, cash-book or other book or record of account kept by the financial institution in the ordinary course of its business;

“**financial document**” means any form or document relating to the deposit, payment, transfer or removal of moneys which is received or executed by a financial institution in the ordinary course of its business, and includes any instruction or notification in writing so received or executed by a financial institution in relation to any moneys held by or on account with that financial institution;

“**financial institution**” means—

- (a) any commercial bank, accepting house, discount house or financial institution registered under the Banking Act [Chapter 24:01]; or
- (b) any building society registered under the Building Societies Act [Chapter 24:02]; or
- (c) the Corporation as defined in [section 2](#) of the Agricultural Finance Corporation Act [Chapter 18:02]; or  
*[paragraph substituted by Act 14/1999]*
- (d) the Reserve Bank of Zimbabwe established by the Reserve Bank of Zimbabwe Act [Chapter 22:10]; or
- (e) the Post Office Savings Bank; or

- (f) any foreign financial institution;

“**foreign financial institution**” means any person carrying on in a foreign country the business of a financial institution such as is mentioned in paragraph (a), (b), (c), (d) or (e) of the definition of “financial institution”.

#### 40. Admissibility of financial documents, entries in books of account and copies thereof

Subject to this Part, a financial document shall be admissible as *prima facie* proof of any fact recorded therein if direct oral evidence of that fact would be admissible, and if it is proved that the financial document—

- (a) was received or executed and kept by the financial institution concerned in the ordinary course of its business; and
  - (b) is in, or comes immediately from, the custody or control of the financial institution concerned.
- (2) Subject to this Part, an entry in a book of account of a financial institution shall be admissible as *prima facie* proof of any fact recorded therein if direct oral evidence of that fact would be admissible, and if it is proved that—
- (a) the entry was made in the ordinary course of business of the financial institution concerned; and
  - (b) the book of account is or has been an ordinary book of account of the financial institution concerned; and
  - (c) the book of account is in, or comes immediately from, the custody or control of the financial institution concerned.
- (3) Subject to this Part, a copy of a financial document referred to in subsection (1) or of an entry in a book of account referred to in subsection (2) shall be admissible as *prima facie* proof of that document or entry if the copy is proved to be a true copy.

#### 41. Proof by affidavit of financial documents entries in books of account and copies thereof

- (1) For the purpose of showing that a financial document or an entry in a book of account or a copy of such a document or entry is admissible under section thirty-nine, a document which purports to be an affidavit made by a person who—
- (a) states in it that he is a director, manager or officer of the financial institution concerned; and
  - (b) identifies the financial document, entry or copy thereof, as the case may be; and
  - (c) in relation to—
    - (i) a financial document, states the matters set out in paragraphs (a) and (b) of subsection (1) of section thirty-nine; and
    - (ii) an entry in a book of account, states the matters set out in paragraphs (a), (b) and (c) of subsection (2) of section thirty-nine; and
    - (iii) a copy of a financial document or an entry in a book of account, states the matters set out in subparagraph (i) or (ii), as the case may be, as well as that he has satisfied himself that the copy is a true copy;

shall be admissible, subject to subsections (2) and (3), on its production by any person as *prima facie* proof of the facts stated therein.

- (2) An affidavit referred to in subsection (1) shall not be admissible in any civil proceedings unless—
- (a) the party intending to produce it has given every other party at least three days' notice of its intended production; or
  - (b) every other party consents to its production.
- (3) On the application of a party that has received notice in terms of subsection (2) of the intended production of a document—
- (a) the court may order the financial institution concerned, if it is not a foreign financial institution, to permit the party, on not less than three days' notice, to inspect and take copies of any financial document or entry in its books of account;
  - (b) where the financial institution concerned is a foreign financial institution, the court may issue a commission in accordance with rules of court for evidence to be taken as to the correctness of any financial document, entry or copy thereof which is sought to be adduced in evidence.

#### **42. Financial institutions not compelled to produce books or financial documents**

Unless in special circumstances a court orders the contrary, a financial institution shall not be compelled to produce the originals of its books of account or of any financial document.

#### **43. Part VIII not applicable where financial institution is a party**

This Part shall not apply to any civil proceedings to which the financial institution whose books of account or financial documents may be required in evidence is a party.

#### **44. Computerised financial documents and entries in books of account**

Where a financial document or an entry in a book of account of a financial institution has been produced by a computer, the requirements of both section thirteen and this Part shall apply to the admissibility of that document or entry.

