DOCUMENTARY EVIDENCE

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- The statutory definition of documentary evidence is governed by s. 3 of the Evidence Act Cap 6 of 2002 of R.E. which states

  “Documentary evidence" means all documents produced as evidence before the court;

- **Thus** documentary evidence is any evidence introduced at a trial in the

What is a document?

- This also has been defined under s. 3 of TEA.

  "*Document*" means any writing, handwriting, typewriting, printing, photostat, photograph and every recording *upon any tangible thing*, any form of communication or representation by letters, *figures*, *marks* or *symbols* or by more than one of these means, which may be used for the purpose of recording any matter provided that such recording is *reasonably permanent and readable by sight;*

What is a document?

- According to this definition ‘document’ generally implies writings and other inscription upon a tangible/physical object.

- This is version is supported by the Darling, J. in the case of *R v. Daye [1908] 2 KB 333*, where it was held that an object may be regarded as a document, whatever its material provided it is writing or printing and capable of being evidence.

Types of Documents

- There are two types of documents

a) Public documents

b) Private documents

- Public documents has been defined under s 83
- Private documents has been defined under s 84.

Proof of the Contents of the Document

- It is well settled that as a general rule oral evidence cannot be used to prove the contents of the document as per s 61.

- So where witness is relying on the words used in a document he must produce the *primary evidence* or *secondary evidence* as the case may be. (S. 63).

What is Primary Evidence?

- Primary evidence means the document itself produced for the inspection of the Court. S.64(1)
- Therefore where a party in a case relies on the words in a document he must produce the original document itself.
- This rule is based on one of the fundamental principles of the law of evidence – *the best evidence rule*- that is in all cases the best evidence available should be given.

What is Primary Evidence?

- Section 64 explains other situations of primary evidence:
- S. 64(2) Where a document is executed in several parts, each part is primary evidence of the document.
- S. 64 (3) Where a document is executed in counterpart each counterpart is primary evidence as against the parties executing it.
- S. 64(3) Where a number of documents are all made by one uniform process, eg by Printing, each is primary evidence of the contents

What is Primary Evidence?

- For primary courts proof of the contents of the document is regulated by R 11 (1), Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations which provides that:

  “The original document must always be produced.”
- Therefore, unless there are exceptional circumstances, all documents must be proved by primary evidence. S. 66

Secondary evidence

- There are circumstances where it is difficult to prove the documents by primary evidence. In such situation the law allows those documents to be proved by secondary evidence.

- Secondary evidence has been provided under S.65

Secondary evidence

- According to s. 65 *Secondary evidence* includes
- certified copies,
- Copies made from the original by mechanical process eg thru photocopying, photographing.
- copies made from or compared with the original; eg copy made from a copy which can be compared with the original
- counterparts of documents as against the parties who did not execute them;
- Oral accounts of the contents of a document given by some person who has himself seen it.

Circumstances of Secondary evidence

- Secondary evidence may be given under the following circumstances
- when the original is in the possession or power of–
  - the adversary or the opposite party in a case;
  - a person out of reach of the court process; or
  - a person legally bound to produce it, does not produce it;
- This is per section 67 (1) (a)

Circumstances of Secondary evidence

- When the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest; S 67 (1)(b)
- The written admission by the person about the content of the original can be admitted as secondary evidence

Circumstances of Secondary evidence

- When the original has been destroyed or lost. As per S 67 (1) (c)

- Here any kind of secondary evidence under s. 65 can be given depending on the nature of the original document involved.

Circumstances of Secondary evidence

- When the original is of such a nature that it is not easily movable. S 67 (1) (d)
- Where it is physically impossible to move the original document.
- In short any type of secondary evidence of the content of the document under s. 65 can be given/is admissible

Circumstances of Secondary evidence

- When the original is a public document. S 67 (1) (e).
  - Normally original public documents are not issued/ given to private persons because there is a danger of them being destroyed if they are exposed to constant production before the court by any person who needs them.
  - That is why the government issues certified copies of the public documents so as to protect them. These certified copies can be admitted as secondary evidence b4 the court. S. 65 (a)

Circumstances of Secondary evidence

- When the originals consist of numerous accounts or other documents which cannot conveniently be examined in court and the fact to be proved is the general result of the whole collection. S 67 (1)(g)
- This provision applies in a situation where the original is a bulky document which cannot be conveniently examined by the court
- In that situation oral accounts of person who has himself seen or examine the document can be admitted as secondary evidence under s. 65(e)

SECONDARY EVIDENCE IN PRIMARY COURTS

- For primary courts secondary evidence is governed by R 11 (1) (a), Magistrates' Courts (Rules of Evidence in Primary Courts) Regulations which provides that:

  “A copy of the original document may be proved if the original has been lost or destroyed or if it is in the hands of the opposing party and he will not produce it”

Proof of Public Documents

- Public document may be proved by the production of certified copies. This means that public documents can only be proved by secondary evidence. s 65 (a) & 67 (1) (e)
- A duty has been imposed upon the officer who has custody of the public document to issue a certified copy to person who demand it. This is per Ss 85- 86 read together with s 65 (a) & 67 (1) (e)

Proof of execution

- Where the document purports to be duly executed, such execution must be proved
- ✓ In case of public document a mere production of a certified copy suffices the requirement of due execution of the document.
- ✓ Read ss 88 (1) (b) and ss 88 (2)

Proof of Execution of private documents

- In case of private documents where witness produces a document which he alleges is executed or signed or written by a certain person, such witness is required to prove that signature, execution or handwriting.
- This is per s. 69
- This provision needs the proof of signature or handwriting of the person who purports to have signed or written the document.

Proof of Execution of private documents

- ***How can you prove the signature/execution?***
- This can be proved by direct evidence i.e by calling signer of document himself or calling the person who witnessed the execution of the document..

- Signature/execution can also be proved by taking the opinion of persons who are familiar with the signature of the signer. S 49

- It can also be done by making comparison of the signature or handwriting of document in dispute and signature/handwriting of the same person in other documents. S 75

- If due execution of documents requires attestation, such execution may be proved by the evidence of attesting witness. S. 70