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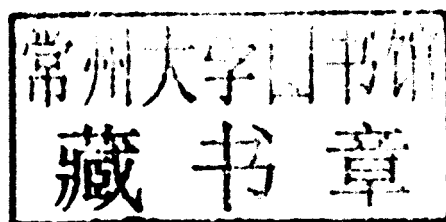
CLAIRE MCGOURLAY

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STUDENT STATUTES

Evidence Statutes
2009–2010

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Evidence Statutes 2009–2010

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Claire McGourlay is Lecturer in Law at the University of Sheffield.

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PREFACE

This is the first edition of *Evidence Statutes*. In creating this book, I hope to provide a statute book that students will find accessible and easy to navigate. This book also improves the pedagogical value for the student through the addition of alphabetical, chronological and thematic contents listings and a free Companion Website providing students with extra guidance and testing on how to use and interpret statutes

I have concentrated on those topics that tend to feature commonly on Evidence courses and I believe I have selected the most pertinent parts of the statutory material available.

Amendments, insertions repeals or substitutions have been included in the text but there is only a note made at the end of that particular Act if this occurred after 2007. In addition where a commencement date is known, and it is after 1 June 2009 but on or before 31 December 2009, the amendment has been made and a note added at the end of the Act in question. If a commencement date is known but it is on or after the following 1 January (2010), no change has been made to the text but a note has been added at the end of the Act. Any amendment for which, at 1 June 2009, a commencement date had not been fixed has been excluded.

On a final note, I wish to express my sincere gratitude to Fiona Kinnear and Rebecca Slorach at Routledge-Cavendish for overseeing the preparation and production of this text, Abigail Pearce-Dyke a former student, who gave invaluable feedback on this first edition and Roger George at Bristol University for stepping in at the last minute to do the indexes on this book. I am also grateful for the support of my husband Jamie and my two children Abigail and Owen who suffered in almost silence whilst mum was working.

As the author, I accept full responsibility for any errors or omissions in the text and would be grateful for any suggestions for future editions.

All statutes are up to date as of June 1st 2009.

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WITNESSES ACT 1806

(c. 37)

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- 1 Witnesses cannot refuse to answer question tended to establish their indebtedness, etc.

A witness cannot by law refuse to answer a question relevant to the matter in issue, the answering of which has no tendency to accuse himself or to expose him to penalty or forfeiture of any nature whatsoever, by reason only or on the sole ground that the answering of such question may establish or tend to establish that he owes a debt, or is otherwise subject to a civil suit either at the instance of his Majesty or of any other person or persons.

CRIMINAL PROCEDURE ACT 1865

(c. 18)

3 How far witness may be discredited by the party producing

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.

4 As to proof of contradictory statements of adverse witness

If a witness, upon cross-examination as to a former statement made by him relative to the subject matter of the indictment or proceeding, 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.

5 Cross-examinations as to previous statements in writing

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 indictment or proceeding, 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: Provided always, that 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 purposes of the trial as he may think fit.

BANKERS' BOOK EVIDENCE ACT 1879

(c. 11)

3 Mode of proof of entries in bankers' books

Subject to the provisions of this Act, a copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of such entry, and of the matters, transactions, and accounts therein recorded.

4 Proof that book is a banker's book

A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be first proved that the book was at the time of the making of the entry one of the ordinary books of the bank, and that the entry was made in the usual and ordinary course of business, and that the book is in the custody or control of the bank.

Such proof may be given by a partner or officer of the bank, and may be given orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

5 Verification of copy

A copy of an entry in a banker's book shall not be received in evidence under this Act unless it be further proved that the copy has been examined with the original entry and is correct.

Such proof shall be given by some person who has examined the copy with the original entry, and may be given either orally or by an affidavit sworn before any commissioner or person authorised to take affidavits.

6 Case in which banker, &c. not compellable to produce book, &c.

A banker or officer of a bank shall not, in any legal proceeding to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under this Act, or under the Civil Evidence (Scotland) Act 1988 or Schedule 8 to the Criminal Procedure (Scotland) Act 1995 or Schedule 3 to the Prisoners and Criminal Proceedings (Scotland) Act 1993 or to appear as a witness to prove the matters, transactions, and accounts therein recorded, unless by order of a judge made for special cause.

9 Interpretation of "bank," "banker," and "bankers' books"

In this Act the expressions "bank" and "banker" mean any person, persons, partnership, or company carrying on the business of bankers and having duly

made a return to the Commissioners of Inland Revenue, and also any savings bank certified under the Acts relating to savings banks, and also any post office savings bank.

