《2002年證據(雜項修訂)條例草案》委員會

政府對委員在2003年2月14日會議席上就條例草案第II部所提事項作出的回應

本文件是政府就上述法案委員會在2003年2月14日會議席上所提事項作出的回應，詳情如下－

(a) 解釋建議的《刑事訴訟程序條例》("條例")第79I(2)條所訂明有關藉電視直播聯繫提供證據的條件是否同樣適用於民事和刑事法律程序上。如不適用，兩者有何分別；

(b) 提供過去三年涉案一方請求取得海外證人證據的案件(民事與刑事)數目；

(c) 解答委員所關注的問題：藉電視直播聯繫提供證據的海外證人的權利和豁免權，以及如何確保為這類證人提供足夠的保障；

(d) 就終審法院首席法官根據建議的條例第79L條訂立規則的範圍提供資料。

給予允許在民事和刑事法律程序中藉電視直播聯繫提供證據的條件

在民事法律程序中使用電視直播聯繫提供證據

2. 在香港的民事法律程序中，法庭可藉電視直播聯繫取得在香港以外地方證人的證據。有關接納藉電視直播聯繫取得的海外證據的根據，是載於《高等法院規則》第38號命令第3條規則和《證據條例》第47條。

3. 《高等法院規則》第 38 號命令第 3 條規則規定－

"(1) 在不損害第 2 條規則的原則下，法庭可在任何訴訟審訊之時或之前，命令關於任何特定事實的證據，須在審訊時按命令所指明的方式提供。

(2) 第(1)款所賦予的權力，適用範圍特別擴及於命令關於任何特定事實的證據可在審訊時－

(a) 藉經宣誓作出的關於資料或所信之事的陳述而提供，或

(b) 藉交出文件或簿冊上的記項而提供，或

(c) 藉交件的副本或簿冊上的記項的副本而提供，或

(d) 如某項事實是普遍地或在某特定地區廣為人知的，則為藉交出一份載有關於該項事實的陳述的指明報章而提供。"

4. 根據英國 *Garcin v. Amerindo Investment Advisors Ltd [1991] 1 WLR1140* 一案，法庭有權根據英國的《最高法院規則》[1]第 38 號命令第 3 條規則，決定以何種方式提供證據，但條件是有關證據必須是法律上可接納的。英國的《最高法院規則》第 38 號令第 3 條規則與香港的《高等法院規則》第 38 號令第 3 條規則相同。

Garcin 案

5. *Garcin* 一案的證人身在美國。案件的焦點，是法庭是否有權根據《最高法院規則》第 38 號命令第 3 條規則，命令身在美國的證人透過電視聯繫作證。問題是證人以這種方式作證，其證供在法律上是否屬可接納的。

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[1] 為"Rules of the Supreme Court"之中文譯名

6. 英國法庭裁定，根據《1968 年民事證據法令》[2]第 2 條，假如證人在美國作出口頭陳述，只要由一名聆聽過該陳述的人證明，則該陳述可獲接納為證據。再者，根據《1968 年民事證據法令》第 10 條，任何攝錄了訊問及盤問的錄影帶亦同樣可獲接納，一如該陳述是載於一份文件內一樣。因此，以電視直播聯繫作出的證據是可接納為證據的。

香港的《證據條例》

7. 1999 年第 2 號條例《1999 年證據(修訂)條例》尚未生效之前，相等於《1968 年民事證據法令》第 2 條和第 10 條的香港法例是《證據條例》第 47 條和 55 條。1999 年的修訂，把《證據條例》第 46 至 55 條廢除，並以新的條文代替，以廢除民事法律程序中的傳聞證據規則。不過，考慮到 *Garcin* 一案的理據，1999 年的修訂並沒有影響民事法律程序中以電視直播聯繫作證的可接納性。

經 1999 年的條例修訂前及修訂後的《證據條例》相關條文的比較

經 1999 年的條例修訂前的《證據條例》第 47 及 55 條/《1968 年民事證據法令》第 2 及 10 條（即 Garcin 案中考慮過的條文）	**經 1999 年的條例修訂後的《證據條例》**
《1968 年民事證據法令》第 2 條規定，“凡何人以口頭或載於某文件的方式……作出陳述，不論該人是否在[民事]法律程序中被傳召作證人…該陳述均可接納為其內所述明事實的證據……” 因此，根據《1968 年民事證據法令》第 2 條，一名身在美國的證人所作的口頭陳述，只要由一名聆聽	第 47 條規定：“不得以任何證據屬傳聞為理由而豁除該證據……”。新訂的條文擴大了可獲接納傳聞證據的範圍。因此，就目前的討論而言，有關情況並無改變。聆聽過證據的人，仍然可以證明由身處海外的證人作出的口頭陳述。

