

AN ACT

An Act to consolidate, define and amend the Law of Evidence.

BE IT ENACTED BY THE NITLJELA OF THE MARSHALL ISLANDS:

1

PART I

2

RELEVANCY OF FACTS

3

CHAPTER I

4

PRELIMINARY.

5

Section 1. Short title and effective date.

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This Act may be cited as the Evidence Act 1986 and shall come into effect on the date on which it becomes law.

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Section 2. Application.

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This Act shall apply to all judicial proceedings in or before any court other than courts-martial, but not to proceedings before an arbitrator.

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Section 3. Repeal.

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All rules of evidence in any written law so far as such rules are inconsistent with any of the provisions of this Act, are hereby repealed.

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Section 4. Interpretation.

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In this Act, unless a contrary intention appears from the context, the following words and expressions are used in the following sense: -

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"Fact" means and includes -

- 1 (a) anything, state of things or relation of things
2 capable of being perceived by the senses;
3 (b) any mental condition of which any person is
4 conscious.

5 Illustrations

- 6 (a) That there are certain objects arranged
7 in a certain order in a certain place
8 is a fact.
9 (b) That a man heard or saw something is
10 a fact.
11 (c) That a man said certain words is a fact;
12 (d) That a man holds a certain opinion, has
13 a certain intention, acts in good faith
14 or fraudulently, or uses a particular
15 word in a particular sense, or is or was
16 at a specified time conscious of a
17 particular sensation, is a fact;
18 (e) That a man has a particular reputation
19 is a fact.

20 "Relevant". One fact is said to be relevant to another when
21 the one is connected with the other in any of the ways
22 referred to in the provisions of this Act relating to the
23 relevancy of facts.

24 Facts in issue. "Facts in issue" means and includes -
25 any facts from which, either by themselves or in connection

1 with other facts, the existence, non-existence, nature or
2 extent of any right, liability, or disability, asserted or
3 denied in any suit or proceeding, necessarily follows.

4 Explanation - Whenever, under the provisions
5 of the law for the time being in force relating
6 to Civil Procedure, any court records an issue
7 of fact, the fact to be asserted or denied, in
8 the answer to such issue, is a fact in issue.

9 Illustrations.

10 A is accused of the murder of B. At his trial the
11 following facts may be in issue: -

12 That A caused B's death.

13 That A had received grave and sudden provocation
14 from B.

15 That A, at the time of doing the act which
16 caused B's death, was by reason of unsoundness
17 of mind, incapable of knowing its nature.

18 Document. "Document" means any matter expressed or
19 described upon any substance by means of letters,
20 figures, or marks of by more than one of those means,
21 intended to be used, or which may be used, for the
22 purpose of recording that matter.

23 Illustrations

24 A writing is a document.

1 Words printed, lithographed, or photographed are
2 documents.

3 A map or plan is a document.

4 An inscription on a metal plate or stone is a document.

5 A caricature is a document.

6 Evidence. Evidence means and includes -

7 (a) all statements which the court permits or requires
8 to be made before it by witnesses in relation to
9 matters of fact under inquiry; such statements are
10 called oral evidence;

11 (b) all documents produced for the inspection of the
12 court; such documents are called documentary
13 evidence.

14 Proved. A fact is said to be proved when, after considering
15 the matters before it, the court either believes it to exist
16 or considers its existence so probable that a prudent man
17 ought, under the circumstances of the particular case, to act
18 upon the supposition that it exists.

19 Disproved. A fact is said to be disproved when, after
20 considering the matters before it, the court either believes
21 that it does not exist, or considers its non-existence so
22 probable that a prudent man ought, under the circumstances of
23 the particular case, to act upon the supposition that it does
24 not exist.

1 by any provision of the law for the time being in force
2 relating to Civil Procedure.

3 Illustrations.

4 (a) A is tried for the murder of B by beating him
5 with a club with the intention of causing his
6 death. At A's trial the following facts are
7 in issue: -

8 A's beating B with the club;

9 A's causing B's death by such beating;

10 A's intention to cause B's death.

11 (b) A, a party to a suit, does not comply with a
12 notice given by B, the other party, to produce
13 for B's inspection a document referred to in
14 A's pleadings. This Section does not enable
15 A to put such document in evidence on his
16 behalf in such suit, otherwise than in
17 accordance with the conditions prescribed by
18 the rules of Civil Procedure.

19 Section 7. Facts forming part of same transaction.

20 Facts which though not in issue are so connected with a fact in
21 issue as to form part of the same transaction are relevant, whether they
22 occurred at the same time and place or at different times and places.

23 Illustrations.

24 (a) A is accused of the murder of B by beating him.

1 Whatever was said or done by A or B or the
2 bystanders at the hearing, or so shortly before or
3 after it as to form part of the transaction is a
4 relevant fact.

5 (b) A is accused by waging war against the Government of
6 the Republic of the Marshall Islands by taking part
7 in an armed insurrection in which property is
8 destroyed, troops are attacked, and jails are broken
9 open. The occurrence of these facts is relevant as
10 forming part of the general transaction, though A
11 may not have been present at all of them.

12 (c) A sues B for a libel contained in a letter forming
13 part of a correspondence. Letters between the
14 parties relating to the subject out of which the
15 libel arose and forming part of the correspondence
16 in which it is contained are relevant facts- though
17 they do not contain the libel itself.

18 (d) The question is, whether certain goods ordered from
19 B were delivered to A. The goods were delivered to
20 several intermediate persons successively. Each
21 delivery is a relevant fact.

22 Section 3. Facts which are the occasion, cause, or effect of
23 facts in issue.

24 Facts which are the occasion, cause, or effect, immediate or
25 otherwise, or relevant facts or facts in issue, or which constitute the

1 state of things under which they happened, or which afforded an
2 opportunity for their occurrence or transaction, are relevant.

3 Illustrations.

4 (a) The question is, whether A robbed B. The facts
5 that shortly before the robbery B went to a
6 fair with money in his possession, and that he
7 showed it, or mentioned the fact that he had it,
8 to third persons, are relevant.

9 (b) The question is, whether A murdered B. Marks on
10 the ground, produced by a struggle at or near the
11 place where the murder was committed, are relevant
12 facts.

13 (c) The question is, whether A poisoned B. The state
14 of B's health before the symptoms ascribed to
15 poison, and habits of B, known to A, which
16 afforded an opportunity for the administration
17 of poison, are relevant facts.

18 Section 9.

19 (1) Motive or preparation. Any fact is relevant which shows
20 or constitutes motive or preparation for any fact in issue or relevant
21 fact.

22 (2) Previous or subsequent conduct. The conduct of any
23 party, or of any agent to any party, to any suit or proceeding in
24 reference to such suit or proceeding or in reference to any fact in

1 issue therein or relevant thereto, and the conduct of any person an
2 offence against whom is the subject of any proceeding, is relevant, if
3 such conduct influences or is influenced by any fact in issue or
4 relevant fact, and whether it was previous or subsequent thereto.

5 Explanation 1. - The word "conduct" in this Section does not
6 include statements, unless those statements accompany and
7 explain acts other than statements, but the explanation is not
8 to affect the relevancy of statements under any other Section
9 of this Act.

10 Explanation 2. - When the conduct of any person is relevant,
11 any statement made to him or in his presence and hearing,
12 which affects such conduct, is relevant.

13 Illustrations.

14 (a) A is tried for the murder of B. The facts that
15 A murdered C, that B knew that A had murdered
16 C, and that B had tried to extort money from A
17 by threatening to make his knowledge public,
18 are relevant.

19 (b) A sues B upon an instrument for the payment of
20 money. B denies the making of the instrument.
21 The fact that at the time when the instrument
22 was alleged to be made B required money for a
23 particular purpose is relevant.

24 (c) A is tried for the murder of B by poison. The
25 fact that before the death of B, A procured

1 poison similar to that which was administered
2 to B, is relevant.

3 (d) The question is, whether a certain document is the
4 will of A. The facts that not long before the date
5 of the alleged will A made inquiry into matters to
6 which the provisions of the alleged will relate,
7 that he consulted lawyers in reference to making
8 the will, and that he caused drafts of other wills
9 to be prepared, of which he did not approve, are
10 relevant.

11 (e) A is accused of a crime. The facts that either
12 before or at the time of, or after the alleged
13 crime, A provided evidence which would tend to give
14 to the facts an appearance favourable to himself,
15 or that he destroyed or concealed evidence, or
16 prevented the presence or procured the absence
17 of persons who might have been witnesses, or
18 suborned persons to give false evidence respecting
19 it, are relevant.

20 (f) The question is, whether A robbed B. The facts
21 that after B was robbed C said in A's presence
22 "The police are coming to look for the man who
23 robbed B", and that immediately afterwards A
24 ran away, are relevant.

1 (g) The question is, whether A owes B \$10,000. The
2 facts that A asked C to lend him money, and that
3 D said to C in A's presence and hearing, "I
4 advise you not to trust A, for he owes B \$10,000"
5 and that A went away without any answer, are
6 relevant facts.

7 (h) The question is, whether A committed a crime. The
8 fact that A absconded after receiving a letter
9 warning him that inquiry was being made for the
10 criminal, and the contents of the letter, are
11 relevant.

12 (i) A is accused of a crime. The facts that after the
13 commission of the alleged crime he absconded, or
14 was in possession of property or the proceeds of
15 the property acquired by the crime, or attempted
16 to conceal things which were or might have been
17 used in committing it, are relevant.

18 (i) The question is, whether A was ravished. The
19 fact that shortly after the alleged rape she made
20 a complaint relating to the crime, the circumstances
21 under which and the terms in which the complaint
22 was made, are relevant. The fact that,
23 The fact that, without making a complaint, she said
24 that she had been ravished, is not relevant as

1 conduct under this Section, though it may be
2 relevant as a dying declaration under Section 31
3 Subsection (1), or as corroborative evidence
4 under Section 160.

5 (k) The question is, whether A was robbed. That fact
6 that soon after the alleged robbery he made a
7 complaint relating to the offence, the circumstances
8 under which and the terms in which the complaint was
9 made, are relevant.

10 The fact that he said that he had been robbed,
11 without making any complaint, is not relevant as
12 conduct under this Section though it maybe relevant
13 as a dying declaration under Section 31 Subsection
14 (1), or as corroborative evidence under Section 160.

15 Section 10. Facts necessary to explain or introduce relevant
16 facts.

17 Facts necessary to explain or introduce a fact in issue or
18 relevant fact, or which support or rebut an inference suggested by a
19 fact in issue or relevant fact, or which establish the identity of
20 anything or person whose identity is relevant, or fix the time or place
21 at which any fact in issue or relevant fact happened, or which show the
22 relation of parties by whom such fact was transacted, are relevant in so
23 far as they are necessary for that purpose.

24 Illustrations.

25 (a) The question is, whether a given document is the

1 will of A. The state of A's property and of his
2 family at the date of the alleged will may be
3 relevant facts.

4 (b) A sues B for a libel imputing disgraceful conduct to
5 A. B affirms that the matter alleged to be
6 libellous is true.

7 The position and relations of the parties at the
8 time when the libel was published may be relevant
9 facts as introductory to the facts in issue. The
10 particulars of a dispute between A and B about a
11 matter unconnected with the libel are irrelevant,
12 though the fact that there was a dispute may be
13 relevant if it affected the relations between A and
14 B.

15 (c) A is accused of a crime. The fact that soon after
16 the commission of the crime A absconded from his
17 house, is relevant, under Section 9, as conduct
18 subsequent to and affected by facts in issue.
19 The fact that at the time when he left home he had
20 sudden and urgent business at the place to which he
21 went, is relevant, as tending to explain the fact
22 that he left home suddenly.

23 The details of the business on which he left are not
24 relevant, except in so far as they are necessary to
25 show that the business was sudden and urgent.

1 (d) A sues B for inducing C to break a contract of
2 service made by him with A. C, on leaving A's
3 service, says to A, "I am leaving you because B has
4 made me a better offer". This statement is a
5 relevant fact as explanatory of C's conduct, which
6 is relevant as a fact in issue.