The fact of any such bank having duly made a return to the Commissioners of Inland Revenue may be proved in any legal proceeding by production of a copy of its return verified by the affidavit of a partner or officer of the bank, or by the production of a copy of a newspaper purporting to contain a copy of such return published by the Commissioners of Inland Revenue; the fact that any such savings bank is certified under the Acts relating to savings banks may be proved by an office or examined copy of its certificate; the fact that any such bank is a post office savings bank may be proved by a certificate purporting to be under the hand of Her Majesty's Postmaster-General or one of the secretaries of the Post Office.

Expressions in this Act relating to "bankers' books" include ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank.

CRIMINAL EVIDENCE ACT 1898

(c. 36)

1 Competency of witnesses in criminal cases

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. Provided as follows:—

- (1) A person charged in criminal proceedings shall not be called as a witness in the proceedings except upon his own application:
 - (c) The wife or husband of the person charged shall not, save as in this Act mentioned, be called as a witness in pursuance of this Act except upon the application of the person so charged:
 - (d) Nothing in this Act shall make a husband compellable to disclose any communication made to him by his wife during the marriage, or a wife compellable to disclose any communication made to her by her husband during the marriage:
- (2) A person charged in criminal proceedings who is called as a witness in the proceedings may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to any offence with which he is charged in the proceedings:
- (3) A person charged in criminal proceedings who is called as a witness in the proceedings 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 one with which 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 an offence with which he is then charged; or
 - (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 the deceased victim of the alleged crime; or
 - (iii) he has given evidence against any other person charged in the same proceedings:

- (4) Every person charged in criminal proceedings who is called as a witness in the proceedings 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:

PERJURY ACT 1911

(c. 6)

13 Corroboration

A person shall not be liable to be convicted of any offence against this Act, or of any offence declared by any other Act to be perjury or subornation of perjury, or to be punishable as perjury or subornation of perjury, solely upon the evidence of one witness as to the falsity of any statement alleged to be false.

14 Proof of certain proceedings on which perjury is assigned

On a prosecution—

- (a) for perjury alleged to have been committed on the trial of an indictment for misdemeanour; or
- (b) for procuring or suborning the commission of perjury on any such trial,

the fact of the former trial shall be sufficiently proved by the production of a certificate containing the substance and effect (omitting the formal parts) of the indictment and trial purporting to be signed by the clerk of the court, or other person having the custody of the records of the court where the indictment was tried, or by the deputy of that clerk or other person, without proof of the signature or official character of the clerk or person appearing to have signed the certificate.

LAW OF PROPERTY ACT 1925

(c. 20)

184 Presumption of survivorship in regard to claims to property

In all cases where, after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

CHILDREN AND YOUNG PERSONS ACT 1933

(c. 12)

42—Extension of power to take deposition of child or young person

- (1) Where a justice of the peace is satisfied by the evidence of a duly qualified medical practitioner that the attendance before a court of any child or young person in respect of whom any of the offences mentioned in the First Schedule to this Act is alleged to have been committed would involve serious danger to his life or health, the justice may taken in writing the deposition of the child or young person on oath, and shall thereupon subscribe the deposition and add thereto a statement of his reason for taking it and of the day when and place where it was taken, and of the names of the persons (if any) present at the taking thereof.
- (2) The justice taking any such deposition shall transmit it with his statement—
 - (a) if the deposition relates to an offence for which any accused person is already [sent]for trial, to the proper officer of the court for the trial at which the accused person has been sent; and
 - (b) in any other case, to the [proper officer] of the court before which proceedings are pending in respect of the offence.

43 Admission of deposition of child or young person in evidence

Where, in any proceedings in respect of any of the offences mentioned in the First Schedule of this Act, the court is satisfied by the evidence of a duly qualified medical practitioner that the attendance before the court of any child or young person in respect of whom the offence is alleged to have been committed would involve serious danger to his life or health, any deposition of the child or young person taken under the Indictable Offences Act 1848, or this Part of this Act, shall be admissible in evidence either for or against the accused person without further proof thereof if it purports to be signed by the justice by or before whom it purports to be taken:

Provided that the deposition shall not be admissible in evidence against the accused person unless it is proved that reasonable notice of the intention to take the deposition has been served upon him and that he or his counsel or solicitor had, or might have had if he had chosen to be present, an opportunity of cross-examining the child or young person making the deposition.