

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER E65

EVIDENCE ACT

Showing the Law as at 15 December 2014

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates Act 18/2010, in force 15 December 2010

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EVIDENCE ACT

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SCHEDULE: Enactments under Which a Husband or Wife of a Person Charged with an Offence may be Called as a Witness without the Consent of the Person Charged

EVIDENCE ACT

Interpretation

1. In this Act, "indictable offence" means any offence for which the party charged is to be tried, or is in the course of being tried, in the High Court.

Oaths and affirmations

2. In this Act, "oath" includes an affirmation in the case of a person allowed to affirm instead of swear, and "swear" in that case includes affirm.

Witnesses not incapacitated from crime or interest

3. No person offered as a witness shall be excluded by reason of incapacity from crime or interest from giving evidence either in person or by deposition, according to the practice of the Court, on the trial of any issue joined, or of any matter or question, or any inquiry, arising in any Court, or before any Judge, jury, coroner, Magistrate, officer, or person having by law, or by consent of parties, authority to hear, receive, and examine evidence; but every person, so offered, may and shall be admitted to give evidence on oath, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or inquiry, or of the suit, action, or proceeding, in which he is offered as a witness, and notwithstanding that such person offered may have been previously convicted of any crime or offence.

Parties to any suit in a Court competent and compellable to give evidence

4. On the trial of any issue, or of any matter or question, or on any inquiry arising in any suit, action, or other proceeding, in any Court, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence, the parties thereto, and the person in whose behalf any such suit, action, or other proceeding may be brought or defended, as also their husbands or wives, shall, except as hereinafter excepted, be competent and compellable to give evidence, either *viva voce* or by deposition, according to the practice of the Court, on behalf of either or any of the parties to the suit, action, or other proceeding.

Accused parties not compellable to incriminate themselves

5. Nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence, or any offence punishable on summary conviction, compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to incriminate himself or herself, or shall, in any criminal proceeding, render any husband compellable to give evidence for or against his wife, or any wife compellable, to give evidence for or against her husband.

Person charged and wife or husband a competent witness

6. Every person charged with an offence and the wife or husband, as the case may be, of the person so charged, shall be a competent witness for the defence, at every stage of the proceedings, whether the person so charged is charged solely or jointly with any other person, but—

(a) a person so charged shall not be called as a witness in pursuance of this Act except upon his own application;

(b) the failure of any person charged with an offence or of the wife or husband, as the case may be, of the person so charged to give evidence shall not be made the subject of any comment by the prosecution;

(c) the wife or husband of the person charged shall not, save as mentioned in this Act, be called as a witness in pursuance of this Act except upon the application of the person so charged;

(d) a person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to incriminate him as to the offence charged;

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

(i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged,

(ii) he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution, or

(iii) he has given evidence against any other person charged with the same offence;

(f) every person called as a witness in pursuance of this section shall, unless otherwise ordered by the Court, give his evidence from the witness box or other place from which the other witnesses give their evidence; and

(g) nothing in this section shall affect the provisions of section 59 of the Magistrate's Code of Procedure Act, or any right of the person charged to make a statement without being sworn.

When wife or husband may be called without consent of person charged

7. (1) The wife or husband of a person charged with an offence under any enactment mentioned in the Schedule may be called as a witness either for the prosecution or defence and without the consent of the person charged.

(2) Nothing in this Act shall affect a case where the wife or husband of a person charged with an offence may at common law be called as a witness without the consent of that person.

A husband or wife not compelled to disclose communications made to each other

8. No husband shall be compelled to disclose any communication made to him by his wife during the marriage, nor shall any wife be compellable to disclose any communication made to her by her husband during the marriage.

A witness in case of adultery not bound to answer incriminating questions

9. No witness in any cause or other proceeding instituted in consequence of adultery, whether a party to the suit or not, shall be liable to be asked, or bound to answer, any question tending to show that he or she has been guilty of adultery, unless such witness shall have already given evidence, in the same proceeding, in disproof of his or her alleged adultery.

