

EVIDENCE ORDINANCE 1934.⁽¹⁾

No. 14 of 1934.

An Ordinance Relating to the Law of Evidence.

BE it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1932*, as follows:—

PART I.—GENERAL.

1. This Ordinance may be cited as the *Evidence Ordinance 1934.*⁽¹⁾ Short title.
2. This Ordinance is divided into Parts, as follows:— Parts.
 - Part I.—General.
 - Part II.—Bankers' Books.
3. In this Ordinance, unless the contrary intention appears— Definitions.
 - “bank” or “banker” means any corporation or company carrying on in the Territory the business of banking;
 - “court” includes all courts of the Territory, and all persons having in the Territory, by law or by the consent of the parties, authority to hear, receive, and examine evidence;
 - “proceeding” includes any action, trial, hearing, cause, or matter, whether civil or criminal, and any inquiry in which evidence is or may be given.
4. No person shall be excluded from giving evidence in any proceeding on the ground that he has or may have an interest in the matter in question, or in the result of the proceeding, or on the ground that he has previously been convicted of any offence. Witness interested or convicted of offence.
5. In any civil proceeding the parties thereto and the persons on whose behalf the proceeding is brought or defended, and the husbands and wives of the parties or persons, shall, subject to the provisions of this Ordinance, be competent and compellable to give evidence on behalf of either or any of the parties to the proceeding: Evidence of party, or of wife or husband of party, in civil cases.

(1) Particulars of this Ordinance are as follows:—

Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
7.2.1934	15.8.1934	7.2.1934 (<i>Laws of T.N.G.</i> , Vol. XIII, p. 44)

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Provided that nothing in this section shall render any person compellable to answer any question tending to criminate himself.

Evidence of accused, and of husband and wife of accused, in criminal cases.

6.—(1.) Every person charged with an offence shall be a competent but not compellable witness for himself in any proceeding in connection with the offence.

(2.) The wife or husband, as the case may be, of every person charged with an offence shall be a competent witness in any proceeding in connection with the offence:

Provided that the wife or husband of an accused person shall not be called as a witness without the consent of the accused, except where the wife or husband is compellable to give evidence, or where either husband or wife is charged with being a party to an offence against the other.

(3.) A person charged with an offence shall not be called as a witness by the prosecutor; but every such person being a witness may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged.

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

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

(5.) Every person charged with an offence and called as a witness shall, unless otherwise ordered by the court, give his evidence from the witness-box.

(6.) The wife or husband of a person charged with bigamy may be called as a witness either for the prosecution or defence, and without the consent of the person charged.

Communications during marriage.

7. A husband shall not be compellable in any proceedings to disclose any communication made to him by his wife during the marriage, and a wife shall not be compellable in any proceeding to

disclose any communication made to her by her husband during the marriage.

8.—(1.) A clergyman of any church or religious denomination shall not divulge in any proceeding any confession made to him in his professional character, except with the consent of the person who made the confession.

Communications to clergymen and medical men.

(2.) A medical practitioner shall not, without the consent of his patient, divulge in any civil proceeding (unless the sanity of the patient is the matter in dispute) any communication made to him in his professional character by the patient, and necessary to enable him to prescribe or act for the patient.

(3.) Nothing in this section shall protect any communication made for any criminal purpose, or prejudice the right to give in evidence any statement or representation at any time made to or by a medical practitioner in or about the effecting by any person of an insurance on the life of himself or any other person.

9. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but may contradict him by other evidence.

How far witness may be discredited by the party producing him.

10. Every witness under cross-examination, and every witness on his examination in chief, may in any proceeding, civil or criminal, be asked whether he has made any former statement relative to the subject-matter of the proceeding, and inconsistent with his present testimony, the circumstances of the supposed statement being referred to sufficiently to designate the particular occasion, and, if he does not admit that he made the statement, proof may be given that he did in fact make it.

Proof of contradictory statements of witness.

11.—(1.) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing relative to the subject-matter of the proceeding without the writing being shown to him; but if it is intended to contradict the witness by the writing his attention shall, before such contradictory proof is given, be called to those parts of the writing that are to be used for the purpose of contradicting him.

Cross-examination as to previous statements in writing.

(2.) The court may at any time during the trial or inquiry require the writing to be produced for its inspection, and may thereupon make such use of it for the purposes of the proceeding as it thinks fit.

12. A witness may be questioned as to whether he has been convicted of any offence, and, upon being so questioned, if he either denies or does not admit the fact, or refuses to answer, the cross-examining party may prove the conviction.

Right to prove previous conviction of witness.

