

The Republic of the Sudan
Ministry of Justice

The Evidence Act, 1993

Chapter 1
Preliminary Provisions

Title and Commencement:

1. This Act shall be cited as the “Evidence Act, 1993” and shall enter into force one month from publishing in the Gazette¹.

Repeal:

2. This Act shall repeal the Evidence Act, 1983.

Extent of application of the Act:

3. 1. This Act shall apply to issues of evidence in civil transactions and criminal cases.
 2. The provisions of this Act shall apply to pending claims in which evidence has not been heard.
 3. In respect of previously prepared evidence there shall apply the provisions which were in force at the time the evidence was prepared or supposed to be prepared.
 4. The provisions of this Act shall apply to every claim or dispute before any court but shall not apply to claims before arbitrators or conciliators unless upon agreement by the parties thereon.

Interpretation:

4. In this Act unless the context otherwise requires, the words and expressions hereinafter set out shall have the meanings assigned to them:

Evidence: Means any method according to which any fact related to a claim or dispute before arbitrators or conciliators may be proved or disproved.

Claim: Includes any procedure in which evidence is taken before the court.

Transactions: Means property, financial and personal relations and all legal questions other than criminal.

Fact: Means any act or thing or condition or relation between things which may be classified by senses or reason.

¹ This Act has been published in the Legislation Annex No. 1580 of the Gazette dated 05.01.1994.

Fact subject of dispute: Means any fact which is disapproved by the opponent party and it includes the nature of the fact and its extent.

Chapter 2 General Provisions

5. The Court, when entertaining claims, takes into consideration the following general provisions:
 1. The presumption in transactions is that obligation has been discharged, and the burden of proof shall be upon the person who claims otherwise.
 2. The accused is presumed innocent until he is proved to be guilty beyond reasonable doubt.
 3. The general presumption as the condition of an adult person is that of soundness of mind and freedom of action, and the burden of proof shall be upon whoever claims his incapacity of constitution of guardianship over him².
 4. That which appears genuine shall be presumed to be so and the burden of proof shall be upon whoever claims otherwise.
 5. The presumption is that things exist in their normal form and that the changes have not occurred, and the burden of proof shall be upon whoever claims otherwise.
 6. The presumption as to legislative, executive and judicial measures is that they are in accordance with the law and the burden of proof shall be upon whoever claims otherwise.
 7. No statement shall be attributed to someone who has kept silent. However, silence in a situation where declarations is required shall be considered as such, and the Court may be entitled to draw the conclusions it deems reasonable.
 8. Whoever seeks to reject an act he has done, his rejection shall be refused.
 9. The tradition, whether verbal or practical, shall be considered evidence if it occurs repeatedly or becomes the norm.

Chapter 3 Evidence

Conditions of Evidence:

6. The facts required to be proved must be relevant to the case, result of the case and admissible.

Facts relevant to the case:

7. Facts which shall be considered as relevant to the claim are as follows:
 1. The facts which are in issue in a case.
 2. Facts related to the case and with which they constitute one transaction.
 3. Circumstantial facts:

First: Facts which are suitable to, or cause of, or result of facts in issue in a case, or which demonstrate their nature or extent or place or time or otherwise which contained them.

² Amendment, 1994.

Second: Facts which indicate or constitute a motive or purpose to any fact in issue and the facts which demonstrate mental conditions or intention or feeling which may be relevant to the facts in issue.

Third: Facts which indicate identification of persons, their physical condition, conduct and relations and the facts which are relevant thereto and which may be related to the facts in issue.

Fourth: Facts which indicate that a particular act is in a pattern of similar prior cases in which the doer has been involved, in order to prove that the act is incidental or deliberately made or has been made with an intention or a particular knowledge. Facts which indicate a pattern or conduct in which the act is normally performed, in order to prove whether or not it has been performed.

Admissible Evidence:

8. The evidence which is admissible in any case must be relevant in proving or disproving the facts which are in issue or the facts related thereto provided that the admissibility of such facts is not prohibited by the provisions of the Act.

