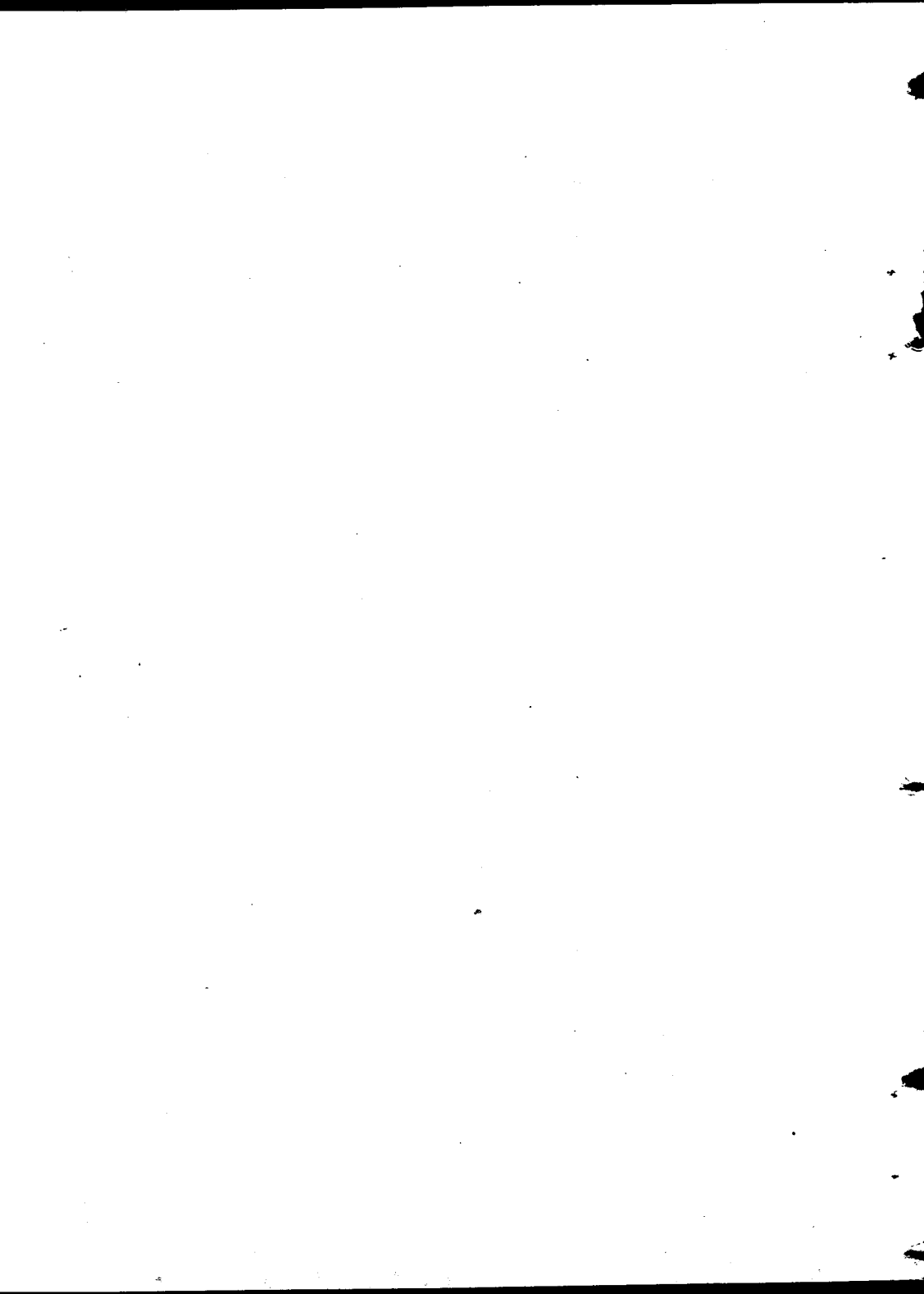


BOOK THREE

EVIDENCE



PART I

RELEVANCY OF FACTS

CHAPTER I

Relevancy of Facts in General

Article 135

Facts in Issue and Relevant Facts

1. Evidence may be given in any criminal proceedings of the existence or non-existence:

- a) of every fact in issue, and
- b) of such other facts as are declared by law to be relevant,

and of no others.

