

EVIDENCE

Fugitive Offenders and Neighbouring Territories Evidence Proclamation 26 of 1920.

Summary: The remaining portions of this Proclamation deal with the attendance of witnesses resident in Namibia at courts in South Africa. It has been superseded by the Foreign Courts Evidence Act 2 of 1995 but has not been technically repealed.

Amendments: This Proclamation is amended by the RSA *Extradition Act 67 of 1962* and repealed in part by the RSA *Criminal Procedure Act 51 of 1977*. The Schedule is amended by the *Foreign Courts Evidence Act 80 of 1962*.

Procedure and Evidence Proclamation 8 of 1938.

Summary: Most of this Proclamation has been repealed. The only remaining provision is section 7, which states that in criminal proceedings arising out of the fact that a cheque has been dishonoured, the onus is on the accused to prove that he had good reason to believe that the cheque would be honoured on the due date.

Amendments: This Proclamation is amended by Ord. 11/1954, Act 59/1959, the SA *Supreme Court Act 59 of 1959* (which repeals section 4), the RSA *Civil Proceedings Evidence Act 25 of 1965* (which repeals sections 1-3 and 5), and the RSA *Maintenance Amendment Act 39 of 1970* (which repeals section 6).

Civil Proceedings Evidence Act 25 of 1965, as amended in South Africa to November 1979.

Summary: This Act regulates the law of evidence in civil proceedings.

Applicability to SWA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 43 states “This Act and any amendment thereof which may be made from time to time shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979.

Section 3(1)(n) of the transfer proclamation excluded all references to the “Republic” in the Act from the operation of section 3(1) of the General Proclamation, meaning that “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Cases: *Cultura 2000 v Government of the Republic of Namibia* 1992 NR 110 (HC); *S v Taapopi & Another* 2001 NR 101 (HC) (sections 34-35); *Seagull's Cry CC v*

Council of the Municipality of Swakopmund & Others 2009 (2) NR 769 (HC) (section 5 discussed at 782G-H).

Second General Law Amendment Act 94 of 1974, section 2.

Summary: Section 2 of this Act requires the permission of the Minister of Trade and Industry for the furnishing of information on business carried on in or outside Namibia in compliance with any order, direction or letter of request emanating from outside Namibia in connection with any civil proceedings.

Applicability to SWA: The text of the Act itself makes no reference to South West Africa. Legal authority for the application of the Act to South West Africa has not been located, but section 2 of the Act was amended in post-independence Namibia.

Amendments: The International Co-operation in Criminal Matters Act 9 of 2000 substitutes section 2.

Computer Evidence Act 32 of 1985.

Summary: This Act provides for the admissibility of computer evidence in civil proceedings. It was brought into operation by AG 25/1987.

Foreign Courts Evidence Act 2 of 1995.

Summary: This Act provides for the obtaining of evidence of persons in Namibia by courts outside Namibia. It replaces the South African *Foreign Courts Evidence Act 80 of 1962*.

Amendments: The Schedules to the Act are amended by GN 39/1994 (GG 821). The International Co-operation in Criminal Matters Act 9 of 2000 amends section 2.

Cases: The following case concerns the predecessor to this Act, the *Foreign Courts Evidence Act 80 of 1962*-
S v Lofty-Eaton & Others (2) 1993 NR 405 (HC).

See also Combating of Rape Act 8 of 2000 (re: evidence in rape cases) (**CRIMINAL LAW AND PROCEDURE**).

See also *General Law Amendment Act 101 of 1969*, section 29 (re: withholding evidence from a court of law in the interests of national security) (**DEFENCE**).