[2] 為”Civil Evidence Act 1968”之中文譯名

過的人證實，則可接納為證據。	
基於《1968 年民事證據法令》第 10 條，任何攝錄了訊問及盤問的錄影帶亦同樣可獲接納，一如該陳述載於文件一樣。	第 46 條對"文件"的釋義廣範，足以涵蓋錄影帶。錄影帶既為傳聞證據，則可根據《證據條例》第 47 條獲得接納。

隨附 *Garcin* 一案及《1968 年民事證據法令》第 2 和第 10 條(見**附件 A**)，以供參考。

8. 電視直播聯繫可以在民事法律程序中用作獲取證據的方法之一，是因為該等證據本身可獲接納。法例並無為此制定特定的規則。法庭准以電視直播聯繫作證，是行使其一般酌情權。由於民事法律制度下已有電視直播聯繫這一個選擇，而現行的安排行之有效，當局認為更改民事法律程序中有關電視直播聯繫的法例，未必理想。因此，條例草案第 II 部並不適用於民事法律程序。

在刑事法律程序中使用電視直播聯繫

9. 但上述理據不適用於刑事法律程序，原因是刑事和民事法律程序的證據規則大相逕庭。《證據條例》第 47 條有關傳聞證據的規定並不適用於刑事法律程序，而法庭也無根據《高等法院規則》第 38 號命令第 3 條規則所給予的一般權力。因此，就刑事法律程序而言，有需要制定具體條文，使該等證據可獲接納。

10. 基於證據規則各有不同，要刑事案件跟從適用於民事案件的法律並不恰當。因此，當局認為較恰當的做法，是為刑事法律程序另訂一套新的程序及準則。法庭會按個別申請的情況，以達至公平及有效率審訊的目的而給予個別考慮。

過去三年涉案一方請求取得海外證人證據的案件(民事及刑事)數目

11. 律政司沒有保存有關涉案一方請求取得海外證人證據的案件數目

的綜合記錄。以我們所知，有關數字如下－

a. 刑事案件

年份	控方提出請求的次數	實際來港的控方證人數目
2000	78	78
2001	60	56
2002	53	50

b. 民事案件

在過去三年，香港特區政府作為涉案一方的案件中，最少有 10 名在香港以外的證人來港提供證據。這些案件沒有使用電視直播聯繫。

藉電視直播聯繫提供證據的海外證人的權利和豁免權，以及如何確保為這類證人提供足夠的保障

12. 根據建議的《刑事訴訟程序條例》第 79J 條（條例草案第 16 條），在香港以外的證人提供證據所在的地方，會當作為香港法庭的一部分。在海外地點提供證據的證人，與實際在香港法庭提供證據的證人享有同樣的特權，也須遵循同樣的程序規則。

13. 法院擁有一般酌情權，可決定是否准許藉電視直播聯繫提供證據的申請。法院只會以有利於司法公正和不損害被告人得到公平審訊權利的方式行使酌情權。

有關終審法院首席法官根據建議的條例第 79L 條訂立規則範圍的資料

14. 有關規則建議載於**附件 B**，以供委員參閱。

律政司
2003 年 3 月

#55325 v1 - 03-199

[CHANCERY DIVISION]

*GARCIN AND OTHERS v. AMERINDO INVESTMENT ADVISORS LTD. AND OTHERS

[1988 G. No. 2903]

1991 June 6, 7

Morritt J.

Evidence—Witness—Examination abroad—Plaintiffs seeking transmission of evidence of overseas witness by video conferencing—Whether jurisdiction to order television evidence in civil action—R.S.C., Ord. 38, r. 3

The plaintiffs brought an action against the defendants claiming payment of sums due under an investment management agreement under which the plaintiffs' portfolios were held by a firm of investment brokers in New York. In the course of the action the plaintiffs alleged that the defendants had made false representations about the value of the portfolios and that the third defendant had provided a bogus statement purporting to come from the brokers, created by cutting out of the original document the parts which showed the liabilities on the account, and photocopying it so as to show an apparently complete account disclosing only the assets. The officer of the brokers who had been concerned in the preparation of the original document was not willing to come to England to give evidence in the action. The defendants therefore applied to the court for an order under R.S.C., Ord. 39 that letters of request be sent to the appropriate judicial authority in New York seeking his examination on oath in New York. The plaintiffs opposed the defendants' application and proposed that the evidence be received by the examination of the witness on oath in New York with counsel in London examining him by means of a video link. The defendants maintained that the court had no jurisdiction to make an order allowing the receipt of evidence by live television link in a civil action.