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Cross-examination
as to credit.

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

(2.) In exercising this discretion the court shall have regard to the following considerations:—

- (a) Such questions are proper if they are of such a nature that the truth of the imputation conveyed by them would seriously affect the opinion of the court as to the credibility of the witness on the matter to which he testifies;
- (b) Such questions are improper if the imputation they convey relates to matter so remote in time or of such a character that the truth of the imputation would not affect, or would affect in a slight degree only, the opinion of the court as to the credibility of the witness on the matter to which he testifies; and
- (c) Such questions are improper if there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

(3.) Nothing in this section shall be deemed to make any witness compellable to give evidence upon any matter he is now by law privileged from disclosing.

Indecent or scandalous questions.

14. The court shall forbid any question it regards as—

- (a) indecent or scandalous, although the question may have some bearing on the case before the court, unless the question relates to facts in issue, or to matters necessary to be known in order to determine whether or not the facts in issue existed; or
- (b) intended to insult or annoy, or needlessly offensive in form, notwithstanding that the question may be otherwise proper in itself.

Confession after
promise or threat.

15. A confession tendered in evidence in any criminal proceeding shall not be rejected on the ground that a promise or threat has been held out to the person confessing, unless the court is of opinion that the inducement was in fact likely to cause an untrue admission of guilt to be made.

Actions for breach
of promise.

16. A plaintiff in an action for breach of promise of marriage shall not recover a verdict unless his testimony is corroborated by some other material evidence of the promise.

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17.—(1.) In an action to recover damages for seduction brought by a parent of the woman seduced, or by a person standing to her in the place of a parent, it is not necessary to allege or prove that she was in the service of the plaintiff, or that he sustained loss of service by reason of the seduction. Action for seduction.

(2.) The plaintiff shall not recover a verdict unless the evidence of the woman seduced is corroborated by some other material evidence of the seduction.

18. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine may be made by witnesses, and such writings and the testimony of witnesses respecting them may be submitted to the court as evidence of the genuineness or otherwise of the writing in dispute. Comparison of disputed hand-writing.

19.—(1.) It is not necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved as if there had been no attesting witness thereto. Proof by attesting witnesses.

(2.) In any District Court or Warden's Court a deed may be proved and given in evidence in the same manner as a document that does not require attestation.

20.—(1.) The conviction by a court of any person for any offence may be proved by— Proof of conviction.

(a) producing a certificate containing the substance of the conviction, purporting to be signed by the officer having the custody of the records of the court; and

(b) showing that the person whose conviction is sought to be proved is identical with the person named in the certificate.

(2.) It shall not be necessary to prove the signature of the officer referred to in this section or his official position or the truth of any statement made by him.

PART II.—BANKERS' BOOKS.

21. Subject to this Part, a copy of any entry in a banker's book shall in all proceedings be received as *prima facie* evidence of the entry, and of the matters, transactions, and accounts therein recorded. Mode of proof of entry in bankers' books.

22.—(1.) A copy of an entry in a banker's book shall not be received in evidence under this Part unless some officer of the bank testifies either orally or by affidavit that— Proof of document purporting to be copy of entry.

(a) he has examined the copy with the original entry; and

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- (b) the copy is a correct copy of an entry which was made in the usual and ordinary course of business in a book which at the time the entry was made was one of the ordinary books of the bank; and
- (c) the book is in the custody or control of the bank.

(2.) An affidavit for the purposes of this section may be sworn before any person authorised to take affidavits.

Case in which banker is not compellable to produce books &c.

23. A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable either to produce any banker's book the contents of which can be proved under this Part, or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a court or Judge.

Court may order inspection.

24.—(1.) On the application of any party to a proceeding, the court or a Judge may, on summons, order that the party be at liberty to inspect and take copies of any entries in the books of a bank for any of the purposes of the proceeding, and may order that the bank shall, free of charge for the first ten folios and on payment of Six pence for each additional folio, prepare and deliver to the party a copy of such entries as may be required for evidence in the proceeding.

(2.) An order made under this section shall be served on the bank three clear days before it is to be obeyed, unless the court or Judge directs otherwise.

(3.) The costs of any application to a court or Judge under or for the purposes of this section, and the costs of anything done or to be done under an order of a court or Judge made under or for the purposes of this section, shall be in the discretion of the court or Judge.

(4.) Where any costs referred to in the last preceding sub-section have been occasioned by any default or delay on the part of the bank, the court or Judge may order that the costs or any part of them be paid to any party by the bank.

(5.) An order made under the last preceding sub-section against a bank may be enforced as if the bank were a party to the proceeding.