2. For the purposes of this Code, unless the context indicates otherwise:

- a) the term «fact in issue» shall mean any fact from which, either by itself or in connection with other facts, the existence or non-existence, nature or extent of any fact asserted or denied, necessarily follows;
- b) the term «relevant fact» shall include every fact which may be proved in the trial.

Article 136

Relevancy of Facts forming Part of the same Event

Facts which, though not in issue, are so connected with a fact in issue as to form part of the same event, are relevant, whether they occurred at the same time and place or at different times and places.

Article 137.

Facts which are the Occasion, Cause or Effect of Facts in Issue

Facts which:

- a) are the occasion, cause or effect, immediate or otherwise, of relevant facts, or facts in issue, or
- b) constitute the state of things under which they happened, or
- c) afforded an opportunity for their occurrence or transaction,

are relevant.

Article 138

Motive, Preparation and previous and subsequent Conduct

Any fact is relevant which:

- a) shows or constitutes a motive or preparation for any fact in issue or relevant fact;
- b) is the conduct, previous or subsequent, other than a statement, of any person who is the accused in any proceedings, if such conduct influences or is influenced by any fact in issue or relevant fact; or
- c) any statement made to or in the presence or hearing of the person whose conduct is made relevant by this Article, if such statement has affected the conduct in question.

Article 139

Facts necessary to explain or introduce Relevant Facts

Facts which:

- a) are necessary to explain or introduce a fact in issue or a relevant fact;
- b) support or rebut an inference suggested by a fact in issue or relevant fact;
- c) establish the identity of any thing or person whose identity is relevant;
- d) fix the time or place at which any fact in issue or relevant fact happened, or
- e) show the relation of parties by whom any such fact was made;

are relevant insofar as they are necessary for that purpose.

Article 140

**Things said or done by Conspirator in Reference to
common Design**

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring for the purpose of:

- a) proving the existence of the conspiracy, or
- b) showing that any such person was a party to it.

CHAPTER II

Facts relevant in certain Circumstances only

Article 141

When Facts not otherwise relevant become relevant

Facts not otherwise relevant are relevant:

- a) if they are inconsistent with any fact in issue or relevant fact, or
- b) if, by themselves or in connection with other facts, they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Article 142

Facts showing Existence of State of Mind or Body

When the existence of a state of mind or body or of bodily feeling is a fact in issue or a relevant fact, the facts which in relation to the matter in question show in a given person the existence of:

- a) any state of mind, such as intention, knowledge, good faith, negligence, rashness, good-will or ill-will;
 - b) a state of body or bodily feeling,
- shall be considered relevant,

Article 143

Facts bearing on Question whether Act was Accidental or Intentional

When there is a question whether:

- a) an act was accidental or intentional, or
- b) done with a particular knowledge or intention,

the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Article 144

Statement forming Part of a longer Statement of Transaction

When any statement of which evidence is given forms part of:

- a) a longer statement;
- b) a conversation;
- c) an isolated document;
- d) a document contained in a book, or
- e) a series of letters or papers,

evidence shall be given of so much, and no more, of the statement, conversation, document, book or series of letters or papers as the Court considers necessary in that particular case to the full understanding of the nature and effect of the statement, and the circumstances under which it was made.

Article 145

Previous Judgment

For purposes of paragraph 3 of Article 13, the existence of any previous judgment which by law prevents any Court from holding a trial, is a relevant fact when the question is whether such Court ought to hold such trial.

Article 146

Consideration of proved Confession of Co-accused

When,

- a) more persons are jointly tried for the same offence, and
 - b) a confession,
 - i) made by one of such persons and
 - ii) implicating himself and some of the other co-accused
- is proved,

the Court may take into consideration the confession, as against the person making it and any other co-accused implicated by it.

