

CHAPTER 156

THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) ACT

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EVIDENCE (PROCEEDINGS IN OTHER
JURISDICTIONS)

(1st October, 1981.)

14/1981.
18/1989.

1. This Act may be cited as the Evidence (Proceedings in Other Jurisdictions) Act. Short title.

2. (1) In this Act—

Interpretation

"civil proceedings", in relation to the requesting court, means proceedings in any civil or commercial matter;

"requesting court" has the meaning given in section 3 of this Act;

"property" includes any land, chattel or other corporeal property of any description;

"request" includes any commission, order or other process issued by or on behalf of the requesting court.

(2) Any power conferred by section 8 of this Act to make an order includes power to revoke or vary any such order by a subsequent order.

(3) Nothing in this Act shall be construed as enabling any court to make an order that is binding on the Crown or on any person in his capacity as an officer or servant of the Crown.

(4) Except as far as the context otherwise requires, any reference in this Act to any enactment is a reference to that enactment as amended or extended by or under any other enactment.

EVIDENCE FOR CIVIL PROCEEDINGS

Application to High Court for assistance in obtaining evidence for civil proceedings in other court.

3. Where an application is made to the High Court for an order for evidence to be obtained in Antigua and Barbuda, and the court is satisfied—

(a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal ("the requesting court") exercising jurisdiction in a country or territory outside Antigua and Barbuda; and

(b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

the High Court shall have the powers conferred on it by the following provisions of this Act.

Power of High Court to give effect to application for assistance.

4. (1) Subject to the provisions of this section, the High Court shall have power, on any such application as is mentioned in section 3 above, by order to make such provision for obtaining evidence in Antigua and Barbuda as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the court may consider appropriate for that purpose.

(2) Without prejudice to the generality of subsection (1) above but subject to the provisions of this section, an order under this section may, in particular, make provision—

(a) for the examination of witnesses, either orally or in writing;

(b) for the production of documents;

(c) for the inspection, photographing, preservation, custody or detention of any property;

(d) for the taking of samples of any property and the carrying out of any experiments on or with any property;

(e) for the medical examination of any person;

(f) without prejudice to paragraph (e) above, for the taking and testing of samples of blood from any person.

(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the court making the order (whether or not proceedings of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court.

(4) An order under this section shall not require a person—

(a) to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power; or

(b) to produce any documents other than particular documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession, custody or power.

(5) A person who, by virtue of an order under this section, is required to attend at any place shall be entitled to the like conduct money and payment for expenses and loss of time as on attendance as a witness in civil proceedings before the court making the order.

5. (1) A person shall not be compelled by virtue of an order under section 4 above to give any evidence which he could not be compelled to give—

Privilege of witnesses.

(a) in civil proceedings in Antigua and Barbuda; or

(b) subject to subsection (2) below, in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (1) (b) above shall not apply unless the claim of the person in question to be exempt from giving the evidence is either—

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(a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or

(b) conceded by the applicant for the order;

and where such a claim made by any person is not supported or conceded as aforesaid he may (subject to the other provisions of this section) be required to give evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

(3) Without prejudice to subsection (1) above, a person shall not be compelled by virtue of an order under section 4 above to give any evidence if his doing so would be prejudicial to the security of the United Kingdom, Antigua and Barbuda or any other State concerned under international law; and a certificate signed by or on behalf of the Minister responsible for such security to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(4) In this section references to giving evidence include references to answering any question and to producing any document and the reference in subsection (2) above to the transmission of evidence given by a person shall be construed accordingly.

Extension of powers of High Court etc. in relation to obtaining evidence for proceedings in that Court. Cap. 143.

6. Section 79 of the Eastern Caribbean Supreme Court Act (which enables the High Court to enforce a subpoena on any person to attend as a witness in any proceedings before a judge of the High Court) shall have effect as if references to attendance before a judge included references to attendance before an examiner or commissioner appointed by the court or a judge thereof in any cause or matter in that court, including an examiner or commissioner appointed to take evidence outside the jurisdiction of the court.

