

**DRAFT CIVIL EVIDENCE (JERSEY) LAW 200-**

---

**Lodged au Greffe on 2nd July 2002  
by the Legislation Committee**

---



**STATES OF JERSEY**

**STATES GREFFE**

150

2002

P.111

Price code: C

## **European Convention on Human Rights**

The President of the Legislation Committee has made the following statement -

In the view of the Legislation Committee the provisions of the Draft Civil Evidence (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

## REPORT

### Introductory

This draft Law stems from the Report (No. 4) of the Jersey Law Commission, published in September, 2000 entitled “The Best Evidence Rule in Civil Proceedings”. The conclusions and recommendations of the Commission were that certain sections of the Civil Evidence Act 1995 of the United Kingdom should be enacted in Jersey, with suitable amendments to reflect the differences between the jurisdictions. The main purpose of the 1995 Act in England and Wales was to provide for the admissibility of hearsay evidence and the proof of certain documentary evidence in civil proceedings.

What is the hearsay rule?

Basically, it is the rule that a statement, other than one made by a person while giving oral evidence in proceedings before the court, is inadmissible as evidence of the truth of the matter stated. Thus, an out-of-court statement may be admissible if the mere fact that it was made is of some relevance in the proceedings, but if the court is asked to rely on it, i.e. use it as evidence of the very matter stated, it is inadmissible as hearsay. Over the years a number of exceptions to the rule have been developed or introduced allowing hearsay evidence in a variety of special cases where either there is no other evidence obtainable, or the out-of-court statement (or document) is likely to be especially reliable.

In civil proceedings, in the absence of juries, the hearsay rule is unduly restrictive. The Court sitting in civil cases builds up a body of expertise in the evaluation of evidence, and can be trusted to attribute appropriate weight to evidence that comes to them indirectly. Quite apart from this consideration, recent developments in the law and practice of civil litigation point to a new approach where the main emphasis is upon ensuring that, insofar as possible, and subject to considerations of reliability and weight, all relevant evidence is capable of being adduced. Another part of this new approach is that litigation now tends to be conducted in a more open climate with more emphasis upon identifying and refining the issues in advance, which in turn gives parties less opportunity to take tactical advantage of technical points at the trial stage.

The draft Law is intended to achieve the following broad result in civil (as opposed to criminal) proceedings -

- (i) evidence should no longer be excluded on the ground that it is hearsay;
- (ii) hearsay evidence should remain a category of evidence which is accorded special attention by the courts; to this end, parties should give notice, where reasonable and practicable, that they intend to rely on hearsay evidence, and courts should be provided with guidelines to assist them in assessing the weight to be attached to such evidence;
- (iii) there should be a uniform approach to the treatment of hearsay evidence in civil proceedings of all types.

### Admissibility of hearsay evidence

*Article 3(1)* of the draft Law introduces the key reform. Its purpose is to abolish the hearsay rule in civil proceedings. The expression “hearsay” is defined in *Article 1(1)* as a statement made otherwise than by a person while giving oral evidence in the proceedings, which is tendered as evidence of the matters stated. References to hearsay include hearsay of whatever degree. The expressions “civil proceedings” and “court” are so defined that the Law would apply to any tribunal in relation to which the strict rules of evidence apply, whether as a matter of law or by agreement of the parties.

### Safeguards in relation to hearsay evidence

*Article 4(1)* requires a party who intends to introduce a hearsay statement to give to the other parties such notice as is reasonable and practicable in the circumstances to enable those other parties to deal with any matters arising from the fact that the evidence will be hearsay. *Sub-paragraph (b)* enables the recipient of a notice to require further particulars, still subject to reasonableness, practicality and need. *Article 4(1)* covers a variety of proceedings, both interlocutory and final, and can be adapted by the court to meet the needs of different situations. Sometimes the haste with which a hearing has to be arranged, or the risk of danger to a person who has provided information, may mean that it is neither practicable nor reasonable for any notice to be given.

*Article 4(2)* empowers the Superior Number of the Royal Court to make Rules of Court under which -

- (a) some classes of proceedings, or of evidence, may be removed altogether from the ambit of the notice requirement;
- (b) the requirement to give notice, including specifying time limits, may be further defined.