On the defendants' application for the grant of letters of request and on the plaintiffs' application under R.S.C., Ord. 38, r. 3[1] for an order that the evidence be given by television linkage:—

Held, granting the plaintiffs' application, that since the oral evidence of an overseas witness recorded on video tape would be admissible as a document under sections 2 and 10 of the Civil Evidence Act 1968 the transmission of such evidence by television fell squarely within the wording of R.S.C., Ord. 38, r. 3, and the court had jurisdiction to make an order allowing its receipt; and since the receipt of the evidence in that manner was cheaper and more expeditious than the procedure by letters of request and did not preclude recourse to other means if it proved unsatisfactory, the court in the exercise of its discretion would make the order sought by the plaintiffs (post, pp. 1142D–F, 1143F–G, 1145D–E).

No cases are referred to in the judgment or were cited in argument.

APPLICATION

In an action against the defendants, Amerindo Investment Advisors Ltd., Amerindo Management Ltd. and Albert Vilar, the plaintiffs, Alberto Garcin, Lorenza Garcin and Garveral Inc., claimed (1) repayment of sums due to the plaintiffs pursuant to the terms of an investment management agreement between the first and second plaintiffs and the first and second defendants made on 17 February 1984; (2) damages; (3) an account; (4) payment of all sums due pursuant to such account; (4A) payment of a specific sum put by the plaintiffs at between U.S.$700,000 odd and U.S.$1.4m. odd; (4B) repayment of U.S.$395,694 odd alleged to have been converted by the defendants and/or of which the defendants were said to be constructive trustees for the plaintiffs; and (4C) repayment of U.S.$150,000 odd allegedly overpaid by the first and second defendants for a quantity of shares bought for the plaintiffs' account.

The plaintiffs, inter alia alleged that the third defendant, Mr. Vilar, at a meeting in Guadalajara in October 1986, in order to induce the plaintiffs to maintain their investments with the first and second defendants, falsely represented to the plaintiffs that the M1 account held by Merrill Lynch Prence Fenner & Smith Inc. was worth a total of U.S.$2·4m. odd when the true position was that the account was worth only some U.S.$300,000, in that, although the stocks held to the credit of the account were indeed worth some U.S.$2·4m. the account was leveraged to the extent of about U.S.$2·1m. The plaintiffs contended that in support of this false representation the third defendant presented to the first and second plaintiffs a bogus statement purportedly emanating from Merrill Lynch for the period from 30 August 1986 to 26 September 1986, which showed the overall value of security positions in the account but omitted to show the leverage thereon. The plaintiffs alleged that that document was not a genuine Merrill Lynch statement for the period but a composite copy of selected parts of the two pages of the relevant Merrill Lynch statement for the relevant period. The provenance and/or genuineness of the one page Merrill Lynch statement for the period from 30 August 1986 to 26 September 1986 for the M1 account was of central importance in the case.

The defendants applied under R.S.C., Ord. 39 for letters of request addressed to the competent judicial authority of the United States District Court for the Southern District of New York, In the State of New York, U.S.A. for the examination on oath of Merrill Lynch and Robert St. Angelo, a satisfactory spokesman for Merrill Lynch and the manager concerned with the making of the original document. The plaintiffs objected to the grant of the letters of request on the ground that the procedure would necessitate an adjournment of three to four months. They therefore sought an order under R.S.C., Ord. 38, r. 3 that the evidence of Mr. St. Angelo be given by television linkage.

The facts are stated in the judgment.

A. D. Colman Q.C. and *Jeffrey Gruder* for the plaintiffs.
Jonathan Marks for the defendants.

MORRITT J. The first question for my decision is whether R.S.C., Ord. 38, r. 3 gives me jurisdiction to order that evidence of a particular fact or facts may be given by a particular witness in the United States by means of a television linkage between him in the United States and this court. If I conclude that I have such jurisdiction, the question will then arise whether I should exercise it.

[1] R.S.C., Ord. 38, r. 3: see post, p. 1142B–C.

The general rule, as reproduced in Ord. 38, r. 1 is that any fact required to be proved at the trial by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court. But that requirement is subject to any other provision of the Rules of the Supreme Court, the Civil Evidence Acts 1968 and 1972 and any other enactment relating to evidence. Ord. 38, r. 3 provides:

> "(1) Without prejudice to rule 2, the court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial, in such manner as may be specified by the order. (2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial (*a*) by statement on oath of information or belief, or (*b*) by the production of documents or entries in books, or (*c*) by copies of documents or entries in books, or (*d*) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact."

Thus the court has power to determine the manner in which evidence is given but does not, as it seems to me, have power to enlarge the evidence which may be given beyond that which is legally admissible, except possibly in the particular categories set out in paragraph (2).