Evidence of children

10. (1) A child's evidence in criminal proceedings shall be given unsworn.

(2) A deposition of a child's unsworn evidence may be taken for the purposes of criminal proceedings as if that evidence had been given under oath.

(3) A child's evidence shall be received unless it appears to the Court that the child is incapable of giving intelligible testimony.

(4) In this section, "child" means a person under 14 years of age.

Breach of promise of marriage

11. No plaintiff in any action for breach of promise of marriage shall recover a verdict, unless his or her testimony shall be corroborated by some other material evidence in support of such promise.

Inspection of documents

12. Whenever any action, or other legal proceeding is pending in any Court within Anguilla, such Court and any Judge thereof may, respectively, on application made for such purpose by either of the litigants, compel the opposite party to allow the party making the application to inspect all documents in the custody, or under the control, of such opposite party relating to such action or other legal proceeding; and, if necessary, to take examined copies of the documents in all cases in which before 25th April, 1876, a discovery might have been obtained by filing a bill or by any other proceeding in a Court of Equity at the instance of the party so making application as aforesaid to that Court or Judge.

Documents, admissible in England, admissible in Anguilla

13. Every document which by any law in force on or after 25th April, 1876 is admissible in evidence in any Court of Justice in England, shall be admissible in evidence in the like manner, to the same extent, and for the same purpose, in any Court in Anguilla, or before any person having by law, or by consent of parties, authority to hear, receive and examine evidence.

Facts of which judicial notice is to be taken

14. (1) Every Judge shall take judicial notice of the following facts—

(a) all public Acts of the Parliament of the United Kingdom, unless the contrary is expressly provided in any such Acts;

(b) all Orders of the Queen in Council and statutory instruments of the United Kingdom having effect in Anguilla;

(c) the *London Gazette*, the *Gazette* of Anguilla, the government gazette of any other Overseas Territories in Her Majesty's dominions or of any territory under Her

Majesty's protection or of a territory for the time being administered by the Government of the United Kingdom;

(d) all laws purporting to be printed or published by authority or by the Government Printer;

(e) all other matters which a Judge is directed by any law to notice.

(2) No evidence of any fact of which judicial notice shall be taken need be given by the party alleging its existence but the Judge, on being called upon to take judicial notice thereof may, if he is unacquainted with the fact, refer to any person or to any document or book of reference for his satisfaction in relation thereto, or may refuse to take judicial notice thereof unless and until the party calling upon him to take the notice produces the document or book of reference.

(3) For the purpose of this section, "Judge" includes all persons authorised to take evidence either by law or by consent of parties.

How far a party may discredit his own witness

15. A party producing a witness shall not be allowed to impeach his credit by general evidence of bad character, but he may, in case the witness shall, in the opinion of the Judge, prove adverse, contradict him by other evidence, or, by leave of the Judge, prove that he has made, at other times, a statement inconsistent with his present testimony; but, before such last-mentioned proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Proof of contradictory statements of adverse witness

16. If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the cause and inconsistent with his present testimony, does not distinctly admit that he has made such statement, proof may be given that he did in fact make it; but, before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he has made such statement.

Cross-examination as to previous statements in writing

17. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but, if it is intended to contradict such witness by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of so contradicting him, but it shall be competent for the Judge, at any time during the trial, to require the production of the writing for his inspection, and he may thereupon make such use of it, for the purpose of the trial, as he shall think fit.