Rejection of Evidence:

9. Subject to the conditions of evidence specified herein, the Court may reject the evidence in the following cases:
 1. If the evidence violates the principles of Sharia Law, law, justice or public order.
 2. Evidence based on the personal knowledge of the Judge.
 3. Evidence presented by one of the opponent parties to reject an act he has done which denote his approval or consent, or an act admitted by his authentic confession or by virtue of a document or by virtue of a judicial verdict.
 4. Evidence of opinion of people other than experts.
 5. Evidence of moral conduct presented against one of the opponent parties unless the evidence of moral conduct of that opponent relates to the case.

Evidence obtained by unlawful means:

10. 1. Without prejudice to the provisions on the inadmissible evidence, evidence shall not be rejected merely because it has been obtained by unlawful means whenever the Court is satisfied with the genuineness of its substance.
 2. A court may, whenever it deems it appropriate to achieve justice, not institute conviction by virtue of the evidence mentioned in sub-section (1) unless it is supported by further evidence.

Evidence effective in the claim:

11. 1. Effective evidence is that which goes towards proving or disproving the claim.
 2. The court may, at any stage of the case, reject the evidence if the court deems the evidence not effective in the claim.

Effect of error in admitting or rejecting evidence:

12. Error in admitting or rejecting evidence shall not constitute a cause to order the retrial or cassation of judgment in any case if it appears to the court, to which an objection against the judgment is presented that the judgment is supported by sufficient evidence even after the withdrawal of the evidence wrongfully admitted,

or that the evidence wrongfully rejected would not change the judgment if it were admitted.

Evaluation of evidence:

13. The court may, within the limits stated in this Act, evaluate items of evidence and rely on any of them as the court may deem fit to realize justice.

Judicial Notice:

14. 1. There shall be no need to prove facts about which the court takes judicial notice.
2. The court shall take judicial notice of local and public affairs which are presumed to be of common knowledge to the public at large.
3. Without prejudice to the generality of the foregoing, the court shall take judicial notice of the following:
 - a. The constitution, legislations and all provisions and measures which have the force of law.
 - b. The general process of the systems of legislative, executive and judicial powers and their organs.
 - c. Occupation of public offices and the names of their occupants, ranks, functions and signatures if their appointment has been officially declared.
 - d. Any state recognized by the government of the Sudan and generally all international and political affairs connected with the Sudan's foreign relations.
 - e. The time and geographic divisions, measures, weights and other prevailing measures in the Sudan.
 - f. Public and national holidays.
 - g. General Sudanese customs recognized by the courts.
 - h. General meanings of words.
 - i. Laws of nature and their normal process.
4. In all matters, of which the court takes judicial notice, it may make investigations and seek the assistance of any suitable reference or official authority. It may stipulate that the applicant, who requests it to take judicial notice about any matter, is to supply it with the necessary reference and documents for taking judicial notice.

**Chapter 4
Admission**

15. Definition of admission:

1. An admission is a statement of a fact which admits an alleged responsibility by the person who makes it.
2. The admission may be judicial or non-judicial

16. Judicial admission:

1. A judicial admission is an admission of a fact made when entertaining the case related to it before a court, or during proceeding of a case related to it before a judge, or before any quasi-judicial body.

2. Without prejudice to the foregoing, no admission made before any quasi-judicial body shall be deemed judicial admission in criminal matters.

17. Non-judicial admission:

General rules of evidence shall be applied to proving non-judicial admission.

18. Types of admission:

The admission may be express or implied, oral or written by usual signals expressed by a dumb person who does not know how to write.

19. Qualification of a person making an admission:

1. A person who makes an admission must be of sound mind, capable of choice, at the age of responsibility as provided by law and under no interdiction.
2. The admission of the distinguishing infant shall be valid in transactions which he is permitted to conclude.
3. An admission made by an authorized person is valid if it is made within the limits of his powers.

20. Conditions of improper admission:

1. An admission is improper when it is against the apparent circumstance.
2. In criminal matters a confession shall not be proper when it comes as a result of inducement or coercion.
3. Notwithstanding sub-section (2), inducement shall have no effect on the validity of admission related to transactions³.

21. Cogency of admission:

1. An admission shall have irrefutable cogency against whoever makes it and in transactions it shall be enforced against his successor upon the subject of the admission.
2. An admission shall constitute irrefutable evidence as to the truthfulness of the subject of the admission unless the person who makes it intended to harm his successor by the subject of the admission, or the parties to the case disagree to its bases.
3. In criminal matters, a confession shall not constitute conclusive evidence if it is non-judicial or there is doubt as to its truth.