*Article 4(3)* allows the notice requirements to be excluded by agreement of the parties or waived by the party to whom notice was to be given.

*Article 4(4)* provides that a failure to give notice, or to comply with Rules of Court as to notice, does not affect the admissibility of the evidence. The Court may, however, take account of such failure in directing the course of proceedings, e.g. the order in which evidence is to be heard, or by allowing an adjournment. The failure to give proper notice may also be taken into account in assessing the weight to be given to the hearsay statement. Thus if, for example, an opponent is taken by surprise by the fact that the evidence is hearsay, so that he has little opportunity to investigate or test it, it may well be right, if it is on a contested matter, to attribute little weight to that evidence.

*Article 5* enables Rules of Court to be made under which, if the maker of a hearsay statement is not called as a witness by the party tendering the statement, any other party may call him as a witness and cross examine him.

*Article 6* makes provision for the performance of the court's task in assessing the weight, if any, to be given to hearsay evidence in the process of fact finding. *Article 6(1)* lays down the general injunction that the court shall have regard to *any* circumstances from which *any* inference can be drawn as to the reliability or otherwise of the evidence. *Article 6(2)* contains the list of factors to which, in particular, the court is to have regard.

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

*Article 7* contains provisions principally relating to the competence and credibility of a person who is not called as a witness, but whose statement is admitted as hearsay evidence. The draft Law is not intended to make admissible any statement which could not be received in evidence on the ground of the incompetence of the person making it. *Article 7(1)* accordingly provides that a hearsay statement shall not be admissible if, at the time that he made the statement, the person making it would not have been competent to be a witness (competence at the date of the proceedings is irrelevant). The requirements for a child to be competent are that -

- (a) he understands that it is his duty to speak the truth; and
- (b) he has sufficient understanding to justify evidence his being heard.

*Article 7(3)* extends the rules of customary law by which credibility may be impeached or supported, to any person upon whose accuracy the court must depend if the hearsay statement is to be relied on.

*Article 8* governs the admissibility of out-of-court (i.e. previous) statements of a person who *is* called as a witness.

*Article 8(1)* allows any party to adduce, under *Article 3*, evidence of previous statements of the witness in order to prove the matter stated. Because this *paragraph* is subject to the rest of the *Article*, its effect is give this right to any party other than the party the party calling the witness. *Article 8(2)* and *(3)* restrict the party calling a witness from also adducing evidence of his previous statements unless the purpose is to rebut a suggestion that his in-court evidence is a recent fabrication. For any other purpose he needs the leave of the court. *Article 8(4)* and *(5)* preserve such customary law or statutory rules as may exist in relation to civil proceedings about hostile witnesses and procedural rules relating to the admissibility and proof of a previous oral statement by a witness who does not admit he made it, and a previous written statement before the maker of it can be contradicted by it. *Article 8(6)* preserves the basic rule that if the ambit of the cross-examination extends outside the part of the document used by the witness to refresh his memory, the party calling the witness can have the document made evidence. *Article 8(7)* provides that where a previous statement becomes evidence under any of the rules made or retained by this *Article* it may be admitted, like any other out-of-court statement, as evidence of the matter stated (not merely as evidence that the statement was made). If, however, the statement is to be used as evidence of the matter stated, its admissibility will be governed by *Article 3* and it will accordingly be subject (where reasonable and practicable) to the notice provisions in *Article 4* as well as the guidance provisions in *Article 6* and potentially the competence rules of *Article 7*.