7 (e) A, accused of theft, is seen to give the stolen
8 property to B, who is seen to give it to A's wife.
9 B says, as he delivers it, "A says you are to hide
10 this". B's statement is relevant, as explanatory of
11 a fact which is part of the transaction.

12 (f) A is tried for riot, and is proved to have marched
13 at the head of a mob. The cries of the mob are
14 relevant as explanatory of the nature of the
15 transaction.

16 Section 11. Things said or done by conspirators in reference to
17 common intention.

18 Where there is reasonable ground to believe that two or more
19 persons have conspired together to commit an offence or an actionable
20 wrong, anything said, done, or written by any one of such persons in
21 reference to their common intention, after the time when such intention
22 was first entertained by any one of them, is a relevant fact as against
23 each of the persons believed to be conspiring, as well for the purpose
24 of proving the existence of the conspiracy as for the purpose of showing
25 that any such person was a party to it.

1 (a) any transaction by which the right or custom in
2 question was created, claimed, modified, recognized,
3 asserted, or denied, or which was inconsistent with
4 its existence

5 (b) particular instances in which the right or custom
6 was claimed, recognized or exercised or in which its
7 exercise was disrupted, asserted, or departed from.

8 Illustration.

9 The question is, whether A has a right to a fishery.
10 A deed conferring the fishery on A's ancestors, a
11 mortgage of the fishery by A's father, a subsequent
12 grant of the fishery irreconcilable with the mortgage,
13 particular instances in which the exercise of the right
14 was stopped by A's neighbours, are relevant facts.

15 Section 15. Facts showing existence of state of mind or of body,
16 or bodily feeling.

17 Facts showing the existence of any state of mind - such as
18 intention, knowledge, good faith, negligence, rashness, ill-will or good
19 will towards any particular person, or showing the existence of any
20 state of body or bodily feeling - are relevant, when the existence of
21 any such state of mind, or body or bodily feeling is in issue or
22 relevant.

23 Explanation 1. - A fact relevant as showing the existence of a
24 relevant state of mind must show that the state of mind

1 exists, not generally, but in reference to the particular
2 matter in question.

3 Explanation 2. - But where, upon the trial of a person accused
4 of an offence, the previous commission by the accused of an
5 offence is relevant within the meaning of this Section, the
6 previous conviction of such person shall also be a relevant
7 fact.

8 Illustrations.

9 (a) A is accused of receiving stolen goods knowing them
10 to be stolen. It is proved that he was in
11 possession of a particular stolen article.

12 The fact that at the same time he was in possession
13 of many other stolen articles is relevant, as
14 tending to show that he knew each and all of the
15 articles of which he was in possession to be stolen.

16 (b) A is accused of fraudulently delivering to another
17 person a counterfeit coin which, at the time when he
18 delivered it, he knew to be counterfeit.

19 The fact that at the time of its delivery A was
20 possessed of a number of other pieces of counterfeit
21 coin is relevant.

22 The fact that A has been previously convicted of
23 delivering to another person as genuine a
24 counterfeit coin knowing it to be counterfeit is
25 relevant.

- 1 (c) A sues B for damage done by a dog of B's which B
2 knew to be ferocious. The facts that the dog had
3 previously bitten X, Y and Z, and that they had made
4 complaints to B, are relevant.
- 5 (d) The question is, whether A, the acceptor of a bill
6 of exchange, knew that the name of the payee was
7 fictitious. The fact that A had accepted other
8 bills drawn in the same manner before they could
9 have been transmitted to him by the payee, if the
10 payee had been a real person, is relevant, as
11 showing that A knew that the payee was a fictitious
12 person.
- 13 (e) A is accused of defaming B by publishing an
14 imputation intended to harm the reputation of B.
15 The fact of previous publications by A respecting B,
16 showing ill-will on the part A towards B, is
17 relevant, as proving A's intention to harm B's
18 reputation by the particular publication in
19 question.
- 20 The fact that there was no previous quarrel between
21 A and B, and that A repeated the matter complained
22 of as he heard it, are relevant, as showing that A
23 did not intend to harm the reputation of B.

- 1 (f) A is sued by B for fraudulently representing to B
2 that C was solvent, whereby B, being induced to
3 trust C, who was insolvent, suffered loss. The fact
4 that at the time when A represented C to be solvent,
5 C was supposed to be solvent by his neighbours and
6 by persons dealing with him, is relevant, as showing
7 that A made the representation in good faith.
- 8 (g) A is sued by B for the price of work done upon a
9 house of which A is owner, by order of C, a
10 contractor. A's defence is that B's contract was
11 with C. The fact that A paid C for the work in
12 question is relevant as proving that A did in good
13 faith make over to C the management of the work in
14 question, so that C was in a position to contract
15 with B on C's own account, and not as agent for A.
- 16 (h) A is accused of the embezzlement of property which
17 he has found, and the question is whether, when he
18 converted it to his own use, he believed in good
19 faith that the real owner could not be found. The
20 fact that public notice of the loss of the property
21 had been given in the place where A was is relevant,
22 as showing that A did not in good faith believe that
23 the real owner of the property could not be found.
24 The fact that A knew, or had reason to believe, that

1 the notice was given fraudulently by C, who had
2 heard of the loss of the property and wished to set
3 up a false claim to it, is relevant as showing that
4 the fact that A knew of the notice did not disprove
5 A's good faith.

6 (j) A is charged with shooting at B with intent to kill
7 him. In order to show A's intent, the fact of A
8 having previously shot at B may be proved.

9 (i) A is charged with sending threatening letters to B.
10 Threatening letters previously sent by A to B may be
11 proved as showing the intention of the letters.

12 (k) The question is, whether A has been guilty of
13 cruelty towards B, his wife.
14 Expressions of their feeling towards each other
15 shortly before or after the alleged cruelty are
16 relevant facts.

17 (l) The question is, whether A's death was caused by
18 poison.
19 Statements made by A during his illness as to his
20 symptoms are relevant facts.

21 (m) The question is, what was the state of A's health at
22 the time when an insurance on his life was effected.
23 Statements made by A as to the state of his health
24 at or near the time in question are relevant facts.

1 (n) A sues B for negligence in providing him with a
2 carriage for hire not reasonably fit for use,
3 whereby A was injured.

4 The fact that B's attention was drawn on other
5 occasions to the defect of that particular carriage
6 is relevant.

7 The fact that B was habitually negligent about the
8 carriages which he let to hire is irrelevant.

9 (o) A is tried for the murder of B by intentionally
10 shooting him dead.

11 The fact that A on other occasions shot at B is
12 relevant as showing his intention to shoot B.

13 The fact that A was in the habit of shooting at
14 people with intent to murder them is irrelevant.

15 (p) A is tried for a crime.

16 The fact that he said something indicating an
17 intention to commit that crime is relevant.

18 The fact that he said something indicating a general
19 disposition to commit crimes of that class is
20 irrelevant.

21 Section 16. Facts bearing on question whether act was accidental
22 or intentional.

23 When there is a question whether an act was accidental or
24 intentional or done with a particular knowledge or intention, the fact

1 that such act formed part of a series of similar occurrences, in each of
2 which the person doing the act was concerned, is relevant.

3 Illustrations.

4 (a) A is accused of burning down his house in order to
5 obtain money for which it is insured.

6 The facts that A lived in several houses
7 successively, each of which he insured, in each of
8 which a fire occurred, and after each of which fires
9 A received payment from a different insurance office
10 are relevant as tending to show that the fires were
11 not accidental.

12 (b) A is employed to receive money from the debtors of
13 B. It is A's duty to make entries in a book showing
14 the amounts received by him. He makes an entry
15 showing that on a particular occasion he received
16 less than he actually did receive.

17 The question is, whether this particular entry was
18 accidental or intentional.

19 The fact that other entries made by A in the same
20 book are false, and that the false entry is in each
21 case in favour of A, are relevant.

22 (c) A is accused of fraudulently delivering to B a
23 counterfeit dollar.

24 The question is, whether the delivery of the dollar
25 was accidental.

1 which is made by any of the persons and under the circumstances
2 hereinafter mentioned.

3 (2) Confession defined.

4 A confession is an admission made at any time by a person
5 accused of an offence stating or suggesting the inference that he
6 committed that offence.

7 Section 19.

8 (1) Admission by party to proceeding, or his agent;

9 Statements made by a party to the proceeding, or by an
10 agent to any such party, whom the court regards, under the circumstances
11 of the case, as expressly or impliedly authorized by him to make them,
12 are admissions.

13 (2) by suitor in representative capacity:

14 Statements made by parties to suits suing or being sued
15 in a representative character are not admissions, unless they were made
16 while the party making them held that character.

17 (3) by party interested in subject-matter:

18 Statements made by -

19 (a) persons who have any proprietary or pecuniary
20 interest in the subject-matter of the proceeding,
21 and who make the statements in their character of
22 persons so interested; or

23 (b) persons from whom the parties to the suit have
24 derived this interest in the subject matter of the
25 suit,

1 are admissions if they are made during the continuance of the interest
2 of the person making the statements.

3 Section 20. Admissions by persons whose position must be proved
4 as against party to suit.

5 Statements made by persons whose position or liability it is
6 necessary to prove as against any party to the suit are admissions if
7 such statements would be relevant as against such persons in relation to
8 such position or liability in a suit brought by or against them and if
9 they are made whilst the person making them occupies such position or is
10 subject to such liability.

11 Illustrations.

12 A undertakes to collect rents for B.

13 B sues A for not collecting rent due from C to B.

14 A denies that rent was due from C to B.

15 A statement by C that he owed B rent is an admission and
16 is a relevant fact as against A if A denies that C did
17 owe rent to B.

18 Section 21. Admissions by persons expressly referred to by party
19 to suit.

20 Statements made by persons to whom a party to the suit has
21 expressly referred for information in reference to a matter in dispute,
22 are admissions.

23 Illustration.

24 The question is, whether a horse sold by A to B is sound.

1 A says to B "Go and ask C; C knows all about it". C's statement is an
2 admission.

3 Section 22. Proof of admissions against person making them or his
4 representative in interest.

5 Admissions are relevant and may be proved as against the
6 person who makes them, or his representative in interest, but they
7 cannot be proved by or on behalf of the person who makes them or by his
8 representative in interest, except in the following cases:

- 9 (a) an admission may be proved by or on behalf of the
10 person making it when it is of such a nature that,
11 if the person making it were dead, it would be
12 relevant as between third persons under Section 31;
- 13 (b) an admission may be proved by or on behalf of the
14 person making it when it consists of a statement
15 of the existence of any state of mind or body,
16 relevant or in issue, made at or about the time
17 when such state of mind or body existed, and is
18 accompanied by conduct rendering its falsehood
19 improbable;
- 20 (c) an admission may be proved by or on behalf of the
21 person making it if it is relevant otherwise than
22 as an admission.

23 Illustrations.

1 (a) The question between A and B is, whether a certain
2 deed is or is not forged. A affirms that it is
3 genuine, B that it is forged.

4 A may prove a statement by B that the deed is
5 genuine, and B may prove a statement by A that the
6 deed is forged but A cannot prove a statement by
7 himself that the deed is genuine nor can B prove a
8 statement by himself that the deed is forged.

9 (b) A, the captain of a ship, is tried for casting her
10 away. Evidence is given to show that the ship was
11 taken out of her proper course.

12 A produces a book kept by him in the ordinary course
13 of his business, showing observations alleged to
14 have been taken by him from day to day and
15 indicating that the ship was not taken out of her
16 proper course. A may prove these statements
17 because they would be admissible between third
18 parties if he were dead under Section 31 Subsection
19 (2).

20 (c) C is accused of a crime committed by him at Eveve.
21 He produces a letter written by himself and dated
22 at Majuro on that day and bearing the Majuro
23 postmark of **that** day.

24 The statement in the date of the letter is

1 Section 24. Relevancy of admissions in civil cases.

2 In civil cases no admission is relevant if it is made either
3 upon an express condition that evidence of it is not to be given, or
4 under circumstances from which the court can infer that the parties
5 agreed together that evidence of it should not be given.

6 Explanation. - Nothing in this Section shall be construed to
7 exempt any attorney at-law from giving evidence of any matter of which
8 he may be compelled to give evidence under Section 131.