22. Retraction of confession:

1. It shall not be permitted to retract a confession unless there has been a mistake of fact, provided that the person who makes the confession shall prove the same.
2. Retraction of a confession in *Hudoud*⁴ crimes shall be considered as doubt which makes the confession non conclusive⁵.

Chapter 5
Testimony of witnesses

³ Amendment, 1994.

⁴ *Sharia* laws.

⁵ Amendment, 1994.

23. Definition of testimony:

Testimony is the oral evidence of a person by his direct knowledge of a fact which proves an alleged responsibility against another person before a court.

24. Capacity of the witness:

Every person of sound mind who is aware of the facts he testified shall be competent to give testimony.

25. Disclosure of official information:

The testimony of a person deputed to public service shall not be admitted even after leaving his office, in respect of what came to his knowledge in his official capacity, if not published in a legal way unless it is permitted by the competent authority, or the court deems that the public interest will not be harmed by the disclosure of such information.

26. Disclosure of marriage secrets:

The testimony of one of the spouses shall not be admitted in respect of a secret told by the other spouse except with his permission.

27. Disclosure of secrets of profession:

The testimony of persons who are confidentially entrusted such as legal agents, doctors and the like shall not be admitted in respect of information known by virtue of their profession except with the permission of the client whenever the secret is related to a commission of an offence.

28. Acceptance of hearsay testimony:

Testimony stated by another person shall not be accepted unless the original maker is dead, or it is impossible to find him or he is unable to testify, or he cannot be brought to testify without loss of money or time, which the court deems unnecessary in the circumstances.

29. Acceptance of testimony by hearsay:

Testimony by hearsay shall not be accepted except in cases of marriage, birth, affiliation, religion and death. Testimony by hearsay shall not be accepted unless it is stated by two witnesses who testify the truth of the subject of testimony. The court shall consider, in evaluating the weight of the hearsay evidence, the attendant circumstances and the extent to which it is necessary to be corroborated by other evidence.

30. Testimony of experts:

When the settlement of a case requires the understanding of technical matter such as medicine, engineering, accountancy, calligraphy and other technical matters, the court may seek the assistance of an expert opinion, and one or more experts may be deputed for this purpose, unless the parties have already agreed upon their selection.

31. Discussion with the expert:

The court may, whenever it deems it appropriate, be satisfied with the opinion of the expert provided that no opponent party requests that the expert must be called for discussion on his opinion.

32. The Expert's opinion subject to the evaluation of the court:

The court may, subject to the evidence of *Hudoud*, rely on the expert's opinion to issue its judgment and it may, in case of an opinion contrary to the expert's opinion, include reasons behind refraining from taking the whole or part of the expert's opinion in its judgment.

33. Objection and refusal of testimony:

1. The person against whom testimony is made may object against a witness's testimony by raising the charge of bias, interest or enmity and the court in such a case may refuse the testimony when it is unsatisfied as to its accuracy.
2. The testimony of a person who has been whipped as a penalty in the *Hudoud* of defamation or conviction of perjury shall be rejected unless repentance is proved.

34. Evaluation of testimony:

The court shall consider, in evaluating the weight of testimony, any doubt in the credibility of the witness, or weakness in his capacity, the conduct of the witness during his testimony, contradiction with other testimonies he has made or any conditions required by the law for the validity of the testimony.

35. Immunity of the witness:

A witness shall not be subject to any legal responsibility as a result of his testimony except in the case of perjury, or an admission contravening a *Sharia Hadd*.

**Chapter 6
Documents**

36. Definition and types of documents:

1. Documents are recorded evidence by way of writing, photography or sound.
2. Documents are either official or ordinary.

37. Cogency of documents and contrary evidence:

1. A document shall be conclusive evidence as to what it contains.
2. Testimony shall not be accepted to present what adds to, amends or contravenes the contents of a document except in the following cases:
 - a. If there is a provision in the document which provides for the case.
 - b. To prove the existence of a previous condition necessary to the execution of the content of the documents provided that it does not contradict with its explicit provisions.
 - c. To prove any custom or usage which is not inconsistent with the express provisions of the document.
 - d. To prove any fact which may invalidate the contents of the document by reason of incapacity, illegality or the like, or which may invalidate it by reason of cheating, coercion or the like.
 - e. To prove any subsequent action or agreement amending the contents of the document save as to what the law requires to be recorded.
3. Discharge of responsibility arising of a content of a document may be proved by any means of evidence.