*Article 9* provides for the supersession of some, and the preservation of other, customary law exceptions to the hearsay rule. Where exceptions are preserved by this *Article*, the hearsay in question is admissible apart from *Article 3*, so the notice and guidance provisions of *Articles 4* to *8* do not apply to it. *Article 9(1)* provides that the customary law rule, under which a statement adverse to the interests of the person making it is admissible as an exception to the hearsay rule, is superseded. Such statements are no longer to be given special treatment; they are admissible under *Article 3* and are subject to the notice and guidance provisions of *Articles 4* to *8*. *Article 9(2)* provides that three exceptions to the hearsay rule shall continue to have effect apart from *Article 3*. Those exceptions relate to published works dealing with matters of a public nature, public documents and records all of which continue to be admissible as evidence of facts stated in them. *Article 9(3)* and *(4)* clarifies the rules relating to reputation and family tradition. Reputation and tradition necessarily involve hearsay which is multiple or composite or both, and as a result it would be impossible to apply the notice and guidance provisions of *Articles 4* to *8* to

each of the statements involved. This paragraph accordingly provides that evidence of a person's reputation is admissible for the purpose of proving his good or bad character; that evidence of reputation or family tradition is admissible for the purposes mentioned in *sub-paragraph (b)*; and that, in either case, the reputation or tradition is to be treated for the purposes of the Law as a fact and not as a series of out-of-court statements each subject to *Articles 4 to 8. Article 9(5)* provides that the words in *Article 9* describing rules of law are not to be taken to alter those rules. It therefore follows that the definition of "document" in *Article 1(1)* is not applicable in *Article 9(2)(b)*.

### **Other matters**

*Article 10* relates to the proof of statements contained in documents. It does *not* have general application to the proof of documents, but only to the proof of statements contained in documents. Many documents are relevant in civil proceedings not for the statements they contain but because of the operative effect of the documents themselves, *e.g.* written contracts, licences, wills, bills of exchange, certificates from the Public Registry. Unless they fall within the provisions of *Article 11* (proof of records of business or public authority) the Law has no effect on the general rules for the proof of such documents and their authentication. Even in the case of documents to which *Article 10* does not apply, there is no provision here for allowing oral evidence of the contents of a document. It is clear from *Article 10* that both original documents and copies are to be authenticated. No form of authentication is prescribed. Because of the broad definition of "copy" in *Article 1(1)* and the provisions of *sub-paragraph (b)* of *Article 10* (which reverses the customary law rule that a copy of a copy is not admissible in evidence), the copy before the court may be far removed from the original, perhaps as a manuscript transcript of a manuscript transcript. Nevertheless, if it is "authenticated", any potential defects go to its weight rather than its admissibility, following the general scheme of the Law.

*Article 11* provides for "fast track" proof of documents which are part of the records of a business or a public authority (as respectively defined). This *Article*, in contrast to *Article 10*, applies only to the proof of the documents themselves, and *not* to the proof of any facts stated in the documents. *Article 11(1)* provides that a document "shown to form part of" such records may be admitted in evidence without further proof. The wording makes it clear that the burden of proof of admissibility under this *Article* lies on the party adducing the document, but, because of *paragraphs (2) and (3)*, that burden will in most cases be easy to discharge. *Article 11(2) and (3)* deals with the method by which a document may be shown to fall within *paragraph (1)* and so be eligible for fast track proof. If a certificate is produced to the effect that the document in question is part of the records of a business or public authority, the document "shall be taken" to form part of such records, provided that the certificate purports (see *paragraph (3)(a)*) to be a certificate signed (or - see *paragraph (3)(b)* - signed in facsimile) by an officer of the business or authority to which the records belong. Thus, when such a certificate is produced, there is a conclusive presumption in favour of admissibility, unless the court decides that the relevant provisions shall not apply: see *paragraph (5)*. "Officer" is widely defined in *paragraph (6)* to include not only a person holding a responsible position in relation to the concern as a whole, but also to a person holding such a position in relation to its records. *Article 11(4)* provides that the absence of an entry in business or official records may be proved by an affidavit of an officer of the business or public authority to which the records belong. The absence of an entry may be, in certain circumstances, as telling as the presence of an entry, but again it must be noted that this *paragraph* makes no provision for the interpretation of such absence. This *paragraph* is concerned only with the method by which the court comes to know that the entry does not occur in the record. *Article 11(5)* empowers the court to dispense with any of the provisions of this *Article*. Such an exercise of discretion would be appropriate if, for example, other evidence before the court raised a real doubt as to the genuineness of the certificate produced under *paragraph (2)*. *Article 11(6)* contains definitions for this *Article*. "Records" is defined so as to include records in any form. "Business" is defined so as to include any activity regularly carried out over a period of time by any body (corporate or otherwise) or an individual. Thus, for example, the activities of the honorary treasurer and secretary of a club will count as a "business" for these purposes.