9 Section 25. Relevancy of confession.

10 A confession made by an accused person is irrelevant in a
11 criminal proceeding if the making of the confession appears to the court
12 to have been caused by any inducement, threat, or promise having
13 reference to the charge against the accused person, proceeding from a
14 person in authority, or proceeding from another person in the presence
15 of a person in authority and with his sanction, and which inducement,
16 threat or promise is sufficient in the opinion of the court to give the
17 accused person grounds, which would appear to him reasonable, for
18 supposing that by making it he would gain any advantage or avoid any
19 evil of a temporal nature in reference to the proceedings against him.

20 Section 26. Exception.

21 Notwithstanding the provisions of Section 25, when any fact is
22 deposed to as discovered in consequence of information received from a
23 person accused of any offence while such person was in the custody or in
24 the presence of a person in authority, so much of such information,

1 whether it amounts to a confession or not such as is referred to in that
2 Section, as relates distinctly to the fact thereby discovered may be
3 proved; provided, however, that no inference of guilt shall be drawn
4 against the accused person from such information.

5 Section 27. Confession made after removal of impression caused by
6 inducement threat or promise.

7 If such a confession as is referred to in Section 25 is made
8 after the impression caused by any such inducement, threat or promise
9 has, in the opinion of the court, been fully removed it is relevant.

10 Section 28. Confession otherwise relevant not to become irrelevant
11 because of promise etc.

12 If such a confession is otherwise relevant, it does not become
13 irrelevant merely because it was made under a promise of secrecy or in
14 consequence of a deception practiced on the accused person for the
15 purpose of obtaining it, or when he was drunk, or because it was made in
16 answer to questions which he need not have answered, whatever may have
17 been the form of those questions.

18 Section 29. Confession of co-accused.

19 Where more persons than one are being tried jointly for the
20 same offence, and a confession made by one of such persons affecting
21 himself and some other of such persons is proved, the court shall not
22 take into consideration such confession as against such other person.

23 Explanation. - "Offence" as used in this Section includes the
24 abetment of or attempt to commit the offence.

1 (2) or is made in course of business;

2 When the statement was made by such person in the
3 ordinary course of business, and in particular when it consists of any
4 entry or memorandum made by him in books kept in the ordinary course of
5 business or in the discharge of professional duty or of an
6 acknowledgment written or signed by him of the receipt of money, goods,
7 securities, or property of any kind or of a document used in commerce
8 written or signed by him, or of the date of a letter or other document
9 usually dated, written, or signed by him.

10 (3) or against interest of maker:

11 When the statement is against the pecuniary of
12 proprietary interest of the person making it, or when if true it would
13 expose him or would have exposed him to a criminal prosecution or to a
14 suit for damages.

15 (4) or gives opinion as to public right or custom or matters
16 of general interest:

17 When the statement gives the opinion of any such person
18 as to the existence of any public right or custom or matter of public or
19 general interest, of the existence of which, if it existed, he would
20 have been likely to be aware, and when such statement was made before
21 any controversy as to such right, custom or matter had arisen.

22 (5) or relates to existence of relationship:

23 When the statement relates to the existence of any
24 relationship by blood, marriage, or adoption between persons as to whose

1 relationship by blood, marriage, or adoption the person making the
2 statement had special means of knowledge, and when the statement was
3 made before the question in dispute was raised.

4 (6) or is made in will or deed relating to family affairs:

5 When the statement relates to the existence of any
6 relationship by blood, marriage, or adoption between person deceased,
7 and is made in any will or deed relating to the affairs of the family to
8 which any such deceased person belonged, or in any family pedigree, or
9 upon any tombstone, family portrait, or other thing on which such
10 statements are usually made, and when such statement was made before the
11 question in dispute was raised.

12 (7) or in document relating to the transaction mentioned in
13 Section 14(a):

14 When the statement is contained in any deed or will, or
15 other document which relates to any such transaction as is mentioned in
16 Section 14 paragraph (a).

17 (8) or is made by several persons and expresses feelings
18 relevant to matter in question;

19 When the statement was made by a number of persons and
20 expressed feelings or impressions on their part relevant to the matter
21 in question.

22 Illustrations.

23 (a) The question is, whether A was murdered by B, or
24 whether A died of injuries received in a transaction

1 in the course of which she was ravished.
2 The question is, whether she was ravished by B or
3 The question is, whether A was killed by B under
4 such circumstances that a suit would lie against B
5 by A's widow.
6 Statements made by A as to his or her death
7 referring respectively to the murder, then rape, and
8 the actionable wrong under consideration, are
9 relevant facts.

10 (b) The question is as to the date of A's birth.
11 An entry in the diary of a deceased surgeon,
12 regularly kept in the course of his business,
13 stating that, on a given day, he attended A's mother
14 delivered her of a son, is a relevant fact.

15 (c) The question is, whether A was in Maiuro on a given
16 day.
17 A statement in the diary of a deceased
18 attorney-at-law, regularly kept in the course of
19 business that, on a given day, the attorney-at-law
20 attended A, at a place mentioned, in Maiuro, for the
21 purpose of conferring with him upon specified
22 business, is a relevant fact.

23 (d) The question is, whether a ship sailed from Maiuro
24 harbour on a given day.

1 A letter written by a deceased member of the
2 merchant's firm by which the ship was chartered to
3 **their correspondents in New York** to whom the cargo
4 was consigned, stating that the ship sailed on a
5 given day from Majuro harbour, is a relevant fact.

6 (e) The question is, whether rent was paid to A for
7 certain land.

8 A letter from A's deceased agent to B saying that he
9 had received the rent on A's account and held it at
10 A's orders, is a relevant fact.

11 (f) The question is, whether A and B were legally
12 married.

13 The statement of a deceased clergyman that he
14 married them under such circumstances that the
15 celebration would be a crime is relevant.

16 (g) The question is, whether A, who cannot be found,
17 wrote a letter on a certain day.

18 The fact that a letter written by him is dated on
19 that day is relevant.

20 (h) The question is, what was the cause of the wreck of
21 a ship.

22 A protest made by the captain, whose attendance
23 cannot be procured, is a relevant fact.

1 (i) The question is, whether a given road is a public
2 way.

3 A statement by A, a deceased, Alab of the village
4 that the road was public is a relevant fact.

5 (j) The question is, what was the price of grain on a
6 certain day in a particular market.

7 A statement of the price made by a deceased broker
8 in the ordinary course of business is a relevant
9 fact.

10 (k) The question is, whether A, who is dead, was the
11 father of B.

12 A statement by A that F was his son is a relevant
13 fact.

14 (l) The question is, what was the date of the birth
15 of A.

16 A letter from A's deceased father to a friend
17 announcing the birth of A on a given date is a
18 relevant fact.

19 (m) The question is, whether and when, A and B were
20 married.

21 An entry in a memorandum book by C, the deceased
22 father of B, of his daughter's marriage with A on a
23 given date, is a relevant fact.

1 (n) A sues B for a libel expressed in a printed
2 caricature exposed in a shop window. The question
3 is as to the similarity of the caricature and its
4 libellous character.
5 The remarks of a crowd of spectators on these points
6 may be proved.

7 Section 32. Relevancy of evidence given in former judicial
8 proceedings.

9 Evidence given by a witness in a judicial proceeding, or
10 before any person authorized by law to take it, is relevant, for the
11 purpose of proving, in a subsequent judicial proceeding, or in a
12 letter stage of the same judicial proceeding, the truth of the facts
13 which it states, when the witness is dead or cannot be found, or is
14 incapable of giving evidence, or is kept out of the way by the adverse
15 party, or if his presence cannot be obtained without an amount of delay
16 or expense which, under the circumstances of the case, the court
17 considers unreasonable.

18 Provided -

- 19 (a) that the proceeding was between the same parties or their
20 representatives in interest;
- 21 (b) that the adverse party in the first proceeding had the
22 right and opportunity to cross-examine;
- 23 (c) that the questions in issue were substantially the same
24 in the first as in the second proceeding.

1 Explanation. - A criminal trial or inquiry shall be deemed to
2 be a proceeding between the prosecutor and the accused within
3 the meaning of this Section.

4 STATEMENTS MADE UNDER SPECIAL CIRCUMSTANCES.

5 Section 33. Entries in books of account when relevant.

6 Entries in books of account, regularly kept in the course of
7 business, are relevant, whenever they refer to a matter into which the
8 court has to inquire, but such statements shall not alone be sufficient
9 evidence to charge any person with liability.

10 Illustration.

11 A sues B for \$1,000 and shows entries in his account
12 books showing B to be indebted to him to this amount.

13 The entries are relevant, but are not sufficient without
14 other evidence to prove the debt.

15 Section 34. Entries in public records made in performance of duty
16 enjoined by law, when relevant.

17 An entry in any public or other official book, register, or
18 record, stating a fact in issue or relevant fact, and made by a public
19 servant in the discharge of his official duty, or by any other person in
20 performance of a duty especially enjoined by the law of the country in
21 which such book, register, or record is kept, is itself a relevant fact.

22 Section 35. Maps, charts and plans, when relevant.

23 Statements of facts in issue or relevant facts, made in
24 published maps or charts generally offered for public sale, or in maps

1 or plans made under the authority of the Government, as to matters
2 usually represented or stated in such maps, charts or plans, are
3 themselves relevant facts.

4 Section 36. Statements as to fact of public nature contained
5 in any United States Act, enactment or notification,
6 when relevant.

7 When the court has to form an opinion as to the existence of
8 any fact of a public nature, any statement of it made in a recital
9 contained in any Act of the Congress of the United States of America, or
10 in any enactment, or in any proclamation or notification of the
11 Governments of the United States of America, Federated States of
12 Micronesia or Belau, appearing in any official publication, is a
13 relevant fact.

14 Section 37. Statement in law books, when relevant.

15 When the court has to form an opinion as to a law of any
16 country, any statement of such law contained in a book purporting to be
17 printed or published under the authority of the Government of such
18 country, and to contain any such laws, and any report of a ruling of the
19 courts of such country contained in a book purporting to be a report of
20 such rulings, is relevant.

21 NOW MUCH OF A STATEMENT IS TO BE PROVED.

22 Section 38. What evidence to be given when statement forms part
23 of a conversation, document, book, or series of
24 letters or papers.

1 A sues B for trespass on his land. B alleges the
2 existence of a public right of way over the land,
3 which A denies. The existence of a decree in favour
4 of the defendant in a suit by A against C for trespass
5 on the same land, in which C alleged the existence
6 of the same right of way, is relevant, but it is not
7 conclusive proof that the right of way exists.

8 Section 42. Judgments, &c., other than those mentioned in §§.
9 39, 40, and 41, when relevant.

10 Judgments, orders, or decrees, other than those mentioned
11 in Sections 39, 40, and 41, are irrelevant unless the existence of
12 such judgment, order, or decree is a fact in issue, or is relevant
13 under some other provision of this Act.

14 Illustrations.

- 15 (a) A and B separately sue C for a libel which
16 reflects upon each of them. C in each case says
17 that the matters alleged to be libellous are
18 true, and the circumstances are such that they
19 are probably true in each case, or in neither.
20 A obtains a decree against C for damages, on the
21 ground that C failed to make out his justification.
22 The fact is irrelevant as between B and C.
- 23 (b) A prosecutes B for stealing a pig from him. B is
24 convicted.

1 A afterwards sues C for the pig, which P had sold
2 to him before his conviction. As between A and
3 C the judgment against P is irrelevant.

4 (c) A has obtained a decree for the possession of land
5 against B. C, B's son, murders A in consequence.
6 The existence of a judgment is relevant, as
7 showing motive for a crime.

8 (d) A is charged with theft.
9 A previous conviction of A for theft may be a
10 relevant fact.

11 (e) A is tried for the murder of P. The fact that P
12 prosecuted A for libel, and that A was convicted
13 and sentenced, is relevant under Section 9 as
14 showing the motive for the fact in issue.

15 Section 43. Fraud, collusion, or incompetency of court.

16 Any party to a suit or other proceeding may show that any
17 judgment, order, or decree which is relevant under Section 39, 40, or
18 41, and which has been proved by the adverse party, was delivered by a
19 court not competent to deliver it, or was obtained by fraud or
20 collusion.

