

Chapter 1

General

1 It can be said, as a general statement, that in Seychelles the law of evidence is the English law of evidence. This stems from s 12 of the Evidence Act which provides as follows –

English law of evidence to prevail except in certain cases

12 Except where it is otherwise provided by this Act or by special laws now in force in Seychelles or hereafter enacted, the English law of evidence for the time being shall prevail.

2 The first point which arises relates to the meaning of the expression “for the time being”. Does it mean the English law of evidence as in force from time to time or as in force on the date of enactment of s 12. It is that latter meaning which must be adopted for the following reasons —

- (a) Section 12 is clearly legislation by reference. That being so the legislature must be taken to have applied the English law of evidence as it knew it, namely, as in force on 15 October 1962, the date of enactment of Ordinance 12 of 1962 (the date on which section 12 was enacted);
- (b) Section 12 cannot be construed as delegating to the United Kingdom Parliament the power of legislating for Seychelles in matters of evidence. Delegation must be effected in express terms. Moreover, when a power has been delegated, the authority which legislates must do so by virtue of such power. It is doubtful whether the British Parliament would ever be inclined to invoke such delegated power when legislating on evidence;

- (c) If s 12 were construed to mean the English law of evidence as in force from time to time this would in effect amount to an abdication, without delegation, of the power of the legislature to legislate in matters of evidence. This would be unconstitutional and as such void and of no effect. This is what the Court of Appeal for Seychelles meant in the following passage of *Kim Koon & Co Ltd v R*.¹

We have no doubt that it is not competent for the Seychelles Legislature to delegate the power to legislate, and that so far as s 12 of the Evidence Ordinance as amended may purport to apply to Seychelles future amendments of the English law of evidence, it is inoperative. In our judgment the effect of the section is to apply to Seychelles the English law of evidence as it stood on the 15th October, 1962, the date of enactment of the Seychelles Judicature Ordinance, 1962. Accordingly, the Criminal Evidence Act 1965 [Eng], does not apply in Seychelles.

¹ *Kim Koon & Co Ltd v R* (1969) SCAR 60 at 64.

3 It is suggested that this limitation of the application of the English law of evidence as at 15 October 1962 applies only to statute law and not to Common Law. Any decision of the English courts interpreting the Common Law, or interpreting a statute anterior to 15 October 1962 would be authoritative in Seychelles. It is a moot point whether the extension of the Common Law by the introduction of an entirely new concept (as opposed to the reversal of an existing concept) would not also be excluded by the limitation.

4 The next point which arises is whether English law, which in terms applies specifically to England or to the United Kingdom, applies in Seychelles. This point has never been the subject of a judicial decision. It would appear that s 12 does not allow the necessary modifications and adaptations to be made to a law of specific application to England or the United Kingdom. However, this point is arguable. That explains why the Evidence (Bankers' Books) Act (Cap 75) was enacted.

5 The following is a list of special laws relating to evidence which apply in criminal cases –

- (a) The Criminal Procedure Code (Cap 54), as amended by Act No 19 of 1975, ss 126 to 135;
- (b) The Evidence Act (Cap 74) ss 5 to 10, 11A, 11B, 15-23, 27, 28 and 31;
- (c) The Evidence (Bankers' Books) Act (Cap 75);
- (d) The Penal Code (Cap 158) ss 41, 57 and 105;
- (e) The Road Transport Act (Cap 206) ss 24 (e) and 30. Section 24 (5) should be noted specially. It is different from English law.

6 The Civil Code of Seychelles contains several provisions relating to the exclusion of oral evidence in certain cases. These provisions are contained in arts 1341 to 1348 and art 1715. Do these provisions apply in criminal cases? The answer is no and it was given in the case of *Gardette v R*¹ by the Court of Appeal for Eastern Africa in an appeal from Seychelles. The following passage from page 191 is worth quoting —

¹ *Gardette v R* (1960) 2 SLR 179 at 191.

It is our opinion, therefore, on this part of the case, that by s 21 of the 1903 Order in Council [now section 12 of the Evidence Act (Cap 74)] the English law of evidence was to prevail in the Colony [now the Republic of Seychelles], except where special laws existed; that in criminal matters the provisions as to evidence contained in the Code Napoleon were general and not special provisions, and were superseded by English law except where, and to the extent that, a contrary indication could be gathered from legislation and, possibly, where the offence in question was one peculiar to the French Penal Code; that the repeal of the 1904 Penal Code and its replacement by the present penal and criminal procedure codes the legislature eliminated the only such contrary indication and enacted codes which were English in substance and approach. There is therefore (so far as criminal evidence is concerned) no reason or necessity to regard the law of evidence as laid down by the Code Napoleon as a special law, or as anything but a general code which has now given way before s 21 of the 1903 Order in Council [now s 12 of Cap 74]. We emphasise that we are dealing only with the law of evidence in criminal matters and not in civil; that is not within our province.

For these reasons we are of opinion that it is the English Law of evidence that applies in criminal trials in Seychelles.

7 It is to be noted that the *Gardette* case only raised the issue of the admissibility of oral evidence under the provisions of the Code Napoleon. These were held not to apply in criminal trials. Can it be said that other provisions of the Civil Code, as for example art 194 which deals with the proof of marriages, are of general application and gave way to s 21 of the 1903 Order-in-Council¹. Are they not special laws? The statement that it is the English law of evidence that applies in criminal trials in Seychelles is generally correct. It may be that in certain cases such as those falling within art 194 of the Civil Code of Seychelles, it is that Code which applies.²

¹ Now s 12 of Cap 74.

² Article 194 para 2 is a reproduction of s 24 of the Civil Status Act (Cap 34) which has been repealed in the Third Schedule of Act No 13 of 1975.

8 In civil cases the English law of evidence prevails except where special laws exist. The following articles of the Civil Code of Seychelles should be noted as special laws in civil cases: arts 194 to 200, 312, 319 to 325, 334, 340, 341, 931, 969 to 1001, 1315 to 69, 1715, 1716, 1834, 1950, 2074, 2091-1, 2127. Sometimes the form in which transaction must be drawn up goes not only to the proof but to its validity: Gifts, art 931; Wills, art 1001; Leases, art 1715; Mortgages, art 2127.

