

BUTTERWORTHS HONG KONG

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**Evidence Law**  
HANDBOOK

Sixth Edition



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Butterworths

# Evidence Law Handbook

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The commentary in this book states the law as at 1 August 2025.

## Part II

## Admissible Witnesses and Evidence

*(Format changes—E.R. 4 of 2011)***3. Incompetency from immature age or unsoundness of mind**  
The following persons only shall be incompetent to give evidence in any proceedings—

- \***(a)** *(Repealed 70 of 1995 s. 2)*
- (b)** persons of unsound mind, who, at the time of the examination, appear incapable of receiving impressions of the facts respecting which they are examined or of relating them truly; and no person who is known to be of unsound mind shall be liable to be summoned as a witness without the consent previously obtained of the court or person before whom his attendance is required.

## Editorial Note:

\* Section 3(a) was repealed by section 2 of 70 of 1995. Please note section 1(2) of 1995. It reads as follows—

“Sections 2 and 3 do not apply in relation to—

- (a) any trial; or
- (b) any committal proceedings within the meaning of section 71A of the Magistrates Ordinance (Cap. 227),

that commenced before the commencement\* of this Ordinance.”

\*70 of 1995 commenced operation on 28 July 1995.

**[3.01] Enactment history**

Section 3(a) was repealed pursuant to s 2 of the Evidence (Amendment) Ordinance 1995 (70 of 1995), commencing 28 July 1995.

**[3.02] England**

There is no equivalent to this section in English legislation.

**[3.03] General note**

By virtue of the Evidence (Amendment) Ordinance 1995 (70 of 1995), s 1, this section does not apply in relation to:

- (1) any trial; or
- (2) any committal proceedings within the meaning of the Magistrates Ordinance (Cap 227), s 71A

that commenced before the commencement of the Evidence (Amendment) Ordinance 1995, ie, 28 July 1995.

Following the repeal of s 3(a) there is no need for the magistrate or judge to inquire into the competency of a child witness and a determination on whether the evidence should be admitted: see *R v Lam Chi Keung* [1997] 2 HKC 250, [1997] 1 HKLRD 421 (CA).

**[3.04] Persons of unsound mind who appear incapable**

Whether a person is incapable is a question of fact. If a person of unsound mind has a defect that has no effect on these abilities or which is transitory then his evidence may be admissible: see *R v Hill* (1851) 20 LJMC 222, (1851) 5 Cox CC 259. The evidence of a person of unsound mind did not require corroboration: see *R v Bagshaw* [1984] 1 All ER 971, [1984] 1 WLR 477 (CA, Eng), although the House of Lords in *R v Spencer* [1987] 1 AC 128, [1986] 2 All ER 928 (HL) has subsequently overruled *R v Bagshaw* (above). See also *Daimler AG v Helge Herbert Leiduck (representative of the Estate of Herbert Heinz Horst Leiduck, Deceased)* [2014] 3 HKC 578, [2014] 3 HKLRD 56 (CFI).

Having considered the expert evidence, the Court found that most of the evidence given by the witness in question was inadmissible on the ground of incompetence of that witness under s 3(b) of the Evidence Ordinance (Cap 8).

See *Daimler AG (formerly known as Mercedes-Benz AG) v Helge Herbert Leiduck appointed by Order to represent the Estate of Herbert Heinz Horst Leiduck, deceased and Anor* [2016] HKCU 2916 (unreported, HCA 4089T/1994, 2 December 2016) (CFI), per Recorder Wong SC.

The Defendant's application for leave to the appeal to the Court of Appeal was dismissed. See *Daimler AG (formerly known as Mercedes-Benz AG) v Helge Herbert Leiduck, appointed by Order to represent the Estate of Herbert Heinz Horst Leiduck, deceased and Anor* [2020] 3 HKLRD 579, [2020] HKCU 2003, [2020] HKCFI 1437. The Court held, inter alia, that in both civil and criminal proceedings, the party calling the witness has the burden of proving competence of a witness if it becomes an issue.