21 OPINIONS OF THIRD PARTIES WHEN RELEVANT.

22 Section 44. Opinions of experts.

23 When the court has to form an opinion as to foreign law, or
24 science or art, or as to the identity or genuineness of handwriting or
25 finger impressions, palm impressions or foot impressions, the opinions

1 upon that point of persons specially skilled in such foreign law,
2 science or art, or in questions as to the identity or genuineness of
3 handwriting or finger impressions, palm impressions or foot impressions,
4 are relevant facts.

5 Such persons are called experts.

6 Illustrations.

- 7 (a) The question is, whether the death of A was
8 caused by poison.
- 9 (b) The opinions of experts as to the symptoms
10 produced by the poison by which A is supposed
11 to have died are relevant.
- 12 (c) The question is whether A, at the time of doing
13 a certain act, was by reason of unsoundness of
14 mind, incapable of knowing the nature of the act,
15 or that he was doing what was either wrong
16 or contrary to law.
- 17 The opinions of experts upon the question
18 whether the symptoms exhibited by A commonly show
19 unsoundness of mind, and whether such unsoundness
20 of mind usually renders persons incapable of
21 knowing the nature of the acts which they do, or
22 of knowing that what they do is either wrong or
23 contrary to law, are relevant.

1 (c) The question is whether a certain
22 document was written by A. Another
3 document is produced which is proved
4 or admitted to have been written by A.
5 The opinions of experts on the question
6 whether the two documents were written
7 by the same person or by different
8 persons, are relevant.

9 Section 45. Facts bearing upon opinions of experts.
10 Facts not otherwise relevant are relevant if
11 they support or are inconsistent with the opinions of
12 experts, when such opinions are relevant.

13 Illustrations.

14 (a) The question is, whether A was
15 poisoned by a certain poison.
16 The fact that other persons who
17 were poisoned by that poison exhibited
18 certain symptoms which experts affirms
19 or deny to be the symptoms of
20 that poison, is relevant.

1 **Section 48. Opinions as to usages, tenets, &c., when relevant.**

2 When the court has to form an opinion as to -

3 (a) the usages and tenets of any body of men or family;

4 (b) the constitution and government of any religious or
5 charitable foundation; or

6 (c) the meaning of words or terms used in particular
7 districts or localities or by particular classes
8 of people,

9 the opinions of persons having special means of knowledge thereon are
10 relevant facts.

11 **Section 49. Opinion on relationship, when relevant.**

12 When the court has to form an opinion as to the relationship
13 of one person to another, the opinion, expressed by conduct, as to the
14 existence of such relationship of any person who, as a member of the
15 family or otherwise, has special means of knowledge on the subject, is a
16 relevant fact.

17 Provided that such opinion shall not be sufficient to prove a
18 marriage in proceedings for divorce, or in prosecutions under Section
19 251 of Title II of the Trust Territory Code (1980 Edn).

20 Illustrations.

21 (a) The question is, whether A and B were married.

22 The fact that they were usually received and treated
23 by their friends as husband and wife is relevant.

1 (b) The question is, whether A was the legitimate son
2 of B.

3 The fact that A was always treated as such by
4 members of the family is relevant.

5 Section 50. Grounds of opinion, when relevant.

6 Whenever the opinion of any living person is relevant the
7 grounds on which such opinion is based are also relevant.

8 Illustration.

9 An expert may give an account of experiments performed
10 by him for the purpose of forming his opinion.

11 CHARACTER WHEN RELEVANT.

12 Section 51. In civil cases, character to prove conduct imputed,
13 irrelevant.

14 In civil cases, the fact that the character of any person
15 concerned is such as to render probable or improbable any conduct
16 imputed to him is irrelevant except in so far as such character appears
17 from facts otherwise relevant.

18 Section 52. In criminal cases, previous good character relevant.

19 In criminal proceedings the fact that the person accused is of
20 good character is relevant.

21 Section 53. Previous bad character relevant when evidence of good
22 character is given.

23 In criminal proceedings the fact that the accused person has a
24 bad character is irrelevant unless evidence is given that he has a good
25 character, in which case it becomes relevant.

1 (2) all public Acts passed or hereafter to be passed by
2 the Nitijela, and all local and personal Acts directed by the Nitijela
3 to be judicially noticed:

4 (3) articles of war for the Navy, Army or Air Force of
5 the United States of America:

6 (4) course of proceedings of the Nitijela:

7 (5) the seals of all the courts of the Marshall Islands
8 the seals of the Court of Admiralty and maritime jurisdiction and of
9 notaries public and all seals which any person is authorized to use by
10 any Act of the Nitijela or other law for the time being in force in the
11 Marshall Islands:

12 (6) the accession to office, names, titles, functions,
13 and signatures of the persons filling for the time being any public
14 office in any part of the Marshall Islands, if the fact of their
15 appointment is notified in the Government Gazette:

16 (7) the existence, title, and national flag of every
17 State or Sovereign recognized by the Government of the Marshall Islands:

18 (8) the ordinary course of nature, natural and
19 artificial divisions of time, the geographical divisions of the world,
20 the meaning of English words, and public festivals, facts, and holidays
21 notified in the Government Gazette:

22 (9) the names of the members and officers of the court,
23 and of their duties and subordinate officers and assistants, and also
24 of all officers acting in execution of its process and of all

1 attorneys-at-law, and other persons authorized by law to appear or act
2 before it;

3 (10) the rule of the road and at sea;

4 (11) all other matters which it is directed by any
5 enactment to notice.

6 In all these cases, and also on all matters of public
7 history, literature, science, or art, the court may resort for its aid
8 to appropriate books or documents of reference.

9 If the court is called upon by any person to take
10 judicial notice of any act, it may refuse to do so unless and until such
11 person produces any such book or document as it may consider necessary
12 to enable it to do so.

13 Section 57. Facts admitted need not be proved.

14 No fact need be proved in any proceeding which the parties
15 thereto or their agents agree to admit at the hearing, or which, before
16 the hearing, they agree to admit by writing under their hands, or which
17 by any rule of pleading in force at the time they are deemed to have
18 admitted by their pleadings:

19 Provided that the court may, in its discretion, require the
20 facts admitted to be proved otherwise than by such admissions.

21 CHAPTER IV.

22 OF ORAL EVIDENCE

23 Section 58. Facts may be proved by oral evidence.

24 All facts, except the contents of documents, may be proved by
25 oral evidence.

1 OF DOCUMENTARY EVIDENCE.

2 Section 60. Proof of contents of documents.

3 The contents of documents may be proved either by primary or
4 by secondary evidence.

5 Section 61. Primary evidence.

6 Primary evidence means the document itself produced for the
7 inspection of the court.

8 Explanation 1. - where a document is executed in several
9 parts, each part is primary evidence of the document. Where a
10 document is executed in counterpart, each counterpart being
11 executed by one or some of the parties only, each counterpart
12 is primary evidence as against the parties executing it.

13 Explanation 2. - where a number of documents are all made by
14 one uniform process as in the case of printing, lithography,
15 or photography, each is primary evidence of the contents of
16 the rest; but where they are all copies of a common original,
17 they are not primary evidence of the contents of the original.

18 Illustration.

19 A person is shown to have been in possession of a number
20 of placards, all printed at one time from one original.

21 Any one of the placards is primary evidence of the
22 contents of any other, but no one of them is primary
23 evidence of the contents of the original.

24 Section 62. Secondary evidence.

25 Secondary evidence means and includes -

1 (1) certified copies given under the provisions hereinafter
2 contained;

3 (2) copies made from the original by mechanical processes
4 which in themselves insure the accuracy of the copy and copies compared
5 with such copies;

6 (3) copies made from or compared with the original;

7 (4) counterparts of documents as against the parties who did
8 not execute them;

9 (5) oral accounts of the contents of a document given by some
10 person who has himself seen it.

11 Illustrations.

12 (a) A photograph of an original is secondary evidence of
13 its contents, though the two have not been compared
14 if it is proved that the thing photographed was the
15 original.

16 (b) A copy compared with a copy of a letter made by a
17 copying machine is secondary evidence of the
18 contents of the letter, if it is shown that the copy
19 made by the copying machine was made from the
20 original.

21 (c) A copy transcribed from a copy, but afterwards
22 compared with the original, is secondary evidence;
23 but the copy not so compared is not secondary
24 evidence of the original although the copy from

1 which it was transcribed was compared with the
2 original.

3 (d) Neither an oral account of a copy compared with the
4 original nor an oral account of a photograph or
5 machine-copy of the original, is secondary evidence
6 of the original.

7 Section 63. Proof of documents by primary evidence.

8 Documents shall be proved by primary evidence except in the
9 cases hereinafter mentioned.

10 Section 64. Cases in which secondary evidence may be given.

11 Secondary evidence may be given of the existence, condition
12 or contents of a document in the following cases: -

13 (1) When the original is shown or appears to be in the
14 possession or power -

15 (i) of the person against whom the document is sought to
16 be proved, or

17 (ii) of any person out of reach of, or not subject to,
18 the process of the court, or

19 (iii) of any person legally bound to produce it and
20 when, after the notice mentioned in section 65
21 such person does not produce it.

22 (2) When the existence, condition, or contents of the
23 original have been proved to be admitted in writing by the person
24 against whom it is sought to be proved, or by his representative in
25 interest;

1 (3) When the original has been destroyed or lost, or when the
2 party offering evidence of it cannot, for any other reason not arising
3 from his own default or neglect, produce it in reasonable time:

4 (4) When the original is of such a nature as not to be easily
5 movable:

6 (5) When the document is a public document within the meaning
7 of Section 73:

8 (6) When the original is a document of which a certified copy
9 is permitted by this Act or by any other law in force in the Marshall
10 Islands to be given in evidence:

11 (7) When the originals consist of numerous accounts or other
12 documents which cannot conveniently be examined in court, and the fact
13 to be proved is the general result of the whole collection.

14 In cases (1), (3), and (4), any secondary evidence of the
15 contents of the document is admissible.

16 In case (2), the written admission is admissible.

17 In case (5), or (6), a certified copy of the document, and no
18 other kind of secondary evidence, is admissible.

19 In case (7), evidence may be given as to the general result of
20 the documents by any person who has examined them, and who is skilled in
21 the examination of such documents.

22 Section 65. Rules as to notice to produce.

23 Secondary evidence of the contents of the documents referred
24 to in Section 64, Subsection (1), shall not be given unless the party

1 proposing to give such secondary evidence has previously given to the
2 party in whose possession or power the document is, or to his
3 attorney-at-law, such notice to produce it as is prescribed by law; and
4 if no notice is prescribed by law, then such notice as the court
5 considers reasonable under the circumstances of the case:

6 Provided that such notice shall not be required in order to
7 render secondary evidence admissible in any of the following cases, or
8 in any other case in which the court thinks fit to dispense with it: -

- 9 (1) when the document to be produced is itself a notice;
- 10 (2) when from the nature of the case, the adverse party must
11 know that he will be required to produce it;
- 12 (3) when it appears or is proved that the adverse party has
13 obtained possession of the original by fraud or by force;
- 14 (4) when the adverse party or his agent has the original in
15 court;
- 16 (5) when that adverse party or his agent has admitted the
17 loss of the document;
- 18 (6) when the person in possession of the document is out of
19 reach of, or not subject to, the process of the court.

20 Section 66. Proof of signature and handwriting.

21 If a document is alleged to be signed or to have been written
22 wholly or in part by any person, the signature or the handwriting of so
23 much of the document, as is alleged to be in that person's handwriting
24 must be proved to be in his handwriting.

1 Section 67. Proof of execution of documents required by law to
2 be attested.

3 If a document is required by law to be attested it shall not
4 be used as evidence until one attesting witness at least has been called
5 for the purpose of proving its execution, if there be an attesting
6 witness alive, and subject to the process of the court and capable of
7 giving evidence.

8 Section 68. Proof where no attesting witness found.

9 If no such attesting witness can be found, or if the document
10 purports to have been executed outside the Marshall Islands, it must be
11 proved that the attestation of one attesting witness at least is in his
12 handwriting and that the signature of the person executing the document
13 is in the handwriting of that person.

