

No. S 6

CONSTITUTION OF BRUNEI DARUSSALAM**{Order under section 83(3)}****EMERGENCY (EVIDENCE ACT) (AMENDMENT) ORDER, 1999**

In exercise of the powers conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order :-

1. (1) This Order may be cited as the Emergency (Evidence Act) (Amendment) Order, 1999.

Short title,
commencement
and application.

(2) This Order shall come into force on 1st day of March, 1999.

(3) This Order shall apply to all civil proceedings as from the date of commencement, whether or not the civil proceedings were instituted before or after such date of commencement.

2. The Evidence Act is amended by the addition of the following new Chapter XII after section 167 -

Addition of
Chapter XII to
Chapter 108.

**"CHAPTER XII
HEARSAY EVIDENCE**

Application of
Chapter XII.

168. The provisions of this Chapter shall apply to all civil proceedings, notwithstanding any provision of this Act or of any other law to the contrary effect.

Admissibility of
hearsay
evidence.

169. (1) In civil proceedings evidence shall not be excluded on the ground that it is hearsay.

(2) In this Chapter -

(a) "hearsay" means a statement made otherwise than by a person while giving oral evidence in the proceedings, which is tendered as evidence of the matters stated ; and

(b) references to hearsay include hearsay of whatever degree.

(3) Nothing in this Chapter shall affect the admissibility of evidence admissible apart from this section.

(4) The provision of sections 170 to 174 do not apply to hearsay evidence admissible apart from this section, notwithstanding that it may also be admissible by virtue of this section.

**Notice of
proposal to
adduce hearsay
evidence.**

170. (1) A party proposing to adduce hearsay evidence in civil proceedings shall, subject to the following provisions of this section, give to the other party or parties to the proceedings –

- (a) such notice (if any) of that fact ; and
- (b) on request, such particulars of or relating to the evidence,

as is reasonable and practicable in the circumstances for the purpose of enabling him or them to deal with any matters arising from its being hearsay.

(2) Subsection (1) may be excluded by agreement of the parties ; and compliance with the duty to give notice may in any case be waived by the person to whom notice is required to be given.

(3) A failure to comply with subsection (1) does not affect the admissibility of the evidence but may be taken into account by the court –

- (a) in considering the exercise of its powers with respect to the course of proceedings and costs ; and
- (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 172.

**Power to call
witness.**

171. Where a party to civil proceedings adduces hearsay evidence of a statement made by a person and does not call that person as a witness, any other party to the proceedings may, with the leave of the court, call that person as a witness and cross-examine him on the statement as if he had been called by the first-mentioned party and as if the hearsay statement were his evidence in chief.

**Consideration
relevant.**

172. (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings that court shall have

regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

{2} Regard may be had, in particular, to the following –

- (a) whether it would have been reasonable and practicable for the party to whom the evidence was adduced to have produced the maker of the original statement as a witness ;
- (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated ;
- (c) whether the evidence involves multiple hearsay ;
- (d) whether any person involved had any motive to conceal or misrepresent matters ;
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose ;
- (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

Competence
and credibility.

173. (1) Hearsay evidence shall not be admitted in civil proceedings if or to the extent that it is shown to consist of, or to be proved by means of, a statement made by a person who at the time he made the statement was not competent as a witness. For this purpose, "not competent as a witness" means suffering from such mental or physical infirmity, or lack of understanding, as would render a person incompetent as a witness in civil proceedings.

(2) Where in civil proceedings hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness –

- (a) evidence which if he had been so called would be admissible for the purpose of attacking or supporting his credibility as a witness is admissible for that purpose in the proceedings ; and
- (b) evidence tending to prove that, whether before or after he made the statement, he made any other statement inconsistent with it is admissible for the purposes of showing that he had contradicted himself :

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

Previous
statements of
witnesses.

174. (1) The provisions of this Chapter as to hearsay evidence in civil proceedings apply equally (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings.

(2) A party who has called or intends to call a person as a witness in civil proceedings may not in those proceedings adduce evidence of a previous statement made by that person, except –

- (a) with the leave of the court ; and
- (b) for the purpose of rebutting a suggestion that his evidence had been fabricated.

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

(3) Nothing in this Chapter affects any of the rules of law as to the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in the proceedings.

(4) Nothing in this section shall be construed as preventing a statement of any description referred to above from being admissible by virtue of section 169 as evidence of the matters stated.

Evidence
formerly
admissible.

175. (1) Any rule of law whereby in civil proceedings –

- (a) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated in them ;
- (b) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated in them ; or
- (c) records (for example, the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated in them,

shall continue to have effect.

(2) Any rule of law whereby in civil proceedings –

- (a) evidence of a person's reputation is admissible for the purpose of proving his good or bad character ; or
- (b) evidence or reputation or family tradition is admissible –
 - (i) for the purpose of proving or disproving pedigree or the existence of a marriage ; or
 - (ii) for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing,

shall continue to have effect in so far as they authorise the court to treat such evidence as proving or disproving that matter. Where any such rule applies, reputation or family tradition shall be treated for the purposes of this Chapter as a fact and not as a statement or multiplicity of statements about the matter in question.

(3) The words in which a rule of law mentioned in this section is described are intended only to identify the rule and shall not be construed as altering it in any way."

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

Made this 30th. day of Syawal, 1419 Hijriah corresponding to the
17th. day of February, 1999 at Our Istana Nurul Iman, Bandar Seri
Begawan, Brunei Darussalam.

**HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM**

Dicetak oleh WAHID BIN HAJI SALLEH, Pengarah Percetakan,
di Jabatan Percetakan Kerajaan, Bandar Seri Begawan BB3510, Negara Brunei Darussalam.

Harga B\$5.00