*Article 12*, in addition to enlarging the power to make Rules of Court, provides that Rules of Court made for the purposes of the Law shall apply to arbitration proceedings (subject to appropriate modifications) unless excluded by agreement for the parties. If the parties cannot agree, the arbitrator may determine what modifications are appropriate.

*Article 13* provides that nothing in the Law is to undermine the operation of rules excluding evidence on grounds other than that it is hearsay. The Law is not intended to allow any existing provision allowing the court to set limits or conditions on certain types of evidence (*e.g.* that adduced by expert witnesses) to be evaded by introducing the evidence as admissible hearsay. *Article 13* also specifically preserves the rules relating to the proof of documents (as distinct from the proof of statements in them) save where those rules are modified by the operation of *Article 10* or *Article 11*.

*Article 14* contains the usual Article of citation and provision for the coming into force of the Law.

### **Conclusion**

As stated at the beginning of this Report, this draft Law stems from the report of the Jersey Law Commission which

concluded that the hearsay rule in civil proceedings should be abolished by enacting legislation along the lines of the Civil Evidence Act 1995 of the United Kingdom. There is general acceptance that such a reform has proved beneficial in England and Wales and that the reasons for introducing such reform in that jurisdiction apply with equal force to this jurisdiction.

The Legislation Committee has noted in particular the restrictive nature of the existing hearsay rule and the fact that it is inconsistent with litigation being conducted in a more open climate with more emphasis upon identifying and refining the issues in advance, giving parties less scope for taking tactical advantage of technical points in civil proceedings. In essence, the new Law will better enable the civil courts to take into account the relevant evidence, so that the weight of the evidence as a whole can properly be assessed.

It will make litigation in civil cases less subject to technical rules and should assist the parties and the court in a speedier disposal of cases, saving time and money.

The proposed reform will also help to clarify an area of law in which uncertainty has often prevailed in the absence of statutory provision in Jersey (unlike in the United Kingdom), and will be in the best interests of the administration of justice in this Island.

### **Financial/manpower implications**

This draft Law has no implications for the financial or manpower resources of the States.

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 28th June 2002 the Legislation Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Legislation Committee the provisions of the Draft Civil Evidence (Jersey) Law 200- are compatible with the Convention Rights.

## **Explanatory Note**

This draft Law provides for the admission of hearsay evidence and proof of documentary evidence in civil proceedings.

*Article 1* contains the interpretation provisions. *Article 2* states that the Law applies to civil proceedings begun on or after it comes into force but it will apply to earlier proceedings if the parties so agree and the court so consents.

*Article 3* provides for the admissibility of hearsay evidence and its admission is regulated by *Articles 4-8*. *Article 4* provides for notice to be given when a party proposes to adduce hearsay evidence, subject to provision made by Rules and by agreement between the parties. Failure to comply may affect the course of proceedings and costs, or the weight to be given to the evidence.

*Article 5* enables Rules to provide that where a party adduces hearsay evidence of a person's statement, the other party may call and cross-examine that person. The considerations relevant to the weighing of hearsay evidence by the court are set out in *Article 6*.

*Article 7* prevents the admission of hearsay evidence where the maker of the statement is not competent as a witness. Evidence may be adduced to attack or support the credibility of the person making the statement. *Article 8* applies, subject to certain modifications, the same general rules as to hearsay evidence to previous statements of witnesses.

*Article 9* abolishes and preserves certain customary law rules regarding admissibility of evidence.

*Article 10* enables statements contained in documents to be proved by the production of the document or a copy. Under *Article 11* a document which is shown to form part of the records of a business or public authority may be received in evidence without further proof.

*Article 12* deals generally with Rules of Court and their application to arbitration proceedings. *Article 13* preserves the existing position regarding exclusion of evidence on grounds other than hearsay and the proof of documents by means other than as specified in *Articles 10* and *11*.

*Article 14* is the citation and commencement provision.

