

LAW OF EVIDENCE AMENDMENT ACT 45 OF 1988

[ASSENTED TO 15 APRIL 1988]

[DATE OF COMMENCEMENT: 3 OCTOBER 1988]

(Afrikaans text signed by the State President)

as amended by

Justice Laws Rationalisation Act 18 of 1996

ACT

To amend the law of evidence so as to provide for the taking of judicial notice of the law of a foreign state and of indigenous law; and to lay down general requirements for the admissibility of hearsay evidence; to amend the Civil Proceedings Evidence Act, 1965, so as to regulate further at civil proceedings communications between spouses made during the marriage; to amend the Criminal Procedure Act, 1977, so as to make the husband or the wife of an accused a competent but not compellable witness at criminal proceedings; and to regulate further at criminal proceedings communications between spouses made during the marriage; and to provide for matters incidental thereto.

1 Judicial notice of law of foreign state and of indigenous law

(1) Any court may take judicial notice of the law of a foreign state and of indigenous law in so far as such law can be ascertained readily and with sufficient certainty: Provided that indigenous law shall not be opposed to the principles of public policy and natural justice: Provided further that it shall not be lawful for any court to declare that the custom of lobola or bogadi or other similar custom is repugnant to such principles.

(2) The provisions of subsection (1) shall not preclude any part from adducing evidence of the substance of a legal rule contemplated in that subsection which is in issue at the proceedings concerned.

(3) In any suit or proceedings between Blacks who do not belong to the same tribe, the court shall not in the absence of any agreement between them with regard to the particular system of indigenous law to be applied in such suit or proceedings, apply any system of indigenous law other than that which is in operation at the place where the defendant or respondent resides or carries on business or is employed, or if two or more different systems are in operation at that place (not being within a tribal area), the court shall not apply any such system unless it is the law of the tribe (if any) to which the defendant or respondent belongs.

(4) For the purposes of this section '**indigenous law**' means the law or custom as applied by the Black tribes in the Republic.

[Sub-s. (4) substituted by s. 4 of Act 18 of 1996 .]

2

Repeals section 54 of the Magistrates' Courts Act 32 of 1944 .

3 Hearsay evidence

(1) Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless-

- (a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;
- (b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or
- (c) the court, having regard to-

- (i) the nature of the proceedings;
 - (ii) the nature of the evidence;
 - (iii) the purpose for which the evidence is tendered;
 - (iv) the probative value of the evidence;
 - (v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;
 - (vi) any prejudice to a party which the admission of such evidence might entail; and
 - (vii) any other factor which should in the opinion of the court be taken into account,
- is of the opinion that such evidence should be admitted in the interests of justice.

(2) The provisions of subsection (1) shall not render admissible any evidence which is inadmissible on any ground other than that such evidence is hearsay evidence.

(3) Hearsay evidence may be provisionally admitted in terms of subsection (1) (b) if the court is informed that the person upon whose credibility the probative value of such evidence depends, will himself testify in such proceedings: Provided that if such person does not later testify in such proceedings, the hearsay evidence shall be left out of account unless the hearsay evidence is admitted in terms of paragraph (a) of subsection (1) or is admitted by the court in terms of paragraph (c) of that subsection.

(4) For the purposes of this section-

'hearsay evidence' means evidence, whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence;

'party' means the accused or party against whom hearsay evidence is to be adduced, including the prosecution.

4

Amends section 10 of the Civil Proceedings Evidence Act 25 of 1965 by inserting subsection (2) while the existing section becomes subsection (1).

5

Repeals section 11 of the Civil Proceedings Evidence Act 25 of 1965 .

6

Amends section 195 of the Criminal Procedure Act 51 of 1977 by substituting subsection (1).

7

Amends section 196 (1) of the Criminal Procedure Act 51 of 1977 by substituting paragraph (b).

8

Amends section 198 of the Criminal Procedure Act 51 of 1977 by substituting subsection (2).

9

Repeals sections 216 and 223 of the Criminal Procedure Act 51 of 1977 .

10 Short title and commencement

This Act shall be called the Law of Evidence Amendment Act, 1988, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

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