CHAPTER III

Statements by the Accused

Section I

ADMISSIONS

Article 147

Definition of Admission

An admission is an oral or written statement which suggests any inference as to any fact in issue or relevant fact, and which is made by any person who is the accused in any criminal proceeding.

Article 148

Relevancy of Admissions

Admissions are relevant and may be proved as against the person who makes them, but they may not be proved by or on behalf of the person who makes them.

Section II

CONFESSIONS

Article 149

Definition of Confession

A confession is a written or oral statement by a person charged with an offence stating or suggesting the inference that he committed that offence.

Article 150

Confession caused by Inducement, Threat or Promise

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by inducement, threat or promise.

Article 151

Cases in which Confession is not admissible in Evidence

1. No confession made by any person shall be proved as against such person, unless the confession is made before a Judge, as provided in Article 68.

2. However, when any fact is alleged to have been discovered in consequence of information received from a person accused of any offence, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

CHAPTER IV

Statement in Public Documents

Article 152

Relevancy of Entry in Public Record

An entry in any public or other official book, register or record, stating a fact in issue or a relevant fact, and made by a public servant, or by a person entrusted with a public service in the discharge of his official duty, is itself a relevant fact.

Article 153

Statements as to Facts of a Public Nature

When the Court has to form an opinion as to the existence of any fact of a public nature, any statement of it made:

- a) in any law, or
 - b) in any statement, publication or notification made in accordance with or under any law,
- is a relevant fact.

Article 154

Relevancy of Statements in Charts and Maps

Statements of facts in issue or relevant facts made in:

- a) maps or plans made under the authority of the State, or
- b) published maps or charts generally offered for public sale

are themselves relevant facts as to matters usually represented or stated in such maps, charts or plans.

CHAPTER V

Statements by Persons who cannot be called as Witnesses

Article 155

Cases in which Statements by Persons who cannot be called as Witnesses are Relevant

Statements, written or oral, of relevant facts made by a person who is dead, who cannot be found, who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case, appears to the Court unreasonable, are themselves relevant facts in the following cases:

- a) when the statement is made by a person as to:
 - i) the cause of his death,
 - ii) any of the circumstances of the event which resulted in his death,

in cases in which the cause of that person's death comes into question;

- b) when the statement was made by such person in the ordinary course of business, and when in particular it consists of:
 - i) any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty;
 - ii) an acknowledgement written or signed by him of the receipt of money, goods, securities or property of any kind;
 - iii) a document used in commerce written or signed by him; or
 - iv) the date of the letter or other document usually dated, written or signed by him;
- c) when the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to criminal prosecution or to a suit for damages.

Article 156

Relevancy of certain Evidence in subsequent Proceedings

1. Evidence given by a witness in a judicial proceeding or before a person authorized by law to take it is relevant, subject to paragraph 2 of this Article, for the purpose of proving the truth of the facts which it states in:

- a) a subsequent judicial proceeding, or
- b) a later stage of the same judicial proceeding.

2. Evidence referred to in paragraph 1 of this Article shall be relevant only:

- a) when:
 - i) the witness is dead,
 - ii) the witness cannot be found,
 - iii) the witness is incapable of giving evidence,
 - iv) the witness is kept out of the way by the other party, or
 - v) the presence of the witness cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable, and

- b) if:
 - i) the proceeding is against the same person or persons,
 - ii) the party, other than the party calling the witness, had the right and opportunity to cross-examine, and
 - iii) the questions in issue were substantially the same in the first as in the second proceedings.

CHAPTER VI

Opinions of Experts

Article 157

Opinions of Experts

1. When the Court has to form an opinion:
 - a) upon a point of foreign law;
 - b) upon a point of science or art,the opinions upon that point of persons specially skilled in such subjects are relevant facts.
2. Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant.

