



# Civil Evidence Act 1995

## 1995 CHAPTER 38

### *Supplementary provisions as to hearsay evidence*

#### **5 Competence and credibility.**

- (1) Hearsay evidence shall not be admitted in civil proceedings if or to the extent that it is shown to consist of, or to be proved by means of, a statement made by a person who at the time he made the statement was not competent as a witness.

For this purpose “not competent as a witness” means suffering from such mental or physical infirmity, or lack of understanding, as would render a person incompetent as a witness in civil proceedings; but a child shall be treated as competent as a witness if he satisfies the requirements of section 96(2)(a) and (b) of the <sup>M1</sup>Children Act 1989 (conditions for reception of unsworn evidence of child).

- (2) Where in civil proceedings hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness—
- (a) evidence which if he had been so called would be admissible for the purpose of attacking or supporting his credibility as a witness is admissible for that purpose in the proceedings; and
  - (b) evidence tending to prove that, whether before or after he made the statement, he made any other statement inconsistent with it is admissible for the purpose of showing that he had contradicted himself.

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

#### **Marginal Citations**

**M1** 1989 c. 41.

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*Changes to legislation: There are currently no known outstanding effects for the Civil Evidence Act 1995,  
Cross Heading: Supplementary provisions as to hearsay evidence. (See end of Document for details)*

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## 6 Previous statements of witnesses.

- (1) Subject as follows, the provisions of this Act as to hearsay evidence in civil proceedings apply equally (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings.
- (2) A party who has called or intends to call a person as a witness in civil proceedings may not in those proceedings adduce evidence of a previous statement made by that person, except—
  - (a) with the leave of the court, or
  - (b) for the purpose of rebutting a suggestion that his evidence has been fabricated.

This shall not be construed as preventing a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead) from being adopted by a witness in giving evidence or treated as his evidence.

- (3) Where in the case of civil proceedings section 3, 4 or 5 of the <sup>M2</sup>Criminal Procedure Act 1865 applies, which make provision as to—
  - (a) how far a witness may be discredited by the party producing him,
  - (b) the proof of contradictory statements made by a witness, and
  - (c) cross-examination as to previous statements in writing,

this Act does not authorise the adducing of evidence of a previous inconsistent or contradictory statement otherwise than in accordance with those sections.

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

- (4) Nothing in this Act affects any of the rules of law as to the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in the proceedings.
- (5) Nothing in this section shall be construed as preventing a statement of any description referred to above from being admissible by virtue of section 1 as evidence of the matters stated.

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### Marginal Citations

**M2** 1865 c. 18.

## 7 Evidence formerly admissible at common law.

- (1) The common law rule effectively preserved by section 9(1) and (2)(a) of the <sup>M3</sup>Civil Evidence Act 1968 (admissibility of admissions adverse to a party) is superseded by the provisions of this Act.
- (2) The common law rules effectively preserved by section 9(1) and (2)(b) to (d) of the <sup>M4</sup>Civil Evidence Act 1968, that is, any rule of law whereby in civil proceedings—
  - (a) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them,

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- (b) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them, or
  - (c) records (for example, the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them, shall continue to have effect.
- (3) The common law rules effectively preserved by section 9(3) and (4) of the Civil Evidence Act 1968, that is, any rule of law whereby in civil proceedings—
- (a) evidence of a person's reputation is admissible for the purpose of proving his good or bad character, or
  - (b) evidence of reputation or family tradition is admissible—
    - (i) for the purpose of proving or disproving pedigree or the existence of a marriage, or
    - (ii) for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing,shall continue to have effect in so far as they authorise the court to treat such evidence as proving or disproving that matter.
- Where any such rule applies, reputation or family tradition shall be treated for the purposes of this Act as a fact and not as a statement or multiplicity of statements about the matter in question.
- (4) The words in which a rule of law mentioned in this section is described are intended only to identify the rule and shall not be construed as altering it in any way.

**Marginal Citations**

**M3** 1968 c. 64.

**M4** 1968 c. 64.

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