EVIDENCE FOR CRIMINAL PROCEEDINGS

7. (1) The provisions of sections 3 to 5 above shall have effect in relation to the obtaining of evidence for the purposes of criminal proceedings as they have effect in relation to the obtaining of evidence for the purposes of civil proceedings except that—

Power of High Court to assist in obtaining evidence for criminal proceedings in overseas court.

(a) paragraph (b) of section 3 above shall apply only to proceedings which have been instituted; and

(b) no order under section 4 above shall make provision otherwise than for the examination of witnesses, either orally or in writing, or for the production of documents.

(2) In its application by virtue of subsection (1) above, section 5 (1) (a) and (b) above shall have effect as if for the words "civil proceedings" there were substituted the words "criminal proceedings".

(3) Nothing in this section applies in the case of criminal proceedings of a political character.

EVIDENCE FOR INTERNATIONAL PROCEEDINGS

8. (1) The Governor-General may by Order direct that, subject to such exceptions, adaptations or modifications as may be specified in the Order, the provisions of sections 3 to 5 above shall have effect in relation to international proceedings of any description specified in the Order.

Power of High Court to assist in obtaining evidence for international proceedings.

(2) An Order under this section may direct that the provisions of the Perjury Act shall have effect in relation to international proceedings to which the Order applies as it has effect in relation to a judicial proceeding in a tribunal of a foreign state.

Cap. 324.

(3) In this section "international proceedings" means proceedings before the International Court of Justice or any other court, tribunal, commission, body or authority (whether consisting of one or more persons) which, in pursuance of any international agreement or any resolution of the General Assembly of the United Nations, exercises any jurisdiction

or performs any functions of a judicial nature or by way of arbitration, conciliation or inquiry or is appointed (whether permanently or temporarily) for the purpose of exercising any jurisdiction or performing any such functions.

SUPPLEMENTARY

Rules of Court.
S.I. 1967.
No. 223.

9. The power to make rules of court under section 17 of the Supreme Court Order shall include power to make rules of court—

(a) as to the manner in which any such application as is mentioned in section 3 above is to be made;

(b) subject to the provisions of this Act, as to the circumstances in which an order can be made under section 4 above; and

(c) as to the manner in which any such reference as is mentioned in section 5 (2) above is to be made; and any such rules may include such incidental, supplementary and consequential provision as the authority making the rules may consider necessary or expedient.

Penalty for false
unsworn
statement.
Cap. 324.

10. Without prejudice to the provisions of the Perjury Act, if any person in giving any testimony (either orally or in writing) otherwise than on oath, where required to do so by an order under section 4 above makes a **statement—**

(a) which he knows to be **false** in a material particular, or

(b) which is false in a material particular and which he does not believe to be true,

he shall be guilty of an offence and shall **be** liable on conviction on indictment to imprisonment **for** a term not exceeding two years or a fine or **both**.

Repeals and
consequential
matters.
Schedule.

11. (1) The Statutes of the **United Kingdom** mentioned in the Schedule to this Act in **so far** as they have effect as part of the law of Antigua and **Barbuda** are hereby repealed to the extent specified in the third column thereof.

(2) Nothing in this section shall **affect—**

(a) any application to any court or judge which is pending at the commencement of this Act;

(b) any certificate given for the purposes of any such application;

(c) any power to make an order on such application; or

(d) the operation or enforcement of any order made on such an application.

(3) Subsection (2) above is without prejudice to ^{Cap. 224.} section 31 of the Interpretation Act.

SCHEDULE

Section 11

Repeals

<i>Chapter</i>	<i>Short title</i>	<i>Extent</i>
19 & 22 Vict. c. 113	The Foreign Tribunals Evidence Act 1856	The whole Act.
22 Vict. c. 20.	The Evidence by Commission Act 1859	The whole Act.
33 & 34 Vict. c. 52	The Extradition Act 1870	Section 24
48 & 49 Vict. c. 74.	The Evidence by Commission Act 1885.	The whole Act.