Accordingly the first point to consider is whether evidence given by a witness abroad by means of a television linkage is admissible at all. Such evidence would be given by the witness in the place where he made his oral statement; namely, the United States. As such, it would be admissible under section 2 of the Civil Evidence Act 1968 if proved by one who heard it. Moreover, any video tape of the examination and cross-examination would be similarly admissible as a document in which the statement was made: see section 10. Thus, if both parties and the witness co-operate, a video tape of the examination and cross-examination of a witness overseas would be admissible in evidence in proceedings in England. Moreover, in such a case, the evidence so obtained would be of greater weight than the ordinary Civil Evidence Act statement, because the witness would have been cross-examined and the judge would have had some opportunity to observe the demeanour of the witness.

But the defendants do not consent to such a procedure. They contend that I have no jurisdiction to make the order sought. First, they point to the provisions of section 32 of the Criminal Justice Act 1988 which came into force in November 1990 in relation to certain classes of prosecution. Subsections (1) and (3) provide:

> "(1) A person other than the accused may give evidence through a live television link on a trial on indictment or an appeal to the Criminal Division of the Court of Appeal or the hearing of a reference under section 17 of the Criminal Appeal Act 1968 if— (*a*) the witness is outside the United Kingdom . . . (3) A statement made on oath by a witness outside the United Kingdom and given in evidence through a link by virtue of this section shall be treated for the purposes of section 1 of the Perjury Act 1911 as having been made in the proceedings in which it is given in evidence."

Subsections (4) and (5) authorise the making of rules necessary or expedient for the purposes of the section.

From those provisions the defendants derive two propositions; namely, that it is for Parliament to decide whether to introduce a similar alteration to the general principle that evidence is given orally and in court in the case of civil proceedings. Secondly, they contend by reference to section 32(3) of the Act of 1988 and section 1(1) and (5) of the Perjury Act 1911, that there is no sanction under English law for a knowingly false answer to the question. I do not think either of those points requires me to hold that R.S.C., Ord. 38, r. 3 does not confer the necessary jurisdiction.

Prior to the Criminal Justice Act 1988 there was no provision applicable to criminal trials comparable to Ord. 38, r. 3. Thus, the fact that section 32 of the Criminal Justice Act 1988 was confined to criminal proceedings does not indicate a lack of jurisdiction in civil proceedings. If anything, it suggests the opposite. Similarly, the fact that section 1 of the Perjury Act 1911 would impose no sanction for knowingly false answers does not indicate a lack of jurisdiction, because there is no such sanction in respect of a statement made by a person overseas which is admissible under section 2 of the Civil Evidence Act 1968.

The defendants also relied on the fact that Ord. 38, r. 3 does not enable this court to compel a witness overseas to give evidence or, if he is prepared to do so, to compel him to answer questions put to him which under English law he could be required to answer. This is true, but it does not seem to me to go to jurisdiction under Ord. 38, r. 3 so much as the exercise of my discretion, if I have one, and the weight to be given to the evidence so obtained if I exercise it. An order under Ord. 38, r. 3 does not have to specify that the evidence must be given by a particular witness or that the evidence of a particular fact must be given in the manner specified in the order to the exclusion of all other evidence relevant to that fact.

I was told that facilities for a television linkage have existed for about 10 years but, except in an arbitration the details of which could not be recalled, no counsel was aware of any case in which an attempt had been made to use those facilities in conjunction with Ord. 38, r. 3 to obtain evidence from a witness abroad. There may be many reasons for this, but it is not in my judgment any ground for denying jurisdiction under Ord. 38, r. 3 if the words of the rule fairly admit it. Given that the evidence of the overseas witness is admissible, then its transmission to the court by means of the television linkage is, in my judgment, a manner in which such evidence is given so as to fall squarely within the words of Ord. 38, r. 3. I conclude therefore that I have jurisdiction to make the order sought.

In the action, the plaintiffs claim payment of sums due to them by the defendants as their discretionary investment managers. Their money and investments were held by a subsidiary of Merrill Lynch and from time to time accounts were provided by Merrill Lynch to the defendants and were produced by the defendants to the plaintiffs. The defendants claim that they have already repaid to the plaintiffs all money due to them. The plaintiffs claim that this is not so according to the accounts the defendants have produced, which they contend are binding on the defendants as a matter of law.

In relation to that issue, it is the allegation of the plaintiffs that the third defendant on his own behalf, and as agent for the other defendants, produced to the first plaintiff an account apparently emanating from Merrill Lynch, which he knew to be false. The document so produced is

a photocopy said to have been created by the defendants by cutting out from the original Merrill Lynch account the parts which showed the liabilities on the account and pasting the rest together and photocopying it so as to show in an apparently complete account only the assets. This allegation was made for the first time in the opening speech by counsel for the plaintiffs, who accepted that the defendants must have an adequate opportunity to deal with it.