**4. Evidence given by children\***

- (1) In this section, *child* (兒童) means a person under 14 years of age.
- (2) A child's evidence in criminal proceedings shall be given

[4.01]

unsworn and shall be capable of corroborating the evidence sworn or unsworn, given by any other person.

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

(Replaced 70 of 1995)

Editorial Note:

\* Section 4 was replaced by section 3 of 70 of 1995. Please note section 1(2) of 70 of 1995. It reads as follows—

“Sections 2 and 3 do not apply in relation to—

- (a) any trial; or
- (b) any committal proceedings within the meaning of section 71A of the Magistrates Ordinance (Cap. 227),

that commenced before the commencement<sup>#</sup> of this Ordinance.”

<sup>#</sup>70 of 1995 commenced operation on 28 July 1995.

[4.01] Enactment history

This section was substituted pursuant to s 3 of the Evidence (Amendment) Ordinance 1995 (70 of 1995), commencing 28 July 1995.

[4.02] England

This section has the same effect as s 33A of the Criminal Justice Act 1988 (UK). The provision in sub-s (2) that a child's evidence is capable of corroborating evidence, sworn or unsworn, given by someone else, has the same effect as s 34 of that Act, where it is believed the reference to s 52 of the Criminal Justice Act 1991 (UK) should have been to s 33A. However, the Act provides that a child's evidence shall be received unless it appears to the court that the child is incapable of giving intelligible testimony but there is no similar provision in the present Evidence Ordinance (Cap 8).

[4.03] General note

The effect of this section, combined with s 3 above is that a child's unsworn testimony must be received whether or not the child would otherwise have been competent. Even if a child is unable to articulate the importance of telling the truth, his evidence is still admissible. If a child is of sufficient understanding it is wise for the judge to bring home to him the importance of telling the truth. But this is a matter for the judge's discretion: see *R v Lam Chi Keung* [1997] 2 HKC 250 [1997] 1 HKLRD 421 (CA), endorsed by the Court of Final Appeal in *Lam Chi Keung v HKSAR* [1998] 1 HKC 499, [1998] 1 HKLRD 440 (CFA).

[4.05]

It appears that even a child who is unable to give intelligible testimony is not per se ruled incompetent although the likely duty of the judge would be to ensure that no weight be given to such evidence: see the obiter in *R v Lam Chi Keung* [1997] 2 HKC 250 at 256, [1997] 1 HKLRD 421 (CA).

The provisions of sub-ss (1) and (2) do not conflict with Arts 14(1) and 26 of the International Covenant on Civil and Political Rights, which provides for equality before the law: see *R v Lam Chi Keung* (above).

See also *HKSAR v TPD* [2018] 4 HKC 262, [2018] HKCA 275. The video recorded interview of the victim in the case was supplemented by her oral evidence, which she gave pursuant to s 79B of the Criminal Procedure Ordinance (Cap 221), which was also relevant to ss 4, 4A and 4B of the Evidence Ordinance (Cap 8).

[4.04] Oath

This is defined in s 3 of the Interpretation and General Clauses Ordinance (Cap 1) which includes affirmation in the case of persons allowed or required by law to affirm instead of swearing, and swear in the like case includes affirm.

An oath may be administered and taken in the following form and manner: the person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words: 'I swear by Almighty God that, followed by the words of the oath prescribed by law': see s 5(1) of the Oaths and Declarations Ordinance (Cap 11).

A person who is neither a Christian nor a Jew shall be permitted to make his affirmation instead of taking an oath for any purpose for which an oath is required by law: see s 7(2) of the Oaths and Declarations Ordinance.

[4.05] A child's evidence in criminal proceedings shall be given unsworn

It is usually necessary for a judge to stress to a child witness the importance of telling the truth, but how this is to be done is a matter for the judge: see *R v Hampshire* [1996] QB 1, [1995] 2 All ER 1019, [1995] 3 WLR 260 (CA, Eng), applied in *R v Lam Chi Keung* [1997] 2 HKC 250, [1997] 1 HKLRD 421 (CA), which was endorsed by the Court of Final Appeal in *Lam Chi Keung v HKSAR* [1998] 1 HKC 499, [1998] 1 HKLRD 440 (CFA).