Proof of previous conviction of a witness may be given

18. A witness in any cause may be questioned as to whether he has been convicted of any offence, and, upon being so questioned, if he either denies the fact or refuses to answer, it shall be lawful for the opposite party to prove his conviction, and a certificate containing the substance and effect only, omitting the formal part, of the indictment and conviction for the previous offence, or a copy of any such summary conviction, purporting to be signed by the clerk of the Court, or other officer, having the custody of the record of the Court where the offender was first convicted, or to which such summary conviction has been returned, or by the deputy of such clerk or officer (for which certificate

a fee of $1.20 shall be demanded and taken) shall, upon proof of the identity of the person, be sufficient evidence of the conviction, without proof of the signature, or official character, of the person appearing to have signed the same.

Attesting witness need not be called except in certain cases

19. It shall not be necessary to prove by the attesting witness any instrument to the validity of which attestation is not requisite, and such instrument may be proved by admission, or otherwise, as if there had been no attesting witness thereto.

Comparison of disputed writing

20. Comparison of a disputed writing with any writing proved, to the satisfaction of the Judge, to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the Court and jury as evidence of the genuineness, or otherwise, of the writing in dispute.

Certified copy of record sufficient where necessary to prove conviction or acquittal of person charged

21. Whenever, in any proceeding whatever, it may be necessary to prove the trial and conviction or acquittal of any person charged with any indictable offence, it shall not be necessary to produce the record of the conviction or acquittal of such person, or a copy thereof, but it shall be sufficient that it be certified, or purport to be certified, under the hand of the clerk of the Court, or other officer having the custody of the records of the Court where such conviction or acquittal took place, that the paper produced is a copy of the record of the indictment, trial, conviction, and judgment, or acquittal, as the case may be, omitting the formal parts thereof.

Examined or certified copies of documents admissible in evidence

22. Whenever any book or other document is of such a public nature as to be admissible in evidence on its mere production from the proper custody, and no statute exists which renders its contents provable by means of a copy, any copy thereof, or extract therefrom, shall be admissible in evidence in any Court, or before any person having by law, or by consent of parties, authority to hear, receive, and examine evidence, if it is proved to be an examined copy or extract, or if it purports to be signed and certified as a true copy, or extract, by the officer to whose custody the original is entrusted, and which officer is hereby required to furnish such certified copy, or extract, to any person applying, at a reasonable time, for the copy or extract, upon payment of a fee for the same of 18¢ for every folio of 96 words.

Court or person authorised to hear evidence may administer oath

23. Every Court, Judge, Magistrate, officer, commissioner, arbitrator, or other person having by law, or by consent of parties, authority to hear, receive, and examine evidence, is hereby empowered to administer an oath to all such witnesses as are legally called before them respectively.

Deeds may be proved before British Consuls, etc.

24. Conveyances, deeds, letters of attorney, and instruments in writing made in any place out of Anguilla, not being part of the dominions of Her Majesty, Her Heirs or Successors, the due execution of which shall be proved by a subscribing witness by affidavit sworn before, or which shall be acknowledged by the party or parties executing the same to be his, her, or their deed or act before, any British Consul-General, Consul, Vice-Consul, acting Consul, or Consular Agent, for the time being, resident at or near such place, and certified under his hand and seal of office, and annexed to

the thing proved, shall be deemed to be as sufficiently proved as if the same witness were personally present and made such proof, or if such instrument in writing were acknowledged, where acknowledgment is by law necessary, by such party, before the Chief Justice or any other Judge of the High Court, or the proper Registrar of deeds, but such deeds, letters of attorney, or written instruments, if concerning lands or tenements, are recorded in the proper Registrar's office, and copies thereof certified by him shall be admitted in evidence; but this section shall not apply to the probate of any will, codicil, or testamentary writing.

Orders and commissions for the examination of witnesses

25. It shall be lawful for any Court in Anguilla, and any Judge thereof, in every action depending in such Court, upon the application of any of the parties to such suit, when it shall appear on oath, or otherwise, that a person, required as a witness in the cause, will be unable to attend the trial from being about to quit the jurisdiction of the Court, or from permanent sickness or any permanent infirmity, to order the examination on oath, upon interrogatories or otherwise, before any Judge of the Court, or any officer thereof, or other person or persons to be named in such order, of any witnesses within the jurisdiction of the Court where the action shall be depending; or, where the person required to be examined is out of the jurisdiction of the Court, to order a commission to issue for the examination of witnesses on oath, at any place, or places, so out of the jurisdiction of the Court, by interrogatories or otherwise, and, by the same or any subsequent order or orders, to give all such directions, touching the time, place, and manner of such examination, and all other matters and circumstances connected with such examination, as may appear reasonable and just.