The defendants response was to refer to two other comparable "short form statements" obtained from Merrill Lynch under subpoena from Merrill Lynch in New York, and to apply for letters of request addressed to the appropriate authority in the State of New York for the examination of Mr. Robert St. Angelo, an officer of Merrill Lynch, and the production of all Merrill Lynch's files relating to all accounts of the plaintiffs with Merrill Lynch. The topics on which the letter of request seeks the examination of Mr. St. Angelo are described in paragraph 19 in the following terms:

> "The court is interested in whether or not the one page Merrill Lynch statement for the period from 30 August 1986 to 26 September 1986 for the Merrill Lynch account is a genuine document emanating from Merrill Lynch and in all matters concerning the provenance and making of that document. There are two other statements in similar form before the court, a statement for the period from 1 January 1986 to 31 January 1986 for the M1 account and a statement for the period from 28 June 1986 to 25 July 1986 for the G2 account. The court is therefore interested in all matters concerning the provenance and making of those documents, in whether or not other such documents exist and, if so, in their number and whereabouts and all matters concerning their provenance and making."

I was told that if I made the order the defendants sought it would necessitate an adjournment of the trial for about three or four months. The application for an order for such letters of request was opposed by the plaintiffs. They are resident in Mexico and have come to England to prepare to give evidence and attend the trial at no little expense. They contended that the order was not necessary for the purposes of justice, at least at this stage, because Mr. St. Angelo is prepared to give oral evidence on oath in New York, transmitted by the television linkage to this court, but is not prepared to attend the trial here. Accordingly, they seek an order under R.S.C., Ord. 38, r. 3.

On the question of discretion, as on jurisdiction, the defendants relied on the fact that Mr. St. Angelo could not be compelled to answer a question put to him, and that there would be no sanction under English law to reinforce the oath he is apparently prepared to take. They point to the fact that the information they have received from counsel in New York for Merrill Lynch as to what Mr. St. Angelo would say is materially different from the information similarly obtained by the plaintiffs. They are concerned that the procedure suggested by the plaintiffs will not compel Merrill Lynch to produce the documents they seek, so that, as they suggest, the search for them will not be as thorough as it would otherwise be. There is no doubt that the procedure suggested by the plaintiffs will be much cheaper and more expeditious

than the procedure suggested by the defendants, or the alternative possible procedure raised this morning, namely, the appointment of a commissioner.

So far as documents are concerned, I have no reason to think that given reasonable time Merrill Lynch will not diligently search for those which the defendants want, and the question of what searches have been made could be pursued in the examination of Mr. St. Angelo. If, as I am told, Mr. St. Angelo is prepared to give evidence on oath, I should not assume at this stage that the lack of sanction would lead him to give false answers which he would not have given if he gave oral evidence here. Nor should I assume now, given his apparent willingness to give evidence, that when the television linkage is set up he will then refuse to answer. Moreover, as the plaintiffs accepted, if I make the order sought by them, and Mr. St. Angelo's evidence in the event turns out to be unsatisfactory in a manner which might be overcome by making the order for letters of request or for evidence on commission sought by the defendants, then the defendants can at that stage renew their application. With some slight redrafting, paragraph 19 of the letters of request can be used to set out the particular facts required by Ord. 38, r. 3 to be contained in any order I make.

In all these circumstances, it seems to me that the opportunity provided by Ord. 38, r. 3 to obtain the evidence of Mr. St. Angelo by means of modern technology should be seized. It would be much cheaper than letters of request or evidence on commission. It will not now and may never be necessary to have a substantial, if any, adjournment, and if in the event it proves to be an unsatisfactory method of obtaining evidence from Mr. St. Angelo it will not preclude an order for letters of request or for evidence on commission hereafter. Accordingly, I will make an order under Ord. 38, r. 3, in a form to be considered with counsel, for the evidence of Mr. St. Angelo on the particular facts referred to in paragraph 19 of the letters of request to be given by television linkage.

I refuse at this stage to make an order for letters of request as sought by the defendants, but without prejudice to a renewal of that application hereafter, or alternatively for an application hereafter for evidence to be given on commission.

Order accordingly.

Solicitors: Howard Kennedy; Lovell White Durrant.

S. W.

Civil Evidence Act 1968

1968 CHAPTER 64

An Act to amend the law of evidence in relation to civil proceedings, and in respect of the privilege against self-incrimination to make corresponding amendments in relation to statutory powers of inspection or investigation.

[25th October 1968]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

HEARSAY EVIDENCE

Hearsay evidence to be admissible only by virtue of this Act and other statutory provisions, or by agreement.

1.—(1) In any civil proceedings a statement other than one made by a person while giving oral evidence in those proceedings shall be admissible as evidence of any fact stated therein to the extent that it is so admissible by virtue of any provision of this Part of this Act or by virtue of any other statutory provision or by agreement of the parties, but not otherwise.