It was argued in *Chim Hon Man v HKSAR* [1999] 1 HKC 428, (1999) 2 HKCFAR 145 (CFA) that the corollary to a child under 14 years giving evidence in criminal proceedings unsworn was that a person who is 14 or over must give evidence on oath or affirmation. The Court of Final Appeal held that the evidence, which was on video-tape, was admissible under s 79C of the Criminal Procedure Ordinance (Cap 221) as sub-s (7) of that section provided that the statements in the recording should be treated as if given by that witness in direct oral testimony. The effect of this subsection was to give the statements in the recording the same effect as if given in evidence on oath or affirmation.

#### 4A. Abolition of corroboration rule in respect of evidence given by a child\*

- (1) Any requirement whereby at a trial by and before a judge and jury it is obligatory for the judge to give the jury a warning about convicting the accused on the uncorroborated evidence of a child is hereby abrogated in relation to cases where such a warning is required by reason only that the evidence is the evidence of a child.
- (2) Any requirement that is applicable at a trial by a judge or magistrate and corresponds to the requirement mentioned in subsection (1) is hereby abrogated.

(Added 70 of 1995 s. 3)

#### Editorial Note:

\* Section 4A was added by section 3 of 70 of 1995. Please note section 1(2) of 70 of 1995. It reads as follows—

“Sections 2 and 3 do not apply in relation to—

- (a) any trial; or
- (b) any committal proceedings within the meaning of section 71A of the Magistrates Ordinance (Cap. 227),

that commenced before the commencement<sup>#</sup> of this Ordinance.”

<sup>#</sup>70 of 1995 commenced operation on 28 July 1995.

#### [4A.01] Enactment history

This section was added pursuant to s 3 of the Evidence (Amendment) Ordinance 1995 (70 of 1995), commencing 28 July 1995.

#### [4A.02] England

Subsection (1) is of similar effect to s 34(2) of the Criminal Justice Act 1988 (UK).

#### [4A.03] General note

This section removes the common law rule concerning the issuing of corroboration warnings in relation to the evidence of children.

See also *HKSAR v TPD* [2018] 4 HKC 262, [2018] HKCA 275 and the discussion above at [4.03].

#### [4A.04] Give the jury a warning

For guidelines as to the circumstances in which, as a matter of discretion, a judge ought to give a warning relating to uncorroborated evidence, and as to the manner in which it should be done, see *R v Makanjuola* [1995] 3 All ER 730, [1995] 1 WLR 1348 (CA, Eng).

#### [4A.05] Uncorroborated evidence

For the meaning of uncorroborated evidence, see *Halsbury's Laws of Hong Kong* (2nd edn, LexisNexis 2021 Reissue), vol 27 on Evidence at para [175.169].

#### [4A.06] Judge

As to meaning, see [2.11] above.

#### [4A.07] Magistrate

As to meaning, see [2.12] above.

#### 4B. Abolition of corroboration rule in respect of sexual offences

- (1) Any requirement whereby at a trial by and before a judge and jury it is obligatory for the judge to give the jury a warning about convicting the accused of an offence under Part VI or XII of the Crimes Ordinance (Cap. 200) on the uncorroborated evidence of a person merely because that person is the person in respect of whom that offence is alleged to have been committed is hereby abrogated.
- (2) Any requirement that is applicable at a trial by a judge or magistrate and corresponds to the requirement mentioned in subsection (1) is hereby abrogated.
- (3) This section shall not apply to—
  - (a) any trial; or
  - (b) any committal proceedings within the meaning of section 71A of the Magistrates Ordinance (Cap. 227), that commenced before the commencement<sup>\*</sup> of this section.

(Added 43 of 2000 s. 2)

#### Editorial Note:

\* Commencement date: 30 June 2000

[4B.01]

### [4B.01] Enactment history

This section was added pursuant to s 2 of the Evidence (Amendment) Ordinance 2000 (43 of 2000), commencing 30 June 2000.