**CIVIL EVIDENCE (JERSEY) LAW 200-**

---

**ARRANGEMENT OF ARTICLES**

---

1. Interpretation
2. Application
3. Admissibility of hearsay evidence
4. Notice of proposal to adduce hearsay evidence
5. Power to call witness for cross-examination on hearsay statement
6. Considerations relevant to weighing of hearsay evidence
7. Competence and credibility
8. Previous statements of witnesses
9. Evidence admissible at customary law
10. Proof of statements contained in documents
11. Proof of records of business or public authority
12. Rules of Court
13. Savings
14. Citation and commencement

**CIVIL EVIDENCE (JERSEY) LAW 200-**

---

**A LAW** to provide for the admissibility of hearsay evidence and the proof of certain documentary evidence in civil proceedings; and for connected purposes; sanctioned by Order of Her Majesty in Council of the

*(Registered on the          day of          200-)*

---

**STATES OF JERSEY**

---

The          day of          200-

---

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

**ARTICLE 1**

**Interpretation**

(1) In this Law -

“civil proceedings” means civil proceedings before any court;

“court” means any tribunal in relation to which the strict rules of evidence apply, whether as a matter of law or by agreement of the parties;

“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, by whatever means and whether directly or indirectly;

“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 references to hearsay include hearsay of whatever degree;

“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;

“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;

“statement” means any representation of fact or opinion, however made.

(2) A reference in this Law to an Article by number only and without further identification is a reference to the Article of that number in this Law.

(3) A reference in an Article or other division of this Law to a paragraph or sub-paragraph by number or letter only and without further identification is a reference to the paragraph or sub-paragraph of that number or letter in the Article or other division of this Law in which that reference occurs.

(4) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another

enactment, including another provision of this Law.

## ARTICLE 2

### **Application**

- (1) Subject to paragraph (2) this Law applies to any civil proceedings begun on or after its commencement.
- (2) This Law shall apply to civil proceedings begun before the commencement of this Law if -
  - (a) the parties to those proceedings so agree; and
  - (b) the court so consents.

## ARTICLE 3

### **Admissibility of hearsay evidence**

- (1) Evidence shall not be excluded on the ground that it is hearsay.
- (2) Nothing in this Law affects the admissibility of evidence admissible apart from this Article.
- (3) Articles 4 to 8 do not apply to hearsay evidence admissible apart from this Article even if it may also be admissible by virtue of this Article.

## ARTICLE 4

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

(1) Subject to the following provisions of this Article, a party proposing to adduce hearsay evidence in civil proceedings shall give to the other party or parties to those proceedings -

- (a) such notice (if any) of that proposal; and
- (b) where so requested, such particulars of or relating to the evidence,

as is reasonable and practicable in the circumstances to enable that party or parties to deal with matters arising from the fact that evidence is hearsay.

- (2) Rules of Court may -
  - (a) specify classes of proceedings or evidence in relation to which paragraph (1) does not apply; and
  - (b) make provision as to the manner in which (including the time within which) the duties imposed by that paragraph are to be complied with in the cases where it does apply.

(3) The parties to the proceedings may exclude paragraph (1) by agreement and a party may waive any requirement for notice to be given to him.

(4) A failure to comply with paragraph (1), or with Rules of Court under paragraph (2)(b), does not affect the admissibility of the evidence but the court may take into account such failure -

- (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 Article 6.

## ARTICLE 5

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

Rules of Court may provide that where a party 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 he had been called by the first-mentioned party and as if the hearsay statement were his evidence in chief.

## ARTICLE 6

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

- (1) In estimating the weight (if any) to be given to hearsay evidence 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 are such as to suggest an attempt to prevent proper evaluation of its weight.

## ARTICLE 7

### **Competence and credibility**

- (1) Hearsay evidence shall not be admitted if or to the extent that it is shown to consist of, or to be proved by means of, a statement made by a person who was not competent as a witness at the time he made the statement.
- (2) For the purposes of paragraph (1) -
  - (a) “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
  - (b) a child shall be treated as competent as a witness if, in the opinion of the court he understands that it is his duty to speak the truth and he has sufficient understanding to justify his evidence being heard.
- (3) Where 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 tending to prove that, whether before or after he made the statement, he made any other statement inconsistent with it is admissible for the purpose of showing that he had contradicted himself.
- (4) Despite paragraph (3), evidence may not be given of any matter of which, if the maker of the original statement, or of any statement relied upon to prove another statement, 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.