(2) In this section "statutory provision" means any provision contained in, or in an instrument made under, this or any other Act, including any Act passed after this Act.

Admissibility of out-of-court statements as evidence of facts stated.

2.—(1) In any civil proceedings a statement made, whether orally or in a document or otherwise, by any person, whether called as a witness in those proceedings or not, shall, subject to this section and to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

PART I

(2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person by whom the statement was made, the statement—

(a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and

(b) without prejudice to paragraph (a) above, shall not be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person by whom it was made, except—

(i) where before that person is called the court allows evidence of the making of the statement to be given on behalf of that party by some other person; or

(ii) in so far as the court allows the person by whom the statement was made to narrate it in the course of his examination-in-chief on the ground that to prevent him from doing so would adversely affect the intelligibility of his evidence.

(3) Where in any civil proceedings a statement which was made otherwise than in a document is admissible by virtue of this section, no evidence other than direct oral evidence by the person who made the statement or any person who heard or otherwise perceived it being made shall be admissible for the purpose of proving it:

Provided that if the statement in question was made by a person while giving oral evidence in some other legal proceedings (whether civil or criminal), it may be proved in any manner authorised by the court.

Witness's previous statement, if proved, to be evidence of facts stated. 1865 c. 18.

3.—(1) Where in any civil proceedings—

(a) a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of section 3, 4 or 5 of the Criminal Procedure Act 1865; or

(b) a previous statement made by a person called as aforesaid is proved for the purpose of rebutting a suggestion that his evidence has been fabricated,

that statement shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

(2) Nothing in this Act shall affect any of the rules of law relating to the circumstances in which, where a person called as a witness in any civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be

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made evidence in those proceedings; and where a document or any part of a document is received in evidence in any such proceedings by virtue of any such rule of law, any statement made in that document or part by the person using the document to refresh his memory shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

Admissibility of certain records as evidence of facts stated.

4.—(1) Without prejudice to section 5 of this Act, in any civil proceedings a statement contained in a document shall, subject to this section and to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if the document is, or forms part of, a record compiled by a person acting under a duty from information which was supplied by a person (whether acting under a duty or not) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with in that information and which, if not supplied by that person to the compiler of the record directly, was supplied by him to the compiler of the record indirectly through one or more intermediaries each acting under a duty.

(2) Where in any civil proceedings a party desiring to give a statement in evidence by virtue of this section has called or intends to call as a witness in the proceedings the person who originally supplied the information from which the record containing the statement was compiled, the statement—

(a) shall not be given in evidence by virtue of this section on behalf of that party without the leave of the court; and

(b) without prejudice to paragraph (a) above, shall not without the leave of the court be given in evidence by virtue of this section on behalf of that party before the conclusion of the examination-in-chief of the person who originally supplied the said information.

(3) Any reference in this section to a person acting under a duty includes a reference to a person acting in the course of any trade, business, profession or other occupation in which he is engaged or employed or for the purposes of any paid or unpaid office held by him.

Admissibility of statements produced by computers.

5.—(1) In any civil proceedings a statement contained in a document produced by a computer shall, subject to rules of court, be admissible as evidence of any fact stated therein of which direct oral evidence would be admissible, if it is shown that the conditions mentioned in subsection (2) below are satisfied in relation to the statement and computer in question.

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1959 c. 22.

Judicature (Consolidation) Act 1925, section 102(2) of the County Courts Act 1959 or any other enactment restricting the matters with respect to which rules of court may be made shall prejudice the making of rules of court with respect to any matter mentioned in the foregoing provisions of this section or the operation of any rules of court made with respect to any such matter.

Admissibility of certain hearsay evidence formerly admissible at common law.

9.—(1) In any civil proceedings a statement which, if this Part of this Act had not been passed, would by virtue of any rule of law mentioned in subsection (2) below have been admissible as evidence of any fact stated therein shall be admissible as evidence of that fact by virtue of this subsection.

(2) The rules of law referred to in subsection (1) above are the following, that is to say any rule of law—

(*a*) whereby in any civil proceedings an admission adverse to a party to the proceedings, whether made by that party or by another person, may be given in evidence against that party for the purpose of proving any fact stated in the admission;

(*b*) whereby in any civil proceedings 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 therein;

(*c*) whereby in any civil proceedings 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 therein; or

(*d*) whereby in any civil proceedings records (for example, the records of certain courts, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated therein.

In this subsection "admission" includes any representation of fact, whether made in words or otherwise.