### [4B.02] England

This section is based on s 32 of the Criminal Justice and Public Order Act 1994 (UK). The UK Act also abolishes the obligatory warning about conviction of a defendant on the uncorroborated evidence of an alleged accomplice.

### [4B.03] General note

This section removes the common law rule concerning the issuing of corroborated warnings in relation to the evidence of victims of sexual offences.

See also *HKSAR v TPD* [2018] 4 HKC 262, [2018] HKCA 275 and the discussion above at [4.03].

### [4B.04] Give the jury a warning

For guidelines as to the circumstances in which, as a matter of discretion, a judge ought to give a warning relating to uncorroborated evidence, and as to the manner in which it should be done, see *R v Makanjuola* [1995] 3 All ER 730, [1995] 1 WLR 1348 (CA, Eng). The circumstances and local authorities were considered in *HKSAR v Khan Arshed* [2003] 4 HKC 409 (CA).

Section 4B of the Evidence Ordinance (Cap 8) abrogates any requirement for a judge at a trial of an offence under Pts VI (Incest) and XII (Sexual and Related Offences) of the Crimes Ordinance (Cap 200) to give the jury a warning about convicting the accused on the uncorroborated evidence of the complainant.

See also *HKSAR v CT* (2019) 22 HKCFAR 225, [2019] HKCU 2780, [2019] HKCFA 26.

### [4B.05] Commencement of this section

ie, 30 June 2000.

See also *R v Makanjuola* [1995] 3 All ER 730, [1995] 1 WLR 1348 (CA, Eng) where the equivalent English section was held to apply even though it was not in force at the time when the applicants were charged and committed for trial, since it was in force before the trial in each case had begun.

## 5. Evidence of parties

In all proceedings before the court, the parties and the husbands and wives of the parties thereto, and the persons in whose behalf any proceedings may be brought, or instituted, or opposed, or defended, and the husbands and wives of such persons shall, except as

[5.06]

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 proceedings.

(Amended 27 of 1937 Schedule)

[cf. 1851 c. 99 s. 2 U.K.; 1853 c. 83 s. 1 U.K.]

### [5.01] Enactment history

This section was amended pursuant to the Schedule of the Law Revision Ordinance 1937 (27 of 1937), commencing 24 December 1937.

### [5.02] England

The wording of this section is to the same effect as s 2 of the Evidence Act 1851 (c 99) (UK) and s 1 of the Evidence Amendment Act 1853 (c 83) (UK).

### [5.03] Parties be competent

See however s 6 below as to criminal proceedings; and for other enactments relating to the competence and compellability of parties and their spouses, see ss 6 and 7 below. For criminal proceedings, note the effect of s 58 of the Criminal Procedure Ordinance (Cap 221). As to competence and compellability generally, see *Halsbury's Laws of Hong Kong* (2nd edn, LexisNexis 2021 Reissue), vol 27 on Evidence at paras [175.090] et seq.

### [5.04] Husbands and wives of the parties

Note the saving as to criminal cases in s 6 below and s 57 of the Criminal Procedure Ordinance (Cap 221).

### [5.05] Persons

Person is defined in s 3 of the Interpretation and General Clauses Ordinance (Cap 1) as including any public body and any body of persons, corporate or unincorporate, and this definition shall apply notwithstanding that the word person occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation.

### [5.06] Definition

For 'court', see s 2 above.

## 6. Evidence of husband and wife

Nothing in this Ordinance shall render any husband competent or compellable to give evidence for or against his wife, or any wife

[22A.08]

**[22A.08] Person**

As to meaning, see [5.05] above.

**[22A.09] Solicitor**

As to meaning, see [19A.06] above.

**[22A.10] Chief Justice**

As to meaning, see [2.10] above.

**[22A.11] Legislative Council**

As to meaning, see [19.05] above.

**[22A.12] Court**

See s 2 above.