Attendance of persons to be examined as witnesses

26. When any rule, or order, shall be made for the examination of witnesses within the jurisdiction of the Court wherein the action shall be depending, by authority of this Act, it shall be lawful for the Court, or any Judge thereof, in and by the first rule or order to be made in the matter, or any subsequent rule or order, to command the attendance of any person, to be named in such rule or order, for the purpose of being examined, or the production of any writings or other documents to be mentioned in such rule or order, and to direct the attendance of any such person to be at his own place of abode or elsewhere, if necessary or convenient so to do; and the wilful disobedience of any such rule or order shall be deemed a contempt of Court, and proceedings may be thereupon had by attachment (the Judge's order being made a rule of Court, before or at the time of the application for an attachment) if, in addition to the service of the rule or order, an appointment of the time and place of attendance in obedience thereto, signed by the person or persons appointed to take the examination, or by one or more of such persons, shall be also served together with, or after the service of, such rule or order, but—

(a) every person, whose attendance shall be so required, shall be entitled to the like conduct money, and payment of expenses and loss of time, as upon attendance at the trial; and

(b) no person shall be compelled to produce, under any such rule or order, any writing or other document that he would not be compellable to produce at a trial of the cause.

Live links in criminal proceedings

27. (1) A witness (other than the accused) may, if the court so directs, give evidence through a live link in criminal proceedings.

(2) A direction may be given under this section—

(a) on an application by a party to the proceedings; or

(b) of the court's own motion.

(3) No direction shall be given under this section unless—

(a) the court is satisfied that it is in the interests of the efficient or effective administration of justice for the person concerned to give evidence in the proceedings through a live link;

(b) it has been notified by the Governor in Council that suitable facilities for receiving evidence through a live link are available;

(c) that notification has not been withdrawn.

(4) No direction given under this section before the withdrawal of such notification shall be affected by such withdrawal.

(5) When deciding whether to give a direction under this section the court must consider all the circumstances of the case including the following—

(a) the availability of the witness;

(b) the need for the witness to attend in person;

(c) the importance of the witness's evidence to the proceedings;

(d) the views of the witness;

(e) the suitability of the facilities at the place where the witness would give evidence through a live link;

(f) whether a direction might tend to inhibit any party to the proceedings from effectively testing the witness's evidence.

(6) The court must state in open court its reasons for refusing an application for a direction under this section and, if it is a magistrate's court, must cause such reasons to be recorded by the court.

(Act 18/2010, s. 2)

Effect of, and rescission of, a live link direction

28. (1) Subsection (2) applies where the court gives a direction under section 27 for a person to give evidence through a live link in particular proceedings.

(2) Subject to subsections (3) to (10), the person concerned may not give evidence in those proceedings after the direction is given otherwise than through a live link (but this is subject to the following provisions of this section).

(3) The court may rescind a direction under section 27 if it appears to the court to be in the interests of justice to do so.

(4) Where a direction is rescinded under subsection (3), the person concerned shall cease to be able to give evidence in the proceedings through a live link, but this does not prevent the court from giving a further direction under section 27 in relation to that person.

(5) A direction under section 27 may be rescinded under subsection (3)—

(a) on an application by a party to the proceedings; or

(b) on the court's own motion.

(6) No application may be made under subsection (5)(a) unless there has been a material change of circumstances since the direction was given.