### **Part IX – Oaths and affirmations**

#### **45. Oaths and affirmations**

- (1) Except as otherwise provided in this Act, it shall not be lawful to receive evidence from any person except upon oath or affirmation.
- (2) The oath to be administered to a person shall be administered in the form which most clearly conveys to him the meaning of the oath and which he considers to be binding on his conscience.
- (3) If a person who is or may be required to take an oath objects to doing so, he may make an affirmation in terms of section 41 of the Interpretation Act [Chapter 1:01].

#### **46. Unsworn evidence**

- (1) If a court considers that a person required to give evidence does not understand the nature or recognize the religious obligation of an oath, whether because of his age or lack of education or for some other reason, the court may permit him to give evidence without being sworn if, before he gives evidence, the court—
  - (a) admonishes him to speak the truth, the whole truth and nothing but the truth; and

- (b) administers or causes to be administered to him any form of admonition which seems likely to impress him and bind his conscience and which is not inhuman, immoral or irreligious and obviously unfit to be administered.
- (2) Any person to whom an admonition has been administered in terms of subsection (1) and who in evidence thereafter intentionally states anything which, if he had been sworn, would have amounted to perjury shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

*[subsection amended by Act 22/2001]*

#### **47. Administration of oath, affirmation or admonition**

The person presiding over the court or the senior person presiding, as the case may be, shall personally, or through a person designated by him for that purpose, administer an oath, affirmation or admonition to any witness who is required to give oral evidence in the civil proceedings concerned.

### **Part X – General**

#### **48. Court's power to exclude certain evidence**

- (1) Notwithstanding anything in this Act but subject to subsection (2), a court may exclude or refuse to allow the giving of any evidence which—
  - (a) has been obtained illegally or improperly; or
  - (b) is likely to cause confusion or an undue waste of time; or
  - (c) is likely to cause undue prejudice to a party to the proceedings.
- (2) In deciding whether or not to exclude or refuse to allow the giving of any evidence in terms of subsection (1), the court shall have regard to—
  - (a) the nature and extent of the illegality, impropriety, confusion, waste of time or prejudice, as the case may be; and
  - (b) the probative value of the evidence; and
  - (c) the interests of justice as between the parties; and
  - (d) the general public interest.

#### **49. Court's power to exclude evidence under other laws**

Nothing in this Act shall limit any power a court may have under any other law to exclude or refuse to allow the giving of any evidence, whether by preventing the questioning of a witness or by refusing to allow the production of any thing or otherwise.

#### **50. Court may examine evidence to deter admissibility or existence of privilege**

- (1) For the purpose of determining whether or not any statement, matter or thing is or should be admissible in evidence or privileged from disclosure in terms of this Act, a court shall be entitled, but not obliged—
  - (a) to examine the statement, matter or thing; and
  - (b) to hear evidence or receive information concerning the statement, matter or thing or concerning its admissibility;

and may make such order in respect thereof as the court considers appropriate.



- (2) If it is appropriate in the circumstances to do so, a court may conduct any examination or hear any evidence in terms of subsection (1) in private and may take such other steps as the court considers necessary to limit publication of the proceedings or disclosure of the statement, matter or thing concerned, whether in terms of the Courts and Adjudicating Authorities (Publicity Restriction) Act [Chapter 7:04] or otherwise.

#### **51. Court not obliged to believe any evidence**

The fact that any evidence is rendered admissible by this Act shall not oblige the court to believe it or to rely on it.

#### **52. Decision may be based on evidence of single witness**

Subject to any other law, a court may make a finding and base its decision on the evidence of a single competent and credible witness.

#### **53. Power to take evidence on commission not limited by Act**

Nothing in this Act shall be construed as limiting the power of a court under any other enactment to order or allow the evidence of a witness to be taken on commission, nor as rendering any such evidence inadmissible.

#### **54. Evidence admissible under more than one provision of Act**

Subject to section forty-four, where any evidence is rendered admissible in terms of two or more provisions of this Act, it may be admitted under any of those provisions.

#### **55. Interpreters**

- (1) Where a witness is unable to give evidence in the language in which the proceedings are being held, the party calling him as a witness shall cause him to be provided with the services of a properly qualified interpreter, approved by the court, to translate his evidence into that language.
- (2) Subject to rules of court, the court shall cause to be administered to an interpreter provided in terms of subsection (1) such oath as the court considers suitable for the occasion.
- (3) Subject to rules of court, the reasonable costs of an interpreter provided in terms of subsection (1) shall be allowed in the taxation of any costs that are awarded by the court.

#### **56. Cases not provided for in Act**

Where an issue as to the admissibility of any evidence or the competence or compellability of any witness arises which is not provided for in this Act, the issue shall be determined according to the law applicable in similar cases before the Supreme Court of Judicature in England:

Provided that nothing in this section shall give effect with Zimbabwe to any enactment passed by the Parliament of the United Kingdom after the 1st June, 1927.