**[22A.13] Computer records for non-hearsay purposes**

Not every computer record put forward in a court by a party is relied upon for proving the facts stated therein. For instance, a document may be relevant because of its form: see discussions in *S-J v Lui Kin Hong Jerry* [2000] 1 HKC 114G–115A, (1999) 2 HKCFAR 510, [2000] 1 HKLRD 92 (CFA) and *Yu King Ming (余景明) & Anor* [2009] HKCU 150 (unreported, CACC 5 February 2009) (CA) at [21]–[25].

**22B. Provisions supplementary to sections 22 and 22A**

- (1) Where in any criminal proceedings a statement contained in a document is admissible in evidence by virtue of section 22 or 22A, it may be proved by the production of that document or (whether or not that document is still in existence) by the production of a copy of that document or of the material part thereof.
- (2) Where in any criminal proceedings a statement contained in a document is admitted in evidence by virtue of section 22 or 22A, the court may draw any reasonable inference from the circumstances in which the statement was made, including the form and contents of the document in which the statement is contained.
- (3) In estimating the weight, if any, to be attached to a statement admitted in evidence by virtue of section 22 or 22A, the court

[22B.01]

*Evidence Ordinance (Cap 8)*

shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular—

- (a) in the case of a statement falling within section 22, to the question whether or not the person who supplied the information from which the record containing the statement was compiled did so contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not that person, or any person concerned with compiling or keeping the record containing the statement, had any incentive to conceal or misrepresent the facts; and
- (b) in the case of a statement falling within section 22A, to the question whether or not the information which the information contained in the statement reproduces or is derived from was supplied to the relevant computer, or recorded for the purpose of being supplied to it, contemporaneously with the occurrence or existence of the facts dealt with in that information, and to the question whether or not any person concerned with the supply of information to that computer, or with the operation of that computer or any equipment by means of which the document containing the statement was produced by it, had any incentive to conceal or misrepresent the facts.

- (4) In sections 22 and 22A and this section *document* (文件), *copy* (副本) and *statement* (陳述) have the same meaning as in Part IV.
- (5) Nothing in section 22 or 22A shall prejudice the admissibility of any evidence that would be admissible apart from that section.

(Added 37 of 1984 s. 7)

**[22B.01] Enactment history**

This section was added pursuant to s 7 of the Evidence (Amendment) Ordinance 1984 (37 of 1984), commencing 15 June 1984. The format, layout and printing style of this section was amended by ER 1 of 2015, commencing 29 January 2015.

[22B.02]

### [22B.02] England

Subsection (2) is to the same effect as Sch 3, para 14 of the Police and Criminal Evidence Act 1984 (c 60) (UK).

### [22B.03] General note

The purpose of this section is to let a document speak for itself. This purpose is defeated if oral evidence is required in every case from either the document's creator or keeper, or the person supplying the information therein: see *R v [1995] 2 Cr App Rep 523* (CA, Eng).

### [22B.04] Person

As to meaning, see [5.05] above.

### [22B.05] Statement

For the definition of 'statement', see s 46 below.

### [22B.06] Document

For the definition of 'document', see s 46 below.

### [22B.07] Copy

For the definition of 'copy', see [22.13] above and s 46 below.

### [22B.08] Subsection (2)

'Is admitted' means 'is the subject of an application to be admitted'.

This subsection is purely permissive. It does not prohibit the court from doing anything it would otherwise be able to do: see *S-J v Lui Kin Hong Jerry* [2000] 1 HKCFAR 510, [1999] 2 HKCFAR 510, [2000] 1 HKLRD 92 (CFA).

### [22B.09] Court

See s 2 above.

**23. Copy of records of Hong Kong Observatory**  
A document purporting to be a copy of the records or part of the records kept by the Director of the Hong Kong Observatory and purporting to be certified by the officer having the custody of the records shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof, and— (Amended L.N. 362 of 1997)

[23.04]

### Evidence Ordinance (Cap 8)

- (a) until the contrary is proved, the court before which such document is produced shall presume—
- (i) that the document is certified by such officer;
  - (ii) that the document is a true copy of the records or part of the records to which it refers; and
  - (iii) that the records were duly made and compiled at the time referred to in the document; and
- (b) such document shall be prima facie evidence of all matters contained therein.