(3) In any civil proceedings a statement which tends to establish reputation or family tradition with respect to any matter and which, if this Act had not been passed, would have been admissible in evidence by virtue of any rule of law mentioned in subsection (4) below—

(*a*) shall be admissible in evidence by virtue of this paragraph in so far as it is not capable of being rendered admissible under section 2 or 4 of this Act; and

(*b*) if given in evidence under this Part of this Act (whether by virtue of paragraph (*a*) above or otherwise) shall by virtue of this paragraph be admissible as evidence of the matter reputed or handed down;

PART I

and, without prejudice to paragraph (*b*) above, reputation shall for the purposes of this Part of this Act be treated as a fact and not as a statement or multiplicity of statements dealing with the matter reputed.

(4) The rules of law referred to in subsection (3) above are the following, that is to say any rule of law—

(*a*) whereby in any civil proceedings evidence of a person's reputation is admissible for the purpose of establishing his good or bad character;

(*b*) whereby in any civil proceedings involving a question of pedigree or in which the existence of a marriage is in issue evidence of reputation or family tradition is admissible for the purpose of proving or disproving pedigree or the existence of the marriage, as the case may be; or

(*c*) whereby in any civil proceedings evidence of reputation or family tradition is admissible for the purpose of proving or disproving the existence of any public or general right or of identifying any person or thing.

(5) It is hereby declared that in so far as any statement is admissible in any civil proceedings by virtue of subsection (1) or (3)(*a*) above, it may be given in evidence in those proceedings notwithstanding anything in sections 2 to 7 of this Act or in any rules of court made in pursuance of section 8 of this Act.

(6) The words in which any rule of law mentioned in subsection (2) or (4) above is there described are intended only to identify the rule in question and shall not be construed as altering that rule in any way.

Interpretation of Part I, and application to arbitrations, etc.

10.—(1) In this Part of this Act—

"computer" has the meaning assigned by section 5 of this Act;

"document" includes, in addition to a document in writing—

(*a*) any map, plan, graph or drawing;

(*b*) any photograph;

(*c*) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(*d*) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom;

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"film" includes a microfilm;

"statement" includes any representation of fact, whether made in words or otherwise.

(2) In this Part of this Act any reference to a copy of a document includes—

(*a*) in the case of a document falling within paragraph (*c*) but not (*d*) of the definition of "document" in the foregoing subsection, a transcript of the sounds or other data embodied therein;

(*b*) in the case of a document falling within paragraph (*d*) but not (*c*) of that definition, a reproduction or still reproduction of the image or images embodied therein, whether enlarged or not;

(*c*) in the case of a document falling within both those paragraphs, such a transcript together with such a still reproduction; and

(*d*) in the case of a document not falling within the said paragraph (*d*) of which a visual image is embodied in a document falling within that paragraph, a reproduction of that image, whether enlarged or not,

and any reference to a copy of the material part of a document shall be construed accordingly.

(3) For the purposes of the application of this Part of this Act in relation to any such civil proceedings as are mentioned in section 18(1)(*a*) and (*b*) of this Act, any rules of court made for the purposes of this Act under section 99 of the Supreme Court of Judicature (Consolidation) Act 1925 shall (except in so far as their operation is excluded by agreement) apply, subject to such modifications as may be appropriate, in like manner as they apply in relation to civil proceedings in the High Court:

1925 c. 49.

Provided that in the case of a reference under section 92 of the County Courts Act 1959 this subsection shall have effect as if for the references to the said section 99 and to civil proceedings in the High Court there were substituted respectively references to section 102 of the County Courts Act 1959 and to proceedings in a county court.

1959 c. 22.

(4) If any question arises as to what are, for the purposes of any such civil proceedings as are mentioned in section 18(1)(*a*) or (*b*) of this Act, the appropriate modifications of any such rule of court as is mentioned in subsection (3) above, that question shall, in default of agreement, be determined by the tribunal or the arbitrator or umpire, as the case may be.

PART II

MISCELLANEOUS AND GENERAL

Convictions, etc. as evidence in civil proceedings

Convictions as evidence in civil proceedings.

11.—(1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in the United Kingdom or by a court-martial there or elsewhere shall (subject to subsection (3) below) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.

(2) In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any court in the United Kingdom or by a court-martial there or elsewhere—

(*a*) he shall be taken to have committed that offence unless the contrary is proved; and

(*b*) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment or charge-sheet on which the person in question was convicted, shall be admissible in evidence for that purpose.

(3) Nothing in this section shall prejudice the operation of section 13 of this Act or any other enactment whereby a conviction or a finding of fact in any criminal proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(4) Where in any civil proceedings the contents of any document are admissible in evidence by virtue of subsection (2) above, a copy of that document, or of the material part thereof, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

(5) Nothing in any of the following enactments, that is to say—

(*a*) section 12 of the Criminal Justice Act 1948 (under which a conviction leading to probation or discharge is to be disregarded except as therein mentioned); 1948 c. 58.