14 Section 69. Admission of execution by party to attested document.

15 The admission of a party to an attested document of its
16 execution by himself shall be sufficient proof of its execution by
17 himself as against him, though it be a document required by law to be
18 attested.

19 Section 70. Proof when attesting witness denies execution.

20 If the attesting witness denies or does not recollect the
21 execution of the document, its execution may be proved by other
22 evidence.

23 Section 71. Proof of documents not required by law to be attested.

24 An attested document not required by law to be attested may be
25 proved as if it was unattested.

1 Section 72. Comparison of handwriting.

2 (1) In order to ascertain whether a signature, writing or
3 seal is that of the person by whom it purports to have been written or
4 made, any signature, writing or seal admitted or proved to the
5 satisfaction of the court to have been written or made by that person
6 may be compared with the one which is to be proved, although that
7 signature, writing or seal has not been produced or proved for any other
8 purpose.

9 (2) The court may direct any person present in court to write
10 any words or figures for the purpose of enabling the court to compare
11 the words or figures so written with any words or figures alleged to
12 have been written by such person.

13 (3) This Section shall apply mutatis mutandis to finger
14 impressions, palm impressions and foot impressions.

15 PUBLIC DOCUMENTS.

16 Section 73. Public documents:

- 17 (a) documents forming the acts, or records of the acts -
18 (i) of the Sovereign authority
19 (ii) of official bodies and tribunals; and
20 (iii) of public officers, legislative, judicial, and
21 executive, whether of the Marshall Islands or
22 of a foreign country;
23 (b) public records, kept in the Marshall Islands, of
24 private documents;

1 (c) plans, surveys, or maps purporting to be made by
2 order or under the authority of the Government and
3 signed by any person authorized in that behalf.

4 Section 74. Private documents.

5 All other documents are private.

6 Section 75. Certified copies of public documents.

7 Every public officer having the custody of a public document
8 which any person has a right to inspect, shall give that person on
9 demand a copy of it on payment of the legal fee therefor, together with
10 a certificate written at the foot of such copy that it is a true copy of
11 such document or part thereof, as the case may be, and such certificate
12 shall be dated and subscribed by such officer with his name and his
13 official title and shall be sealed, whenever such officer is authorized
14 by law to make use of a seal, and such copies so certified shall be
15 called certified copies.

16 Explanation. - Any officer who, by the ordinary course of
17 official duty, is authorized to deliver such copies shall be deemed to
18 have the custody of such documents within the meaning of this Section.

19 Section 76. Proof of documents by production of certified copies.

20 Such certified copies as are referred to in Section 75 may be
21 produced in proof of the contents of the public documents or parts of
22 the public documents of which they purport to be copies.

23 Section 77. Proof of other official documents.

24 The following public documents may be proved as follows: -

-
- 1 (1) acts, orders, or notifications of the Government of the
2 Marshall Islands or of any of its departments -
- 3 (i) by the records of the departments certified by the
4 heads of those departments respectively, or by the
5 Secretary or a Deputy Secretary or an Assistant
6 Secretary;
- 7 (ii) by any document purporting to be printed by order of
8 the Government;
- 9 (2) the proceedings of the Legislature -
- 10 (i) by the minutes of that body, or
11 (ii) by published documents or abstracts, or
12 (iii) by copies purporting to be printed by order of the
13 Government;
- 14 (3) the acts of the executive or the proceedings of the
15 legislature of a foreign country -
- 16 (i) by journals published by their authority, or
17 commonly received in that country as such, or
18 (ii) by a copy certified under the seal of the country,
19 or Sovereign, or
20 (iii) by a recognition thereof in some public enactment of
21 the Marshall Islands;
- 22 (4) the proceedings of a municipal body in the Marshall
23 Islands -
- 24 (i) by a copy of such proceedings certified by the legal
25 keeper thereof, or

-
- 1 (ii) by a printed book purporting to be published by the
2 authority of such body;
- 3 (5) public documents of any other class in a foreign country -
4 (i) by the original, or
5 (ii) by a copy certified by the legal keeper thereof,
6 with a certificate under the seal of a notary public
7 or of a Marshall Islands Consul or Diplomatic Agent,
8 that the copy is duly certified by the officer
9 having the legal custody of the original and upon
10 proof of the character of the document according to
11 the law of the foreign country.

12 PRESUMPTIONS AS TO DOCUMENTS.

13 Section 79. Presumption as to genuineness of documents.

14 (1) The court shall presume every document purporting to be a
15 certificate, certified copy, or other document, which is by law declared
16 to be admissible as evidence of any particular fact, and which purports
17 to be duly certified by any officer in the Marshall Islands, to be
18 genuine.

19 Provided that such document is substantially in the form
20 and purports to be executed in the manner directed by law in that
21 behalf.

22 (2) The court shall also presume that any officer, by whom
23 any such document purports to be signed or certified, held, when he
24 signed it, the official character which he claims in such paper.

1 Section 79. Presumption on production of record of evidence.

2 Whenever any document is produced before any court purporting
3 to be a record or memorandum of the evidence or of any part of the
4 evidence given by a witness in a judicial proceeding or before any
5 officer authorized by law to take such evidence, or to be a statement or
6 confession by any prisoner or accused person taken in accordance with
7 law and purporting to be signed by any judge or by any officer
8 authorized by law to take such statement or confession, or by any such
9 officer as aforesaid, the court shall presume--

10 (i) that the document is genuine;

11 (ii) that any statements as to the circumstances under
12 which it was taken, purporting to be made by the
13 person signing it, are true; and

14 (iii) that such evidence, statement, or confession was
15 duly taken.

16 Section 80. Presumption as to Government publications.

17 The court shall presume the genuineness of every document
18 purporting to be the Congressional Record or to be a publication of the
19 Government Printing Office of the United States of America, or of any
20 territories or possessions of the United States of America, or to be the
21 Government Gazette of the Marshall Islands, or to be a newspaper or
22 journal, and of every document purporting to be a document directed by
23 any law to be kept by any person, if such document is kept substantially
24 in the form required by law and is produced from proper custody.

1 Section 26. Presumption as to books and maps.

2 The court may presume that any book to which it may refer for
3 information of public or general interest, and that any published map or
4 chart, the statements of which are relevant facts and which is produced
5 for its inspection was written and published by the person and at the
6 time and place by whom or at which it purports to have been written or
7 published.

8 Section 27. Presumption as to telegraphic messages.

9 The court may presume that a message forwarded from a
10 telegraph office to the person to whom such message purports to be
11 addressed, corresponds with a message delivered for transmission at the
12 office from which the messages purports to be sent, but the court shall
13 not draw any presumption as to the person by whom such message was
14 delivered for transmission.

15 Section 28. Presumption as to due execution &c., of documents not
16 produced.

17 The court shall presume that every document called for and not
18 produced, after notice to produce given under Section 65, was attested,
19 stamped, and executed in the manner required by law.

20 Section 29. Presumption as to documents thirty years old.

21 Where any document purporting or proved to be thirty years old
22 is produced from any custody which the court in the particular case
23 considers proper, the court may presume that the signature and every
24 other part of such document which purports to be in the handwriting of

1 any particular person is in that person's handwriting and in the case of
2 a document executed or attested, that it was duly executed or attested
3 by the persons by whom it purports to be executed and attested.

4 Explanation. - Documents are said to be in proper custody if
5 they are in the place in which, and under the care of the
6 person with whom they would naturally be; but no custody is
7 improper if it is proved to have had a legitimate origin, or
8 if the circumstances of the particular case are such as to
9 render such an origin probable.

10 This explanation applies also to Section 20.

11 Illustrations.

12 (a) A has been in possession of landed property for a
13 long time. He produces from his custody deeds
14 relating to the land showing his title to it.
15 The custody is proper.

16 (b) A produces deeds relating to landed property of
17 which he is the mortgagee. The mortgagor is in
18 possession. The custody is proper.

19 (c) A, a connection of B, produces deeds relating to
20 lands in B's possession which were deposited with
21 him by B for safe custody. The custody is proper.

22 CHAPTER VI.

23 FARMERS' BOOKS.

1 Section 90. Interpretation.

2 In this Chapter, unless there is something repugnant in the
3 subject or context -

4 "bank" and "banker" mean -

5 (i) any company carrying on the business of bankers,

6 (ii) any partnership or individual to whose books the
7 provisions of this Chapter shall have been
8 extended as hereinafter provided,

9 (iii) any savings bank, post office savings bank, or
10 money order office;

11 "bankers' books" include ledgers, day books, cash books,

12 account books, and all other books used in the ordinary
13 business of a bank;

14 "certified copy" means a copy of any entry in the books of a
15 bank, together with a certificate written at the foot of
16 such copy that it is a true copy of such entry; that such
17 entry is contained in one of the ordinary books of the
18 bank, and was made in the usual and ordinary course of
19 business; and that such book is still in the custody of
20 the bank, such certificate being dated and subscribed by
21 the principal accountant or manager of the bank with his
22 name and official title;

23 "company" means a company registered under the enactments
24 relating to companies from time to time in force in the

1 Marshall Islands, or incorporated by an Act of the
2 Legislature of the Marshall Islands.

3 Section 91. Power to extend provisions of Charter.

4 The Minister of Justice may from time to time, by notification
5 in the Government Gazette, extend the provisions of this Charter to the
6 books of any partnership or individual carrying on the business of
7 bankers within the Marshall Islands, and keeping a set of not less than
8 three ordinary account books, namely a cash book, a day book or
9 journal, and a ledger, and may in like manner rescind any such
10 notification.

11 Section 92. Mode of proof of entries in bankers' books.

12 Subject to the provisions of this Chapter, a certified copy of
13 any entry in a banker's book shall in all legal proceedings be received
14 as prima facie evidence of the existence of such entry, and shall be
15 admitted as evidence of the matters, transactions, and accounts therein
16 recorded in every case where, and to the same extent as the original
17 entry is now by law admissible, but not further or otherwise.

18 Section 93. Cases in which officer of bank not compellable to
19 produce books.

20 No officer of a bank shall, in any legal proceedings to which
21 the bank is not a party, be compellable to produce any banker's book the
22 contents of which can be proved under this Chapter, or to appear as a
23 witness to prove the matters, transactions, and accounts therein
24 recorded, unless by order of the court, or a judge, made for special
25 cause.

1 Section 94. Inspection of books by order of judge.

2 (1) On the application of any party to a legal proceeding,
3 the court or a judge may order that such party be at liberty to inspect
4 and take copies of any entries in a banker's book for any of the
5 purposes of such proceeding, or may order the bank to prepare and
6 produce, within a time to be specified in the order, certified copies of
7 all such entries, accompanied by a further certificates shall be dated
8 and subscribed in the manner herein before directed in reference to
9 certified copies.

10 (2) An order under this or the preceding Section may be made
11 either with or without summoning the bank, and shall be served on the
12 bank three clear days (exclusive of bank holidays) before the same is to
13 be obeyed, unless the court or judge shall otherwise direct.

14 (3) The bank may at any time, before the time limited for
15 books at the trial or give notice of their intention to show cause
16 against such order, and thereupon the same shall not be enforced without
17 further order.

18 Section 95. Costs.

19 (1) The costs of any application to the court or a judge
20 under or for the purposes of this Chapter, and the costs of anything
21 done or to be done under an order of the court or of a judge made under
22 or for the purposes of this Chapter shall be in the discretion of the
23 court or judge, who may further order such costs or any part thereof to
24 be paid to any party by the bank if they have been incurred in
25 consequence of any fault or improper delay on the part of the bank.

1 to be appointed in writing, and when it is shown
2 that any particular person has acted as such
3 officer, the writing by which he is appointed need
4 not be proved.

5 Exception 2. - Wills admitted to probate in the Marshall
6 Islands may be proved by the probate.

7 Explanation 1. - This Section applies equally to cases in
8 which the contracts, grants, or other dispositions of
9 property referred to are contained in one document and
10 to cases in which they are contained in more documents
11 than one.

12 Explanation 2. - Where there are more originals than one,
13 one original only need be proved.

14 Explanation 3. - The statement in any document whatever
15 of a fact other than the facts referred to in this
16 Section shall not preclude the admission of oral evidence
17 as to the same fact.

