Chapter 2

Admissibility of Oral Evidence under the Civil Code of Seychelles Article 1341

1 Article 1341

> Any matter the value of which exceeds 5000 Rupees shall require a document drawn up by a notary or under private signature, even for a voluntary deposit, and no oral evidence shall be admissible against and beyond such document nor in respect of what is alleged to have been said prior to or at or since the time when such document was drawn up, even if the matter relates to a sum of less than 5000 Rupees.
>
> The above is without prejudice to the rules prescribed in the laws relating to commerce.

2 Article 1341 contains two rules —

(a) There must be documentary proof of any matter exceeding R 5000;

(b) Oral evidence is not admissible against or beyond a document nor in respect of what is alleged to have been said prior to or at or since the time when the document was drawn up even if the matter relates to a sum of less than R 5000.

3 The first rule, although not stated expressly, only concerns proof and does not lay down a rule as to form. It excludes proof by oral evidence[1] of any matter exceeding R 5000 in value. It does not exclude proof by judicial admission under art 1356 or by decisive oath under art 1358.[2]

[1] Or by presumptions "preuve incidiaire", vide art 1353.
[2] Vide *Encyclopédie Dalloz. Droit Civil*. Verbo "Preuve" (2 règles de preuve) paras 177 to 178 [*Dalloz Civil 2*].

4 Both rules bind only the parties or those claiming through them such as creditors or heirs and personal representatives. They do not bind third parties.[1]

[1] *Dalloz Civil 2*, op cit, paras 178-181.

5 Neither rule is a rule of public order. As a result, the parties must themselves invoke them. The judge will not invoke them ex officio. The parties may expressly or tacitly waive their right to invoke them. The rules cannot be invoked for the first time on appeal. It is at first instance that they must be invoked.[1]

[1] *Dalloz Civil 2*, op cit, paras 182-193.

6 To revert to the first rule, and the meaning which must be ascribed to "Any matter" in art 1341.

A distinction must be made between "actes ou faits juridiques" (juridical acts) and "faits matériels ou faits purs et simples" (mere acts). The first rule only applies to the proof of "actes ou faits juridiques".

Juridical acts are those which consist in the manifestation of the will, having as the immediate and direct aim either to create or transfer, or to confirm or acknowledge or to modify or extinguish obligations or rights.

Mere acts are those which have a legal effect not intended by their author.[1]

[1] *Dalloz Civil 2*, paras 197-201, above p8.

7 Sometimes the two are mixed up. In that case oral evidence of the "fait matériel" is admissible whereas the "fait juridique" must be proved by a document eg a person who builds on someone else's land with permission. The fact of building without hindrance may be proved by oral evidence but the giving of permission to build must be proved by a document if oral evidence is objected to. One cannot presume permission from the fact of building without hindrance. When it is impossible to distinguish "le fait matériel" from "le fait juridique" in a situation known as "faits complexes", then documentary proof is required.

8 Any matter the value of which does not exceed R 5000. How does one deal with the question of value?

(a) **Cases which arise outside of contract**

The juridical act must be considered in relation to the juridical effect that one wants to rely upon (*Dalloz Civil 2*, above p 8, para 246). For example, the juridical act consists in the payment of a sum of less than R 5000.

(i) One wants to rely on such payment to prove that one has paid up a debt of that amount. Oral evidence is admissible. (ii) One wants to rely on such payment to prove that prescription of an obligation has been interrupted or that such payment constitutes the confirmation of a voidable obligation. In such a case it is the value of the obligation which is relevant and not the value of the payment. Oral evidence would not be admissible if the value of the obligation exceeded R 5000 although the payment was for a sum of less than R 5000.

(b) **Contracts**

The value is that of the subject-matter of the obligation which forms the basis of the claim eg the value of the property transferred or the amount which the debtor has bound himself to remit.

The amount of the claim itself is not relevant. That amount may even exceed R 5000 eg when a lottery ticket has been purchased in common by two persons and the ticket wins a prize of more than R 5000. A claim for his share of the prize by one of the persons against the other may be supported by oral evidence as it is the value of the ticket which is relevant and not the value of the prize.[1]

[1] *Dalloz Civil 2*, paras 247-252, above p8.

9 The time relevant for determining the value of the juridical act or the value of the subject-matter of the obligation is the time when the parties reached agreement.[1] When the value is not expressed, it is for the trial judge to determine it in case of conflict between the parties.[2]

[1] *Dalloz Civil 2*, para 253, above p8.
[2] *Dalloz Civil 2*, para 254, above p8.

10 Articles 1342 to 1346 support the general principles laid down in paras 6 and 7 above. They apply in claims of money arising from money lending. It is difficult to envisage the practical application of art 1346; It is obsolete and should have been repealed.

11 The second rule contained in art 1341 is that oral evidence (and proof by presumptions) is not admissible against and beyond a document nor in respect of what is alleged to have been said prior to or at or since the time when the document was drawn up.

12 That rule applies irrespective of the value of the matter ie the transaction, which the document witnesses. The rule aims at preventing the proof by oral evidence (or by presumptions) of —

(a) Mistakes or omissions made in the document at the time when it was drawn up; or

(b) Modifications which occurred in the agreement of the parties (juridical act) after the document was drawn up.

Such proof however may be made by another document or by a judicial admission or by the decisive oath. The prohibition contained in art 1341 does not extend to these modes of proof.

13 The rule only applies when the document is on the face of it clear and unambiguous. If however the document is couched in terms which are obscure, ambiguous or imprecise then oral evidence and presumptions are admissible to make clear the intention of the parties.

> L'article 1341 du code civil restreint la recevabilité des modes de preuve lorsqu'on veut modifier ou compléter l'expression de la volonté des parties. En revanche, ce texte ne prohibe pas le recours à des témoignages ou à des présomptions pour interpréter les clauses obscures ou pour apprécier la portée et l'étendue des mentions imprécises d'un écrit.[1]

[1] *Dalloz Civil 2*, para 293, above p8; the case of *Wilmot & Ors v/s W & C French (Seychelles)* (1972) SLR 144 is a case in point.

14 Extrinsic evidence may be admitted to prove fraud or error which vitiates the consent of a contracting party without the second rule in art 1341 being flouted.[1]

In the case of fraud, the mere allegation of fraud is not sufficient. There must be a precise allegation of an act which constitutes fraud before the door to extrinsic evidence is opened.

In case of error the document must on the face of it be ambiguous or imprecise before extrinsic evidence is admissible; if the document is clear and precise then it would be necessary to have another writing providing initial proof under art 1347 before oral evidence is admitted to prove error.

[1] *Dalloz Civil 2*, paras 302-312, above p8.

15 Article 1321 deals exhaustively with the question of simulation by means of back-letters and their force and effect. The ostensible transaction simulated in the overt document signed by the parties may be altered by the back-letter (contre-lettre) in accordance with the terms of art 1321.

16 The document to which art 1341 refers is a document drawn up by a notary or a document under private signature and therefore the second rule applies only to such documents. However, in the case of a document under private signature, the provisions of art 1324 and art 1326 para 1 must be satisfied before the second rule applies.[1]

[1] *Dalloz Civil 2*, para 316, above p8.

17 What is a document under private signature? It is a document signed by the parties. It cannot include a document marked by a party who is unable to write his name. The rule under s 22(1) of the Interpretation and General Provisions Act (Cap 103) does not apply to the Civil Code of Seychelles (see ss 5 and 9 of the Civil Code of Seychelles Act).[1]

[1] Vide *Encyclopédie Dalloz. Droit Civil*. Verbo "Preuve" (1 modes de preuve) para 198 [*Dalloz Civil 1*].