附件 B

根據《刑事訴訟程序條例》(第 221 章)第 79L 條訂立的附屬法例的範圍

建議

1. 現建議根據《刑事訴訟程序條例》第 79L 條訂立《電視直播聯繫(海外證人)規則》(以下稱"本規則")。

2. 本規則會由終審法院首席法官訂立，並且會於《2002 年證據(雜項修訂)條例草案》第 II 部實施當日起實施。

3. 雖然各級法院都可選用電視直播聯繫，但本規則只涉及《刑事訴訟程序條例》第 IIIB 部範圍內的聆訊，即裁判法院、區域法院及原訟法庭的聆訊。

4. 使用電視直播聯繫訊問證人的申請，必須視乎法律程序進行的地方而向高等法院司法常務官、區域法院司法常務官或裁判法院書記長提出。申請必須用訂明表格提出。為此，所採用的表格會以《電視直播聯繫及錄影紀錄證據規則》(第 221 章，附屬法例 J)附表 1 為藍本，並且會附載於本規則。表格應載述擬使用電視直播聯繫作證的理由。

5. 有關法律程序的另一訴訟方可反對申請。法庭會進行聆訊，就該宗申請作出決定。如果各其他訴訟方都不提反對，則法庭可不予聆訊而就申請作出裁定。

6. 法庭就申請所作的決定，必須通知各訴訟方。如果給予許可，法庭必須在通知中述明證人作證的所在國家、證人作證的地點(如知道的話)、證人的姓名(只適用於控方證人、專家證人或證明被告不在犯罪現場的證人)，以及任何法院擬訂明的條件。

7. 由於證人本身並非身處法庭之內，法庭如能施以某種程度的控制，或至少能獲悉於海外作證地點發生並可能影響證據質素的任何事情，則更為理想。現建議法庭可指定一名人士出席海外作證地點，作為給予許可的條件之一。於聆訊期間，法庭可要求該人就證人作證的情況在宣誓下作出回答。

8. 申請須於限期內提出，但基於各種理由，這點有需要彈性處理。現建議如獲得法庭的許可，申請可於限期過後提出。

9. 在審訊期間由於可能須向證人展示文件，所以須要就香港的法庭與海外作證地點之間傳送文件的方法作出規定。假如有關文件的正本是在作證地點，香港的法庭只能取得傳送的副本。在大多數情況下，傳送副本的質素與正本差不多，為方便審訊的進行，該傳送副本應取代該份正本獲接納為證據。為此目的，本規則須加入條文以取代須提出最佳證據的規定(根據該規定，如有更佳的證據，即原始證據，便不得接納非原始證據)，並須確保傳送副本的真確性不會僅因為它屬傳送副本而受到質疑。

附註：

具追溯力的修訂—見 1998 年第 25 號第 2 條

[第 3(3)條]

刑事訴訟程序條例
(第 221 章)
根據本條例第 79B 條申請許可
使用電視聯繫的通知

— 申請應在下述日期後 28 天內提出，即將被告人交付審訊的日期、同意就案件提出公訴書擬稿的日期、《裁判官條例》(第 227 章)第 88 條所指的移交令的日期或案件編定於裁判官席前審訊的編定當日。凡已獲准延展提出本申請的期限，亦可使用本表格。

—本表格的文本必須同時發給案件的另一方或其他各方。

案件詳情
.....法庭/法院 案件編號：
交付審訊的日期*： * 刪去不適用者
同意提出公訴書擬稿的日期*：
移交令的日期*：
案件編定於裁判官席前審訊的編定當日*：

被告人： 述明本申請所關乎的被告人姓名或名稱

申請書
申請人姓名或名稱：
申請人律師姓名：
律師地址：

檔號：

控罪 簡要列明本申請所關乎的控罪的詳情

證人—在填寫前，請先閱讀本段旁的附註。

出生日期：

如已申請將證人證供的錄影紀錄提出作為證據，述明該申請的日期及(如知悉的話)結果：

如申請人為檢控人，填寫證人姓名(否則留空)

申請藉電視聯繫提供證據的理由：

建議的陪同證人的人的姓名：

此人的職業：

此人與證人的關係(如有的話)：

相信此人應陪同證人的理由：

附註：

由辯方提出透過電視直播聯繫提供證據的申請無須披露證人是何人，但如披露是在《刑事訴訟程序條例》(第 221 章)第 65D 條或《區域法院條例》(第 336 章)第 75A 條(不在犯罪現場)所規定者的範圍內則除外，如披露建議的陪同證人的人的姓名能使證人被識別，則亦無須披露該人的姓名。證人在提供證據時，通常會由法院的傳達員陪同。如建議另一人在場，則請列明詳情。

....

申請人簽名 日期

或

申請人的律師簽名

申請許可在接納錄影紀錄後使用電視聯繫。

表格

(1998 年第 25 號第 2 條)