18 Illustrations.

19 (a) If a contract be contained in several letters,
20 all the letters in which it is contained must
21 be proved.

22 (b) If a contract is contained in a bill of
23 exchange, the bill of exchange must be proved.

- 1 (c) If a bill of exchange is drawn in a set of
2 three, one only need be proved.
- 3 (d) A contracts in writing with B for the delivery
4 of copra upon certain terms. The contract
5 mentions the fact that B had paid A the price
6 of other copra contracted for verbally on
7 another occasion. Oral evidence is offered
8 that no payment was made for the other copra.
9 The evidence is admissible.
- 10 (e) A give B a receipt for money paid by B. Oral
11 evidence is offered of the payment. The
12 evidence is admissible.

13 Section 97. Exclusion of evidence or oral agreements.

14 When the terms of any such contract, grant or other
15 disposition of property, or any matter required by law to be reduced to
16 the form of a document, have been proved according to the last Section,
17 no evidence of any oral agreement or statement shall be admitted as
18 between the parties to any such instrument, or their representatives in
19 interest, for the purpose of contradicting, varying, adding to or
20 subtracting from its terms.

21 Proviso (1). Any fact may be proved which would invalidate
22 any document, or which would entitle any person to any decree or order
23 relating thereto, such as fraud, intimidation, illegality, want of
24 due execution, want of capacity in any contracting party, the fact
25 that it is wrongly dated, or mistake in fact or law.

1 Proviso (2). The existence of any separate oral agreement as
2 to any matter on which a document is silent, and which is not
3 inconsistent with its terms, may be proved.

4 Proviso (3). The existence of any separate oral agreement as
5 to any matter on which a document is silent and which is not
6 inconsistent with its terms, may be proved. In considering whether or
7 not this proviso applies, the court shall have regard to the degree of
8 formality of the document.

9 Proviso (4). The existence of any separate oral agreement
10 constituting a condition precedent to the attaching of any obligation
11 under any such contract, grant, or disposition of property may be
12 proved.

13 Proviso (5). The existence of any distinct subsequent oral
14 agreement to rescind or modify any such contract, grant or disposition
15 of property may be proved, except in cases in which such contract, grant
16 or disposition of property is by law required to be in writing, or has
17 been registered according to the law in force for the time being as to
18 the registration of documents.

19 Proviso (6). Any usage or custom by which incidents, not
20 expressly mentioned in any contract, are usually annexed to contracts of
21 that description may be proved:

22 Provided that the annexing of such incidents would not be
23 repugnant to or inconsistent with the express terms of the contract.

24 Proviso (7). Any fact may be proved which shows in what
25 manner the language of a document is related to existing facts.

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Illustrations.

- (a) A policy of insurance is effected on goods "in ships from Majuro to New York". The goods are shipped in a particular ship which is lost. The fact that that particular ship was orally excepted from the policy cannot be proved.
- (b) A agrees absolutely in writing to pay B \$1,000 on the 1st of March 1986. The fact that, at the same time, an oral agreement was made that money should not be paid till the 31st of March cannot be proved.
- (c) An estate called the "Laura estate" is sold by deed which contains a map of the property sold. The fact that land not included in the map had always been regarded as part of the estate and was meant to pass by the deed cannot be proved.
- (d) A enters into a written contract with B to work certain mines, the property of B, upon certain terms. A was induced to do so by a misrepresentation of B's as to their value. This fact may be proved.
- (e) A institutes a suit against B for the specific performance of a contract, and also prays that the contract may be reformed as to one of its provisions on the ground that that provision was inserted in it

1 by mistake. A may prove that such a mistake was
2 made as would by law entitle him to have the
3 contract reformed.

4 (f) A orders goods of B by a letter, in which nothing is
5 said as to the time of payment, and accepts the
6 goods on delivery. B sues A for the price. A may
7 show that the goods were supplied on credit for a
8 term still unexpired.

9 (g) A sells B a horse and verbally warrants him sound.
10 A gives B a paper in these words: "Bought of A a
11 horse for \$1,500". B may prove the verbal warranty.

12 (h) A hires lodgings of B, and gives B a card on which is
13 written "Rooms \$200 a month". A may prove a verbal
14 agreement that these terms were to include partial
15 board.

16 A hires lodgings of B for a year, and a regularly
17 stamped agreement drawn up by a notary is made
18 between them. It is silent on the subject of board.
19 A may not prove that board was included in the terms
20 verbally.

21 (i) A applies to B for a debt due to A by sending a
22 receipt for the money. B keeps the receipt and does
23 not send the money. In a suit for the amount A may
24 prove this fact.

1 (i) A and B made a contract in writing to take effect
2 upon the happening of a certain contingency. The
3 writing is left with B, who sues A upon it. A may
4 show the circumstances under which it was delivered.

5 Section 98. Exclusion of evidence to explain or amend ambiguous
6 document.

7 When the language used in a document is on its face ambiguous
8 or defective, evidence may not be given of facts which would show its
9 meaning or supply its defects.

10 Illustrations.

11 (a) A agrees in writing to sell a horse to B for "\$1,000
12 or \$1,500". Evidence cannot be given to show which
13 price was to be given.

14 (b) A deed contains blanks. Evidence cannot be given of
15 facts which would show how they were meant to be
16 filled.

17 Section 99. Exclusion of evidence against application of documents
18 to existing facts.

19 When language used in a document is plain in itself, and when
20 it applies accurately to existing facts, evidence may not be given to
21 show that it was not meant to apply to such facts.

22 Illustration.

23 A sells to B by deed "My estate in Majuro containing 100
24 acres". A has an estate in Majuro containing 100 acres.

1 Evidence may not be given of the fact that the estate
2 meant was one situated in a different atoll and of a
3 different size.

4 Section 100. Evidence as to documents unmeaning in reference to
5 existing facts.

6 When language used in a document is plain in itself, but is
7 unmeaning in reference to existing facts evidence may be given to show
8 that it was used in a particular sense.

9 Illustration.

10 A sells to B by deed "My house at Delap". A had no house
11 at Delap, but it appears that he had a house in Long
12 Islands, of which B had been in possession since the
13 execution of the deed.

14 These facts may be proved to show that the deed related
15 to the house in Long Island.

16 Section 101. Evidence as to application of language which can
17 apply to one only of several persons.

18 When the facts are such that the language used might have been
19 meant to apply to any one, and could not have been meant to apply to more
20 than one of several persons or things, evidence may be given of facts which
21 show which of those persons or things it was intended to apply to.

22 Illustrations.

23 (a) A agrees to sell to B for \$2,000 "My white horse".

24 A has two white horses. Evidence may be given of
25 facts which show which of them was meant.

1 (b) A agrees to accompany B to Halifax. Evidence may be
2 given of facts showing whether Halifax in Yorkshire
3 or Halifax in Nova Scotia was meant.

4 Section 102. Evidence as to application of language to one of two
5 sets of facts, to neither of which the whole
6 correctly applies.

7 When the language used applies partly to one set of existing
8 facts and partly to another set of existing facts, but the whole of it
9 does not apply correctly to either, evidence may be given to show which
10 of the two it was meant to apply to.

11 Illustration.

12 A agrees to sell to B "My land at X in the possession of
13 Y". A has land at X, but not in the possession of Y, and
14 he has land in occupation of Y, but it is not at X.
15 Evidence may be given of facts showing which he meant
16 to sell.

17 Section 103. Evidence as to meaning of illegible characters &c.

18 Evidence may be given to show the meaning of illegible or not
19 commonly intelligible characters, of foreign, obsolete, technical, local
20 and provincial expressions, of abbreviation, and of words used in a
21 peculiar sense.

22 Illustration.

23 A, a sculptor, agrees to sell to B "All my mods". A
24 has both models and modelling tools. Evidence may be
25 given to show which he meant to sell.

1 Section 104. Who may give evidence of agreement varying terms of
2 document.

3 Persons who are not parties to a document, or their
4 representatives in interest, may give evidence of any facts tending to
5 show a contemporaneous agreement, varying the terms of the document.

6 Illustration.

7 A and B make a contract in writing that B shall sell to A
8 a certain quantity of cotton, to be paid for on delivery.
9 At the same time they make a oral agreement that three
10 month's credit shall be given to A. This could not be
11 shown as between A and B, but it might be shown by C if
12 it affected his interests.

13 CHAPTER VIII.

14 ENGLISH LAW OF EVIDENCE WHEN IN FORCE.

15 Section 105. What questions to be determined according to English
16 Law of Evidence.

17 Whenever in a judicial proceeding a question of evidence
18 arises not provided for by this Act or by any other law in force in the
19 Marshall Islands, such question shall be determined in accordance with
20 the English Law of Evidence for the time being in force.

21 PART III

22 PRODUCTION AND EFFECT OF EVIDENCE

23 CHAPTER IX.

24 OF THE BURDEN OF PROOF.

1 entitled to retain his possession. Therefore, the
2 burden of proof lies on A.

3 (b) A sues B for money due on a bond. The execution of
4 the bond is admitted, but B says that it was
5 obtained by fraud which A denies.

6 If no evidence were given on either side A would
7 succeed as the bond is not disputed and the fraud is
8 not proved. Therefore, the burden of proof is on B.

9 Section 108. Burden of proof as to particular fact.

10 The burden of proof as to any particular fact lies on that
11 person who wishes the court to believe in its existence, unless it is
12 provided by any law that the proof of that fact shall lie on any
13 particular person.

14 Illustrations.

15 A prosecutes B for theft, and wishes the court to
16 believe that B admitted the theft to C. A must
17 prove the admission.

18 B wishes the court to believe that, at the time in
19 question, he was elsewhere. He must prove it.

20 Section 109. Burden of proving fact necessary to be proved to
21 make evidence admissible.

22 The burden of proving any fact necessary to be proved in order
23 to enable any person to give evidence of any other fact is on the person
24 who wishes to give such evidence.

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Illustrations.

- (a) A wishes to prove a dying declaration by P.
A must prove P's death.
- (b) A wishes to prove, by secondary evidence, the contents of a lost document.
A must prove that the document has been lost.

Section 110. Burden of exceptions to criminal liability.

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Criminal Law or within any special exception or proviso contained in any other part of the Criminal Law, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances.

Illustrations.

- (a) A, accused of murder, alleges that by reason of unsoundness of mind, he did not know the nature of the act.
The burden of proof is on A.
- (b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self-control.
The burden of proof is on A.
- (c) A who is accused of aggravated assault, alleges that he acted in the exercise of the right of self-defence. The burden is on A to prove the

1 existence of circumstances giving rise to the
2 right of self-defence.

3 Section 111. Burden of proving fact especially within the
4 knowledge of any person.

5 When any fact is especially within the knowledge of any
6 person, the burden of proving that fact is upon him.

7 Illustrations.

8 (a) When a person does an act with some intention other
9 than that which the character and circumstances of
10 the act suggest, the burden of proving that
11 intention is upon him.

12 (b) A is charged with travelling on a railway without
13 a ticket. The burden of proving that he had a
14 ticket is on him.

15 (c) A is charged with being in possession of a fire-arm
16 without a licence. The burden of proving that he
17 had a licence is on him.

18 Section 112. Burden of proving death of person known to have
19 been alive within thirty years.

20 When the question is whether a man is alive or dead, and it
21 is shown that he was alive within thirty years, the burden of proving
22 that he is dead is on the person who affirm it.

23 Section 113. Burden of proving that person is alive who has
24 not been heard of for seven years.

11 (b) that when a document creating an obligation is
12 in the hands of the obligor, the obligation has
13 been discharged.

14 But the court shall also have regard to such facts as the following in
15 considering whether such maxims do or do not apply to the particular
16 case before it; -

17 as to illustration (a) - a shopkeeper has in his till a marked
18 one dollar note soon after it was stolen, and cannot account
19 for its possession specifically, but is continually receiving
20 one dollar notes in the course of his business.

21 as to illustration (b) - A, a person of the highest character,
22 is tried for causing a man's death by an act of negligence in
23 arranging certain machinery. B, a person of equally good
24 character, who also took part in the arrangement of the
25 machinery, describes precisely what was done, and admits and
26 explains the common carelessness of A and himself.