(7) The court must state in open court its reasons—

(a) for rescinding a direction given under section 27; or

(b) for refusing an application to rescind such a direction;

and, if it is a magistrate's court, must cause its reasons to be recorded.

(8) Where a direction provides for the witness to give evidence by means of a live link, the court may permit the witness to give evidence otherwise than through a live television link.

(9) The court may give permission under subsection (8) if it appears to be in the interests of justice to do so, and may give the permission either—

(a) on an application by a party to the proceedings, if there has been a material change of circumstances since the relevant time; or

(b) on its own motion.

(10) In subsection (9)(a) "the relevant time" means—

(a) the time when the direction was given; or

(b) if a previous application has been made under that subsection, the time when the application (or most recent application) was made.

(Act 18/2010, s. 2)

Magistrate's court permitted to sit at other locations for live links

29. (1) This section applies where—

(a) a Magistrate's court is minded to give a direction under section 27 for evidence to be given through a live link in proceedings before the court; and

(b) suitable facilities for receiving such evidence are not available at the Magistrate's court.

(2) The court may sit for the purposes of the whole or any part of the proceedings at any place at which suitable facilities for receiving evidence through a live link are available and which has been

appointed for the purposes of this section by the Governor in Council under section 9 of the Magistrate's Code of Procedure Act.

(Act 18/2010, s. 2)

Warning to jury

30. (1) This section applies where, as a result of a direction under section 27, evidence has been given through a live link in proceedings before the High Court.

(2) The judge may give the jury (if there is one) such direction as the judge thinks necessary to ensure that the jury gives the same weight to the evidence as if it had been given by the witness in the courtroom or other place where the proceedings are held.

(Act 18/2010, s. 2)

Rules of court respecting live links in criminal proceedings

31. (1) A court may make may make such rules of court as appears to it to be necessary or expedient for the purposes of sections 27 to 30.

(2) Rules of court may in particular make provision—

(a) as to the procedure to be followed in connection with applications under section 27 or 28; and

(b) as to the arrangements or safeguards to be put in place in connection with the operation of live links.

(3) Rules made by virtue of subsection (2)(a) may include provision—

(a) for uncontested applications to be determined by the court without a hearing;

(b) for preventing the renewal of an unsuccessful application under section 27 unless there has been a material change of circumstances;

(c) for the manner in which confidential or sensitive information is to be treated in connection with an application under section 27 or 28 and in particular as to its being disclosed to, or withheld from, a party to the proceedings.

(4) Nothing in this section affects the generality of any enactment conferring power to make rules of court.

(5) Nothing in this section or sections 27 to 30 affects any power of a court—

(a) to make an order, give directions or give leave of any description in relation to any witness (including one or more accused persons); or

(b) to exclude evidence at its direction (whether by preventing questions being put or otherwise).

(Act 18/2010, s. 2)

Persons authorised to examine witnesses

32. It shall be lawful for all and every person authorised to take the examination of witnesses, by any rule, order, or commission made or issued in pursuance of this Act, and he and they are hereby authorised and required to take all such examinations upon the oath of the witnesses, to be administered by the person so authorised, or by any Judge of the Court wherein the action shall be depending; and if upon such oath, any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence.

Special report of persons authorised to examine witnesses

33. It shall be lawful for the officer, or any other person, to be named in every such rule or order, as aforesaid, for taking any examination in pursuance thereof, and he and they are hereby required to make, if need be, a special report to the Court, touching such examination, and the conduct, or absence, of any witness, or other person, thereon or relating thereto; and the Court is hereby authorised to institute such proceedings, and make such order or orders, upon such report, as justice may require, and as may be instituted and made in any case of contempt of the Court.

Costs

34. The costs of every rule, or order, to be made for the examination of witnesses under any commission, or otherwise, by virtue of this Act, and of the proceedings thereupon, shall be costs in the cause, unless otherwise directed, either by the Judge making such rule or order, or by the Judge before whom the cause may be tried, or by the Court.