(Added 46 of 1967 s. 2.  
Amended 31 of 1969 s. 3)

### [23.01] Enactment history

This section was added pursuant to s 2 of the Evidence (Amendment) Ordinance 1967 (46 of 1967), commencing 4 August 1967. It was subsequently amended pursuant to s 3 of the Evidence (Amendment) (No 2) Ordinance 1969 (31 of 1969), commencing 4 July 1969; and was amended by the Declaration of Change of Titles (General Adaptation) Notice 1997 (LN 362 of 1997), commencing 1 July 1997. The format, layout and printing style of this section was amended by ER 1 of 2015, commencing 29 January 2015.

### [23.02] England

There is no equivalent to this section in English legislation.

### [23.03] Document

As to meaning, see [2.08] above.

### [23.04] Court

See s 2 above.

### 24. Certificate of accuracy of chronometer

A document purporting to be a record of the testing of and the accuracy of a chronometer and purporting to be certified by an officer of the Hong Kong Observatory shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof, and— (Amended L.N. 362 of 1997)

- (a) until the contrary is proved the court before which such document is produced shall presume—
- (i) that the document is certified by such officer;

- (ii) that the facts stated in the document relate to the chronometer are true; and
  - (iii) that the record was made and compiled at the time referred to in the document; and
- (b) such document shall be prima facie evidence of all matters contained therein.

(Added 46 of 1967  
Amended 31 of 1969)

### [24.01] Enactment history

This section was added pursuant to s 2 of the Evidence (Amendment) Ordinance 1967 (46 of 1967), commencing 4 August 1967. This section was subsequently amended pursuant to s 4 of the Evidence (Amendment) (No 2) Ordinance 1969 (31 of 1969), commencing 4 July 1969; and was amended by the Declaration of Change of Titles (General Adaptation) Notice 1997 (LN 362 of 1997), commencing 1 July 1997. The format, layout and printing style of this section was amended by ER 1 of 2015, commencing 29 January 2015.

### [24.02] England

There is no equivalent to this section in English legislation.

### [24.03] Document

As to meaning, see [2.08] above.

### [24.04] Chronometer

No definition is given in the present Evidence Ordinance (Cap 8) nor in the Interpretation and General Clauses Ordinance (Cap 1).

### [24.05] Court

See s 2 above.

## 24A. Certificate of accuracy of apparatus designed and used for ascertaining the speed of a vessel

A document purporting to be a record of the testing of and the accuracy of any apparatus designed and used for ascertaining the speed of a vessel and purporting to be certified by a person authorised in that behalf by the Director of Electrical and Mechanical Services shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof and—

- (a) in the absence of evidence to the contrary the court before which such document is produced shall presume—
  - (i) that the document is certified by such person;
  - (ii) that the facts stated in the document relating to such apparatus are true; and
  - (iii) that the record was made and compiled at the time and place referred to in the document; and
- (b) such document shall be evidence of all matters contained therein.

(Added 13 of 1995 s. 30)

### [24A.01] Enactment history

This section was added by s 30 of the Administration of Justice (Miscellaneous Provisions) Ordinance 1995 (13 of 1995). The format, layout and printing style of this section was amended by ER 1 of 2015, commencing 29 January 2015.

### [24A.02] England

There is no equivalent to this section in English legislation.

### [24A.03] Person

As to meaning, see [5.05] above.

### [24A.04] Document

As to meaning, see [2.08] above.

### [24A.05] Court

See s 2 above.

## 25. Government Chemist's certificates

- (1) A document in the form set out in Form 1 of the Schedule purporting to be signed by the Government Chemist and purporting to be a certificate as to any article or substance submitted to him shall be admitted in evidence in criminal or civil proceedings before any court on its production without further proof, and—

- (a) until the contrary is proved, the court before which