27 as to illustration (c) - a crime is committed by several
28 persons. A, B, and C, three of the criminals, are captured
29 on the spot and kept apart from each other. Each gives an
30 account of the crime implicating D, and the accounts
31 corroborate each other in such a manner as to render
32 previous concert highly improbable.

33 as to illustration (c) - it is proved that a river ran in a
34 certain course five years ago, but it is known that **there** is

1 have been floods since that time, which might change its
2 course.

3 as to illustration (d) - a judicial act, the regularity of
4 which is in question, was performed under exceptional
5 circumstances.

6 as to illustration (e) - the question is, whether a letter
7 was received. It is shown to have been posted, but the
8 usual course of the post was interrupted by disturbances.

9 as to illustration (f) - a man refuses to produce a document
10 which would bear on a contract of small importance on which
11 he is sued, but which might also injure the feelings and
12 reputation of his family.

13 as to illustration (g) - a man refuses to answer a question
14 which he is not compelled by law to answer, but the answer
15 to it might cause loss to him in matters unconnected with
16 the matter in relation to which it is asked.

17 as to illustration (h) - a bond is in the possession of the
18 obligor, but the circumstances of the case are such that he
19 may have stolen it.

20 CHAPTER X

21 ESTOPPEL.

22 Section 120. Estoppel.

23 When one person has by his declaration, act, or omission
24 intentionally caused or permitted another person to believe a thing to

1 be true and to act upon such belief, neither he nor his representative
2 shall be allowed in any suit or proceeding between himself and such
3 person or his representative to deny the truth of that thing.

4 Illustration.

5 A intentionally and falsely leads B to believe that a
6 certain land belongs to A, and thereby induces B to buy
7 and pay for it.

8 The land afterwards becomes the property of A, and A
9 seeks to set aside the sale, on the ground that at the
10 time of the sale he had no title. He must not be allowed
11 to prove his want of title.

12 Section 121. Estoppel of tenant and license.

13 No tenant of immovable property, or person claiming through
14 such tenant, shall during the continuance of the tenancy, be permitted
15 to deny that the landlord of such tenant had, at the beginning of the
16 tenancy, a title to such immovable property: and

17 No person who came upon any immovable property by the licence
18 of the person in possession thereof shall be permitted to deny that such
19 person had a title to such possession at the time when such licence was
20 given.

21 Section 122. Estoppel of bailee, &c.

22 No bailee, agent, or licensee shall be permitted to deny that
23 the bailor, principal, or licensor, by whom any goods were entrusted to
24 any of them respectively, was entitled to those goods at the time when
25 they were entrusted.

1 Section 125. Competent witnesses.

2 (1) In all civil proceedings the parties to the suit and the
3 husband or wife of any party to the suit shall be competent witnesses.

4 (2) In criminal proceedings against any person the husband
5 or wife of such person respectively shall be a competent witness if
6 called by the accused, but in that case all communications between them
7 shall cease to be privileged.

8 (3) In criminal proceedings against a husband or wife for
9 any bodily injury or violence inflicted on his or her wife or husband,
10 such wife or husband shall be a competent witness.

11 (4) In criminal proceedings against a husband or wife for
12 any attempt to cause any bodily injury or violence on his or her wife
13 or husband, such wife or husband shall be a competent witness for the
14 prosecution.

15 (5) In criminal proceedings against a husband or wife for
16 an offence punishable under 11 TTC Section 251 (1980 Edn.), the wife
17 or husband of the accused shall be a competent witness for the
18 prosecution.

19 (6) In criminal trials the accused shall be a competent
20 witness in his own behalf, and may give evidence in the same manner and
21 and with the like effect and consequences as any other witness,
22 provided that, so far as the cross-examination relates to the credit
23 of the accused, the court may limit the cross-examination to such
24 extent as it thinks proper, although the proposed cross-examination
25 might be permissible in the case of any other witness.

1 Section 126. Judges.

2 No judge shall, except upon special order of a judge of a
3 superior court, be compelled to answer any questions as to his own
4 conduct in court as such judge, or as to anything which came to his
5 knowledge in court as such judge; but he may be examined as to other
6 matters which occurred in his presence while he was so acting.

7 Illustrations.

- 8 (a) A, on his trial before the High Court, says that
9 a deposition was improperly taken by B, a
10 District Judge. B cannot be compelled to answer
11 questions as to this, except upon the special
12 order of a judge of the High Court.
- 13 (b) A is accused before the High Court of having
14 given false evidence before B, a District Judge.
15 B cannot be asked what A said except upon the
16 special order of a Judge of the High Court.
- 17 (c) A is accused before the High Court of attempting
18 to murder a police officer whilst on his trial
19 before B, a District Judge. B may be examined as
20 as to what occurred.

21 Section 127. Communications during marriage.

22 No person who is or has been married shall be compelled to
23 disclose any communication made to him during marriage by any person
24 to whom he is or has been married, nor shall he be permitted to

1 disclose any such communication unless the person who made it, or his
2 representative in interest, consents, except in suits between married
3 persons, or proceedings in which one married person is prosecuted for
4 any crime committed against the other and except in cases mentioned
5 in Section 125(2).

6 Section 128. Evidence as to affairs of State.

7 No one shall be permitted to produce any unpublished
8 official records relating to any affairs of State, or to give any
9 evidence derived therefrom, except with the permission of the officer
10 at the head of the department concerned, who shall give or withhold
11 such permission as he thinks fit, subject, however, to the control of
12 the Minister.

13 Section 129. Official communications.

14 No public officer shall be compelled to disclose
15 communications made to him in official confidence when he considers
16 that the public interest would suffer by such disclosure.

17 Section 130. Information as to commission of offences.

18 No judge or police officer shall be compelled to say whence he
19 got the information as to the commission of any offence and no revenue
20 officer shall be compelled to say whence he got any information as to
21 the commission of any offence against the public revenue or excise laws.

22 Explanation. - "Revenue officer" in this Section
23 means any officer employed in or about the business
24 of any branch of the public revenue, or in or about
25 the business of any Government enterprise.

1 Section 131. Professional communications.

2 (1) No attorney-at-law or notary shall at any time be
3 permitted, except **with** his client's express consent, to disclose any
4 communication made to him in the course and for the purpose of his
5 employment as such attorney-at-law or notary by or on behalf of his
6 client, or to state the contents or conditions of any document with
7 which he has become acquainted in the course and for the purpose of his
8 professional employment, or to disclose any advice given by him to his
9 client in the course of and for the purpose of such employment;

10 Provided that nothing in this Section shall protect from
11 disclosure -

12 (a) any such communication made in furtherance
13 of any illegal purpose;

14 (b) any fact observed by any attorney-at-law or
15 notary in the course of his employment as
16 such, showing that any crime or fraud has
17 been committed since the commencement of
18 his employment.

19 (2) It is immaterial whether the attention of such
20 attorney-at-law or notary was or was not directed to such fact by or
21 on behalf of his client.

22 Explanation. - The obligation stated in this Section
23 continues after the employment has ceased.

24 Illustrations.

1 (a) A, a client, says to B, an attorney-at-law, "I
2 have committed forgery, and I wish you to defend
3 me". As the defence of a man known to be guilty
4 is not a criminal purpose, this communication is
5 protected from disclosure.

6 (b) A, a client, says to B, an attorney-at-law, "I
7 wish to obtain possession of property by the use
8 of a forced deed on which I request you to sue".
9 This communication, being in furtherance of a
10 criminal purpose, is not protected from disclosure.

11 (c) A, being charged with embezzlement, retains B, an
12 attorney-at-law, to defend him. In the course of
13 the proceedings B observes that an entry has been
14 made in A's account book charging A with the sum
15 said to have been embezzled, which entry was not
16 in the book at the commencement of his employment.
17 This being a fact observed by B in the course of
18 his employment, showing that a fraud has been
19 committed since the commencement of the proceedings,
20 it is not protected from disclosure.

21 Section 132. Clerk or servants of attorney-at-law and notaries.

22 The provisions of Section 132 shall apply to interpreters
23 and Clerks or servants of attorneys-at-law and notaries.

1 Section 133. Privilege not waived by volunteering evidence.

2 If any party to a suit gives evidence therein at his own
3 instance or otherwise, he shall not be deemed to have consented thereby
4 to such disclosure as is mentioned in Section 131, and if any party to
5 a suit or proceeding calls any such attorney-at-law or notary as a
6 witness he shall be deemed to have consented to such disclosure only
7 if he questions such attorney-at-law or notary on matters which but for
8 such questions, he would not be at liberty to disclose.

9 Section 134. Confidential communications with legal advisors.

10 No one shall be compelled to disclose of the court any
11 confidential communication which has taken place between him and his
12 legal professional advisor unless he offers himself as a witness, in
13 which case he may be compelled to disclose any such communications as
14 may appear to the court necessary to be known in order to explain any
15 evidence which he has given but no others.

16 Section 135. Production of witness's title deeds.

17 (1) No witness who is not a party to a suit shall be
18 compelled to produce his title deeds to any property, or any document
19 in virtue of which he holds any property as pledgee or mortgagee, or
20 any document the production of which might tend to criminate him,
21 unless he has agreed in writing to produce them with the person seeking the
22 the production of such deeds, or some person through whom he claims.

23 (2) By a party to the suit.

24 No witness who is a party to the suit shall be bound
25 produce any document in his possession or power which is not relevant

1 to the case of the party requiring its production.

2 (3) Bankers' books.

3 No bank shall be compelled to produce the books of
4 such bank in any legal proceeding to which such bank is not a party,
5 except as provided by Section 94.

6 Section 136. Who may not be compelled to produce documents.

7 No one shall be compelled to produce documents in his
8 possession which any other person would be entitled to refuse to
9 produce if they were in his possession (except for the purpose of
10 identification) unless such last-mentioned person consents to their
11 production, nor shall any one who is entitled to refuse to produce a
12 document be compelled to give oral evidence of its contents.

13 Section 137. Accomplice.

14 An accomplice shall be a competent witness against an accused
15 person, and a conviction is not illegal merely because it proceeds upon
16 the uncorroborated testimony of an accomplice.

17 Section 138. Number of witnesses.

18 No particular number of witnesses shall in any case be
19 required for the proof of any fact.

20 CHAPTER XII.

21 OF THE EXAMINATION OF WITNESSES.

22 Section 139. Order of production and examination of witnesses.

23 The order in which witnesses are produced and examined shall
24 be regulated by the law and practice for the time being relating to

1 civil and criminal procedure respectively and, in the absence of any
2 such law, by the discretion of the court.

3 Section 140. Judge to decide admissibility of evidence.

4 (1) When either party proposes to give evidence of any fact,
5 the Judge may ask the party proposing to give the evidence in what
6 manner the alleged fact, if proved, would be relevant; and the Judge
7 shall admit the evidence if he thinks that the fact, if proved, would
8 be relevant and not otherwise.

9 (2) If the fact proposed to be proved is one of which
10 evidence is admissible only upon proof of some other fact, such
11 last-mentioned fact must be proved before evidence is given of the
12 fact first mentioned, unless the party undertakes to give proof of
13 such fact, and the court is satisfied with such undertaking.

14 (3) If the relevancy of one alleged fact depends upon
15 another alleged fact being first proved, the Judge may in his discretion
16 either permit evidence of the first fact to be given before the second
17 fact is proved, or require evidence to be given of the second fact
18 before evidence is given of the first fact.

19 Illustrations.

20 (a) It is proposed to prove a statement about a
21 relevant fact by a person alleged to be dead,
22 which statement is relevant under Section 31.
23 The fact that the person is dead must be
24 proved by the person proposing to prove the

1 statement before evidence is given of the
2 statement.

3 (b) It is proposed to prove by a copy the contents of
4 a document said to be lost.

5 The fact that the original is lost must be
6 proved by the person proposing to produce the
7 copy before the copy is produced.

8 (c) A is accused of receiving stolen property
9 knowing it to have been stolen.

10 It is proposed to prove that he denied the
11 possession of the property.

12 The relevancy of the denial depends on the
13 identity of the property. The court may in its
14 discretion either require the property to be
15 identified before the denial of the possession
16 is proved, or permit the denial of the possession
17 to be proved before the property is identified.