Examinations not to be read in evidence except the witness is unable to attend personally

35. No examination or deposition, to be taken by virtue of any of the provisions of this Act, shall be read in evidence at any trial, without the consent of the party against whom the same may be offered, unless it shall appear, to the satisfaction of the Court, that the examinee, or deponent, is beyond the jurisdiction of the Court, or dead, or unable from permanent sickness, or other permanent infirmity, to attend the trial; in all, or any, of which cases the examination and depositions certified under the hand of the Judge, officer, commissioner, or other person taking the same, shall and may, without proof of the signature to such certificate, be received and read in evidence, saving all just exceptions.

Bringing up a prisoner to give evidence

36. It shall be lawful for the Governor, or any Judge of the High Court, in any case where he may see fit to do so, upon written application, to issue a warrant or order under his hand, for bringing up any prisoner or person confined in any prison, or other legalized place of confinement, under any sentence, or under commitment for trial, or otherwise (except under process in any civil action, suit, or proceeding), before any Court, Judge, Justices, Magistrate, or other judicature, to be examined as a witness in any cause or matter, civil or criminal, depending, or to be inquired of or determined, in or before any such Court, Judge, Justices, Magistrate, or judicature; and the person required by any such warrant, or order, to be so brought before such Court, Judge, Justices, Magistrate, or judicature, shall be so brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner, required by any writ of *habeas corpus*, awarded by the High Court, to be brought before such Court to be examined as a witness in any case or matter depending before such Court, is now by law required to be dealt with.

Citation

37. This Act may be cited as the Evidence Act, Revised Statutes of Anguilla, Chapter E65.

SCHEDULE

(Section 7(1))

ENACTMENTS UNDER WHICH A HUSBAND OR WIFE OF A PERSON CHARGED WITH AN OFFENCE MAY BE CALLED AS A WITNESS WITHOUT THE CONSENT OF THE PERSON CHARGED

Enactment	**Parts or Sections of Enactment referred to**
Married Women's Property Act	Section 13 (Remedies of married woman for protection and security of separate property)
	Section 17 (Criminal liability of wife to husband)
Criminal Code[1]	Section 64 (Seditious offences)
	Section 136 (Bigamy)
	Section 143 (Sexual intercourse with person under 14 years of age)
	Section 144 (Sexual intercourse with person between 14 and 16 years of age)
	Section 145 (Sexual intercourse with minor suffering from mental disorder)
	Section 146 (Sexual intercourse with dependent child)
	Section 151 (Causing or encouraging prostitution of minor)
	Section 152 (Householder, etc., permitting defilement of minor on his premises)
	Section 155 (Abduction of unmarried person under 16 years of age)
	Section 162 (Rape)
	Section 168 (Indecent assault on a woman)
	Section 169 (Abduction or kidnapping woman with intent to marry, etc.)
	Section 171 (Procuring woman by threats or false pretences)
	Section 172 (Administering drugs to facilitate sexual intercourse)
	Section 173 (Detention of woman in brothel, etc.)
	Section 174 (Man living on earnings of prostitution)
	Section 184 (Use of poison, etc., or instruments to cause miscarriage)
	Section 186 (Child destruction)

[1] This section has been corrected to reflect the renumbering of the Criminal Code, R.S.A. c. C140 *(15/12/2014)*.

Section 222 (Common assault)

Section 226 (Assault on female or male under 14)

Section 227 (Assault on police officer, etc.)

Section 232 (Abandoning or exposing child under 2 years of age)

Section 238 (Abduction with intent to convey person out of Anguilla)

Section 239 (Unlawfully taking girl under age of 16 away from parent)

Section 240 (Child stealing)

Section 345 (Neglecting to maintain family)

Attempting, aiding, abetting, counselling or procuring, the commission of any of the above offences or conspiracy to commit, or being an accessory after the fact in respect of, any of the above offences.

(Am in L.R. 15/12/2014)