38. Acceptance of testimony to correct defect in document:

Testimony shall be admissible to correct any defect in the recording or expression of a document such as may be necessary to give its provisions reasonable meaning or to apply its terms in reality.

39. Loss of documents:

All means of evidence shall be accepted to prove what is required by law to be recorded in a document if the loss of a document is due to a reason for which the person who claims through the document is not responsible.

40. Definition of official documents:

Official documents are those in which a person deputed with public duties, in accordance with the legal conditions and within his power and competence, what he has carried out or required from persons concerned with such documents.

41. Cogency of official documents:

Official documents are cogent as to what is recorded therein unless forgery is proved.

42. Cogency of official copy:

1. An official copy of a document approved by a competent official in the presence of the original shall be cogent so long as it is identical with the original.
2. The copy of a document is presumed to be identical to the original thereof, unless that matter is disputed by an opponent party, in which case, the copy shall be compared with the original.
3. If the original is not in existence, the copy shall have the same cogency as the original whenever its appearance doesn't raise doubt as to its conformity to the original.

43. Definition of ordinary documents:

1. Ordinary documents are papers in which a fact is proved and signed or sealed or finger-printed by the person against whom they are alleged.
2. Ordinary documents include recorded evidence by way of photography or sound.

44. Cogency of ordinary documents:

1. Ordinary documents are considered to be made by the person to whom they are attributed unless he denies their attribution to him or his successor states under oath that he doesn't know if the signature, seal, sound, finger-print or photography on such document belong to the person whom he has succeeded.
2. In case of denial, it is permitted to prove that the document has been made by the person to whom they are attributed by all means of evidence.
3. Old documents whose age dates back to 20 years or more are presumed to be made by the person to whom they are attributed and the authenticity of signature of the witness is also presumed.

45. Cogency of letters and telegrams:

Signed letters shall have the cogency of ordinary documents, and telegrams shall have the same when their originals deposited at the sending office are signed by the person

who sent them. The telegram shall be considered identical with its original unless it is proved otherwise.

46. Objection against documents:

The plea of forgery shall be applied to both official and ordinary documents; but the denial of signature or seal or finger-print shall be applied only to ordinary documents.

47. Power of the court to determine the authenticity of documents:

1. The court may, on its own motion, decide that a document is forged if it appears clearly as such from such document or from the circumstances of the case.
2. The court may decide the effect of erasure, rubbing, written insertions and other material defects upon the evidentiary value of a document in order to disregard or reduce its value.
3. The court may order an investigation in cases of denial or forgery by comparison or by hearing witnesses or by both and the court may issue a decision on the authenticity of the document as it deems appropriate.

Chapter 7 Presumptions

48. Definition:

A presumption is the deduction of an unproved matter from proved matters in accordance with the prevailing circumstances.

49. Cogency of presumption:

The cogency of presumption shall be evaluated on the basis of its power to prove the matter. However, it may be disapproved in all circumstances.

50. Material evidence, evidence of the accomplice and the deceased:

1. Material evidence such as trace, hand writing, and finger-print are considered types of presumptions.
2. Evidence of the accomplice and deceased are considered types of presumptions.

Chapter 8 Cogency of judgments

51. Cogency of *res judicata*:

Final judgment shall be considered as conclusive proof as to the parties thereto regarding what has been determined in them and no proof shall be accepted to rebut such cogency.

52. Cogency of criminal judgment in transaction:

The court shall be bound in a case involving a transaction by a prior criminal judgment as to the facts decided in such judgment where such decision was necessary therein.

Chapter 9

Taking of oath

53. Definition:

1. Taking of oath means to swear by Allah the Almighty or by God that statements made about facts are true.
2. The person to whom the oath is directed may take it according to the conditions prescribed in his religion or belief.
3. In taking the oath, the party to the case is permitted to authorize someone to direct the oath; however he is not permitted to authorize someone to take the oath in his place.