18 (d) It is proposed to prove a fact (a) which is said
19 to have been the cause or effect of a fact in
20 issue. There are several intermediate facts,

21 (b), (c), and (d) which must be shown to exist
22 before the fact (a) can be regarded as the
23 cause or effect of the fact in issue. The court
24 may either permit (a) to be proved before (b)

1 (c), or (d) is proved or may require proof of
2 (b), (c), and (d) before permitting proof of (c).
3 Section 141.

4 (1) Examination in chief.

5 The examination of a witness by the party who calls him
6 shall be called his examination-in-chief.

7 (2) Cross-examination.

8 The examination of a witness by the adverse party shall
9 be called his cross-examination.

10 (3) Re-examination.

11 The examination of a witness subsequent to the
12 cross-examination by the party who called him shall be called his
13 re-examination.

14 Section 142. Order of examination.

15 (1) Witnesses shall be first examined in-chief, then (if the
16 adverse party so desires) cross-examined, then (if the party calling
17 him so desires) re-examined.

18 (2) Examination and cross examination.

19 The examination and cross examination must relate to
20 relevant facts, but the cross-examination need not be confined to the
21 facts to which the witness testified on his examination-in-chief.

22 (3) Re-examination.

23 The re-examination shall be directed to the explanation
24 of matters referred to in cross-examination and if new matter is, by

1 permission of the court, introduced in re-examination the adverse
2 party may further cross-examine upon that matter.

3 (4) Further examination and cross-examination.

4 The court may in all cases permit a witness to be
5 recalled either for further examination-in-chief or for further
6 cross-examination, and if it does so the parties have the right of
7 further cross-examination and re-examination respectively.

8 Section 143. Cross-examination of person called to produce a
9 document.

10 A person summoned to produce a document does not become a
11 witness by the mere fact that he produces it, and cannot be
12 cross-examined unless and until he is called as a witness.

13 Section 144. Witness to character.

14 Witnesses to character may be cross-examined and re-examined.

15 Section 145. Leading questions.

16 Any question suggesting the answer which the person putting
17 it wishes or expects to receive is called a leading question.

18 Section 146. When leading questions may not be asked.

19 Leading questions must not, if objected to by the adverse
20 party, be asked in an examination-in-chief or in a re-examination,
21 except with the permission of the court.

22 Section 147. When leading questions may be asked in cross
23 examination.

24 (1) Leading questions may be asked in cross-examination,
24 subject to the following qualifications: -

1 (a) the question must not put into the mouth of the
2 witness the very words which he is to echo back
3 again and

4 (b) the question must not assume that facts have
5 been proved which have not been proved, or that
6 particular answer have been given contrary to
7 the fact.

8 (2) Court may prohibit leading questions.

9 The court may, in its discretion, prohibit leading
10 questions from being put to a witness who shows a strong interest or
11 bias in favour of the cross-examining party.

12 Section 148. Evidence as to matters in writing.

13 Any witness may be asked, whilst under cross-examination,
14 whether any contract, grant or other disposition of property as to
15 which he is giving evidence, was not contained in a document, and if
16 he says that it was, or if he is about to make any statement as to
17 the contents of any document which, in the opinion of the court, ought
18 to be produced, the adverse party may object to such evidence being
19 given until such document is produced, or until facts have been proved
20 which entitle the party who called the witness to give secondary
21 evidence of it.

22 Explanation. - A witness may give oral evidence of
23 statements made by other persons about the contents
24 of documents if such statements are in themselves
25 relevant facts.

1 Section 150. Questions lawful in cross-examination.

2 When a witness is cross-examined, he may, in addition to the
3 questions hereinbefore referred to, be asked any questions which tend -

4 (a) to test his accuracy, veracity, or credibility;

5 (b) to discover who he is, and what his station in
6 life; or

7 (c) to shake his credit, by injuring his character;

8 although the answers to such questions might tend directly or
9 indirectly to criminate him, or might expose or tend to expose him to
10 a penalty or forfeiture.

11 Section 151. Court to decide when witness shall be compelled
12 to answer.

13 (1) If any such question relate to a matter not relevant
14 to the suit or proceeding, except in so far as it affects the credit
15 of the witness by injuring his character, the court shall decide
16 whether or not the witness shall be compelled to answer it, and may,
17 if it thinks fit, warn the witness that he is not obliged to answer it.

18 (2) In exercising its discretion, the court shall have
19 regard to the following considerations:

20 (a) such questions are proper if they are of such a
21 nature that the truth of the imputation conveyed
22 by them would seriously affect the opinion of
23 the court as to the credibility of the witness
24 on the matter to which he testifies;

1 (b) such questions are improper if the imputation
2 which they convey relates to matters so remote
3 in time, or of such a character that the truth
4 of the imputation would not affect, or would
5 affect in a slight degree, the opinion of the
6 court as to the credibility of the witness on
7 the matter to which he testifies;

8 (c) such questions are improper if there is a great
9 disproportion between the importance of the
10 imputation made against the witness's character
11 and the importance of his evidence;

12 (d) the court may if it sees fit, draw from the
13 witness's refusal to answer, the inference that
14 the answer if given would be unfavourable.

15 Section 152. Questions not to be asked without reasonable grounds.

16 No such question as is referred to in Section 151 ought to be
17 asked unless the person asking it has reasonable grounds for thinking
18 that the imputation which it conveys is well founded.

19 Illustrations.

20 (a) An attorney-at-law is instructed by another
21 attorney at-law that an important witness is a
22 thief. This is a reasonable ground for asking
23 the witness whether he is a thief.

1 (b) An attorney-at-law is informed by a person in court
2 court that an important witness is a professional
3 gambler; the informant, on being questioned by
4 the attorney-at-law, gives satisfactory reasons
5 for his statement. This is a reasonable ground
6 for asking the witness whether he is a professional
7 gambler.

8 (c) A witness of whom nothing whatever is known, being
9 questioned as to his mode of life and means of
10 living, gives unsatisfactory answers. This may be
11 a ground for asking if he is a professional gambler.

12 Section 153. Procedure of court in case of question being asked
13 without reasonable grounds.

14 If the court is of the opinion that any such question was
15 asked without reasonable grounds, it may, if the question was asked by
16 an attorney-at-law, report the circumstances of the case to the court or
17 or other authority to which such attorney-at-law is subject in the
18 exercise of his profession.

19 Section 154. Indecent and scandalous questions.

20 The court may forbid any questions or inquiries which it
21 regards as indecent or scandalous, although such questions or inquiries
22 may have some bearing on the questions before the court, unless they
23 relate to facts in issue or to matters necessary to be known in order
24 to determine whether or not the facts in issue existed.

- 1 (b) A witness is asked whether he was not dismissed
2 from a situation for dishonesty. He denies it.
3 Evidence is offered to show that he was dismissed
4 for dishonestly.
5 The evidence is not admissible.
- 6 (c) A affirms that on a certain day he saw B in
7 Ebeve. A is asked whether he himself was not on
8 that day in Majuro. He denies it.
9 The evidence is admissible, not as contradicting
10 A on a fact which affects his credit, but as
11 contradicting the alleged fact that B was seen
12 on the day in question in Ebeve.
13 In each of these cases, the witness might, if
14 his denial was false, be charged with giving
15 false evidence.
- 16 (d) A is tried for a rape on B. B is asked in
17 cross-examination whether she has not had illicit
18 intercourse with C and D. She denies it.
19 Evidence is offered to show that she has had
20 such intercourse with C and D. The evidence is
21 not admissible.
- 22 (e) A is asked whether he has not said that he would
23 be revenged on B, against whom he gives evidence.
24 He denies it. He may be contradicted on the ground
25 that the question tends to impeach his impartiality.

1 Section 157. Question by party to his own witness.

2 The court may in its discretion permit the party who calls
3 a witness to put a question to him, which might be put in cross-
4 examination by the adverse party.

5 Section 158. Impeaching credit of witness.

6 The credit of a witness may be impeached in the following
7 ways by the adverse party or, with the consent of the court, by the
8 party who calls him: -

- 9 (a) by the evidence of persons who testify that
10 they, from their knowledge of the witness, believe
11 him to be unworthy of credit;
- 12 (b) by proof that the witness has been bribed or has
13 accepted the offer of a bribe, or has received
14 any other corrupt inducement to give his evidence;
- 15 (c) by proof of former statements inconsistent with
16 any part of his evidence which is liable to be
17 contradicted;
- 18 (d) when a man is prosecuted for rape or an attempt
19 to ravish, it may be shown that the prosecutrix
20 was of generally immoral character.

21 Explanation - A witness declaring another witness to be
22 unworthy of credit may not, upon his examination-in-chief,
23 give reasons for his belief, but he may be asked to give
24 his reasons in cross-examination, and the answers which he

1 gives cannot be contradicted, though, if they are false,
2 he may afterwards be charged with giving false evidence.

3 Illustrations.

4 (a) A sues B for the price of goods sold and
5 delivered to B. C says that he delivered the
6 goods to B. Evidence is offered to show that, on
7 a previous occasion, he said that he had not
8 delivered the goods to B.

9 The evidence is admissible.

10 (b) A is tried for the murder of B. C says that B,
11 when dying, declared that A had given B the
12 wound of which he died.

13 Evidence is offered to show that, on a previous
14 occasion, C said that the wound was not caused by
15 A or in his presence.

16 The evidence is admissible.

17 Section 150. Questions tending to corroborate evidence of
18 relevant facts admissible.

19 When a witness whom it is intended to corroborate gives
20 evidence of any relevant fact, he may be questioned as to any other
21 circumstances which he observed at or near to the time or place at
22 which such relevant fact occurred, if the court is of the opinion
23 that such circumstances, if proved, would corroborate the testimony
24 of the witness as to the relevant fact to which he testifies.

1 translator to keep the contents secret, unless the document is to be
2 given in evidence, and if the translator disobeys such direction he
3 shall be held to have committed the offence of contempt of court.

4 Section 166. Giving as evidence, of document called for and
5 produced on notice.

6 When a party calls for a document which he has given the other
7 party notice to produce, and such document is produced and inspected by
8 the party calling for its production he is bound to give it as evidence,
9 if the party producing it requires him to do so, and if it is relevant.

10 Section 167. Using as evidence, of document production of which
11 was refused on notice.

12 When a party refuses to produce a document which he has had
13 notice to produce, he cannot afterwards use such document as evidence
14 without the consent of the other party or the order of court.

15 Illustration.

16 A sues B on an agreement, and gives B notice to produce
17 it. At the trial A calls for the document and B
18 refuses to produce it. A gives secondary evidence
19 of its contents. B seeks to produce the document
20 itself to contradict the secondary evidence given by
21 A, or in order to show that the agreement is not
22 stamped. He cannot do so.

23 Section 168. Judge's power to question and order production.

24 The Judge may, in order to discover or to obtain proper proof
25 of relevant facts, ask any question he pleases, in any form, at any

1 time, of any witness, or of the parties, about any fact relevant or
2 irrelevant and may order the production of any document or thing;
3 and neither the parties nor their agents shall be entitled to make
4 any objection to any such question or order nor, without the leave
5 of the court, to cross-examine any witness upon any answer given in
6 reply to any such question:

7 Provided that the judgment must be based upon facts
8 declared by this Act to be relevant and duly proved:

9 Provided also that this Section shall not authorize any
10 judge to compel any witness to answer any question, or to produce any
11 document, which such witness would be entitled to refuse to answer or
12 produce under Sections 126 to 136 both inclusive if the question were
13 asked or the document **were** called for by the adverse party; nor shall
14 the judge ask any question which it would be improper for any **other**
15 person to **ask** under Section 151 or 152; nor shall he dispense with
16 primary evidence of any document, excepting the cases hereinbefore
17 excepted.

18 Section 169. Power of jury or assessors to put questions.

19 In cases tried by jury or with assessors, the jury or
20 assessors may put any question to the witnesses, through or by leave
21 of the judge, which the judge himself might put, and which he considers
22 considers proper.

23 CHAPTER VIII.
24 OF IMPROPER ADMISSION AND REJECTION OF EVIDENCE.

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3 /s/ Rufina W. Jack
4 Rufina W. Jack, Clerk
5 Mitijela of the Marshall Islands

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