## ARTICLE 8

### **Previous statements of witnesses**

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

(2) A party who has called or intends to call a person as a witness in civil proceedings may not in those proceedings adduce evidence of a previous statement made by that person, except -

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

(3) Paragraph (2) shall not be construed as preventing 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 any enactment or rule of law makes provision as to -

- (a) how far a witness may be discredited by the party producing him;
- (b) the proof of contradictory statements made by a witness; and
- (c) cross-examination as to previous statements in writing,

this Law does not authorize the adducing of evidence of a previous inconsistent or contradictory statement otherwise than in accordance with such enactment or rule.

(5) Paragraph (4) is without prejudice to any provision made by Rules of Court under Article 5.

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

(7) Nothing in this Article shall be construed as preventing a statement of any description referred to in this Article from being admissible by virtue of Article 3 as evidence of the matters stated.

## ARTICLE 9

### **Evidence admissible at customary law**

(1) The rule of law whereby in civil proceedings 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 is superseded.

(2) Any rule of law whereby in civil proceedings -

- (a) 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 in them;
- (b) 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 in them; or
- (c) records (for example, Acts of Court, treaties and commissions) are admissible as evidence of facts stated in them,

shall continue to have effect.

(3) Any rule of law whereby in civil proceedings -

- (a) evidence of a person's reputation is admissible for the purpose of proving his good or bad character; or
- (b) evidence of reputation or family tradition is admissible -

- (i) for the purpose of proving or disproving pedigree or the existence of a marriage, or
- (ii) for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing,

shall continue to have effect in so far as it authorizes the court to treat such evidence as proving or disproving that matter.

(4) Where any rule referred to in paragraph (3) applies, reputation or family tradition shall be treated for the purposes of this Law as a fact and not as a statement or multiplicity of statements about the matter in question.

(5) The words in which a rule of law mentioned in this Article is described are intended only to identify the rule and shall not be construed as altering it in any way.

## ARTICLE 10

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

Where a statement contained in a document is admissible as evidence, 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 (however many copies away from the original) or of the material part of it,

authenticated in such manner as the court may approve.

## ARTICLE 11

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

(1) A document which is shown to form part of the records of a business or public authority may be received in evidence 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 the purposes of paragraph (2) -

- (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 by affidavit of an officer of the business or authority to which the records belong.

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

(6) In this Article -

“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 parochial authority, statutory undertaking, States department and person holding office under the States or under Her Majesty.

## ARTICLE 12

### **Rules of Court**

- (1) The power of the Royal Court to make Rules of Court under Article 11 of the Royal Court (Jersey) Law 1948 <sup>[1]</sup> shall include power to make such provision as may be necessary or expedient for carrying this Law into effect.
- (2) Rules of Court made for the purposes of this Law in relation to proceedings in the Royal Court shall apply to proceedings under the Arbitration (Jersey) Law 1998<sup>[2]</sup> -
  - (a) except in so far as their operation is excluded by agreement; and
  - (b) subject to such modifications as may be appropriate.
- (3) Any question arising as to what modifications are appropriate shall be determined, in default of agreement, by the arbitrator.

## ARTICLE 13

### **Savings**

- (1) Nothing in this Law affects the exclusion of evidence on grounds other than that it is hearsay, whether the evidence falls to be excluded in pursuance of any enactment or rule of law or for failure to comply with Rules of Court or an order of the court, or otherwise.
- (2) Nothing in this Law affects the proof of documents by means other than those specified in Article 10 or 11.

## ARTICLE 14

### **Citation and commencement**

This Law may be cited as the Civil Evidence (Jersey) Law 200- and shall come into force on such day as the States may by Act appoint.

---

<sup>[1]</sup> Tome VII, page 510, Volume 1996-1997, page 147 and Volume 2001, page 7.

<sup>[2]</sup> Volume 1998, page 441 and Volume 1999, page 521.