54. The conclusive oath:

The conclusive oath means the oath directed by the party upon whom lies the responsibility of proving any fact of dispute to the opponent party, at any stage of the case, in order to settle the dispute.

55. Facts which are subject to the conclusive oath:

1. Whoever directs the taking of the conclusive oath to the other party shall state accurately the facts required to be sworn upon.
2. The fact which is subject of the oath shall be related to the person to whom the oath is directed, and if a fact is not related to him personally, then the oath shall be directed to his mere knowledge of it.
3. Conclusive oath shall not be directed in case of a fact which includes an admission of crime.

56. Text and refusal of the oath:

1. The court may determine the text of the oath, accept the text presented by the party to the case or amend the same.
2. The conclusive oath may be substantiated by a solemn oath by pronouncing the text of oath or by swearing by time or place.
3. The court may refuse the direction of an oath which is not permissible by law, or is not relevant to the dispute, or is ineffective in such dispute or if the party directs the oath oppressively.

57. Taking, redirecting and refusal of the oath:

1. If the person to whom the oath is directed does not dispute its admissibility or its relationship to the case or if he objected and the court rejects his objection, he shall, when he is present in court, take the oath forthwith or redirect it to the other party; otherwise he shall be considered refusing the oath.
2. If the person to whom the oath is directed takes the oath, the dispute against him shall come to an end.
3. Whoever having been directed to take the oath, refuses to take it without redirecting it back to the other party, or having been redirected to take the oath refuses it, shall lose his case.

58. The supplementary oath:

1. The court may direct the supplementary oath, on its own motion, to any one of the opponent parties in order to support evidence subject to the case.

2. It is stipulated, in the case of directing the supplementary oath, that no complete evidence is available in the case or that the case does not include evidence at all.
3. The party to whom the court has directed the supplementary oath shall not redirect the oath to other party.

59. Oath in evincing of right

The court shall, when evidence proves the right to the deceased's or the missing person's or the minor's funds, direct the oath to the plaintiff before the issuance of the judgment to evince such right.

60. Oath of cross-damnation

Means that the husband swears that his wife has committed adultery or that he denies that she has become pregnant from him and that the wife swears that he is lying. The husband shall testify four times that he is truthful as to the fact of adultery and the fifth time that the curse of Allah shall fall upon him if he is lying, and that the wife testifies four times that her husband is one of the liars and the fifth time that the anger of Allah shall fall upon her if he is one of the truthful.

Chapter 10 Viewing

61. Viewing:

1. The court may, on its own motion or pursuant to the request of a party to a case, decide to view the matter which is the subject of a dispute.
2. The court shall prepare a written record stating therein all the remarks without recording its impression or its opinion regarding the viewing.
3. The record of viewing is considered part of the evidence on which the court relies to issue its judgment.

Chapter 11 Evidence of *hudud*

62. Proof of adultery:

The offense of adultery shall be proved:

1. by express confession before a court, unless there is a retraction before the commencing of the execution of the judgment, or
2. by the testimony of four adult men,
3. by pregnancy when the woman has no husband when pregnancy is beyond doubt,
4. when the wife refuses to testify four times in the Name of Allah that the husband is one of the liars and that the fifth time that the anger of Allah shall fall upon her if he is one of the truthful, after her husband testifies four times in the Name of Allah as to the fact of adultery and the fifth time that the curse of Allah shall fall upon him if he is lying.

63. Proof of Hudud offenses:

Subject to the provisions of Section 62, all *hudud* offenses shall be proved:

1. By confession even once before a court, or
2. By the testimony of two men, or when necessary, by the testimony of a man and two women or by the testimony of four women⁶.

64. Proof of the offense of drinking liquor:

Notwithstanding the provisions of section 63, the smell of liquor is sufficient to prove the offense of drinking liquor when it is proved to the court by two adult witnesses or by a report of a competent expert stating that the smell is of liquor.

65. *Hudud* not to be judged upon doubt:

1. *Hudud* shall not be judged in cases of doubt.
2. There shall be considered cases of doubt retraction from confession, contradiction in witnesses' testimonies and the withdrawal of testimony given by a witness.
3. *Hudud* shall not be applied to a wife, in case of oath of liar, if she swears.

⁶ Amendment, 1994.

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