Article 158

Opinions as to Handwriting

When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

Article 159

Opinions as to Usages

When the Court has to form an opinion as to:

- a) the usages and traditions practised in a given area or by an ethnical group or by a group of persons, or
- b) the meaning of words or terms used in particular areas or by an ethnical group or by a group of persons,

the opinions of persons having special knowledge of them are relevant facts.

Article 160

Grounds of Opinions

Whenever the opinion of any person is relevant, the grounds on which such opinion is based are also relevant.

Article 161

Form of Expert Opinion

1. When a Court considers it necessary or proper for the opinion of an expert to be provided about a particular matter, the Court shall, either at the request of the Attorney General or of the accused or of its own accord, provide for the appointment of an expert choosing him, if possible, from among persons designated by agreement between the parties.

2. The appearance of any expert to give evidence, when so called upon, is mandatory and any expenses connected therewith shall be paid from State funds.

3. The Court shall inform the expert of his duties and shall put its questions to him during the hearing in chambers in the presence of such parties that wish to be there. When on account of the nature or difficulty of the investigation the expert is unable to give his opinion immediately, the Court shall fix a time-limit in which the opinion may be submitted in a written report, provided that such time-limit may be extended on justifiable grounds.

4. The opinion of the expert shall be heard by the Court and, if it is given verbally, it shall be reduced to writing. If the expert opinion is given in written form, it shall be attached to the record of the proceedings and a copy shall be given to each of the parties concerned.

5. An expert may be called to give evidence as a witness at the request of one of the parties or by the Court on its own motion.

6. The appointment of an expert to give evidence shall in no way prejudice the right of any party to obtain, at its own expense, evidence from other technical experts.

7. When the services of a psychiatrist are called for, the Court must ask the psychiatrist whether the accused is a person dangerous to society, whenever this is so prescribed by law for taking any proper security measures.

CHAPTER VII

Relevancy of the Character of the Accused

Article 162.

Character of the Accused

1. In criminal proceedings:
 - a) the fact that the person accused is of a good character is relevant; and
 - b) the fact that the accused person has a bad character is irrelevant, unless:
 - i) evidence has been given that he has a good character, in which case it becomes relevant;
 - ii) the bad character of any person is itself a fact in issue, in which case it is always relevant.
2. A previous conviction is relevant as evidence of bad character.

PART II

PRODUCTION AND EFFECT OF EVIDENCE

CHAPTER I

The Burden of Proof

Article 163

Burden on Prosecution

In criminal proceedings, the prosecution shall prove beyond reasonable doubt:

- a) that the alleged offence was in fact committed; and
- b) that the accused committed it,

Article 164

Burden of Proof as to Particular Fact

Unless any law provides otherwise, the burden of proof as to any particular fact lies on that party who wishes the Court to believe in its existence.

Article 165

Burden of proving that Case of Accused comes within Exceptions

When a person is accused of any offence, the burden of proving the existence of extenuating circumstances or of circumstances excluding punishment is upon the accused.

CHAPTER II

Facts which need not be Proved

Article 166

Facts Judicially Noticed

No fact of which the Court will take judicial notice need be proved.

Article 167

Facts of which Court shall take Judicial Notice

The Court shall take judicial notice of the following facts:

- a) all laws and regulations in force or formerly in force in the Somali Republic or in any part of the territory of the Somali Republic prior to its constitution as a State and also the procedure followed for preparing such laws and regulations;
- b) the seals of the State and any other seals which any person is authorized to use by law or may have been authorized to use in the different parts of the State prior to its constitution;

- c) the accession to office, names, titles, functions and signature of the persons filling for the time being any public office in the Somali Republic, if the fact of their appointment to such office is notified in the Official Bulletin or any similar publication in use in any part of the territory of the Somali Republic at any time;
- d) the existence, title and national flag of every State recognized by the Government of the Somali Republic;
- e) the divisions of time, official holidays and the territory of the State.

Article 168

Facts of which Court may take Judicial Notice

The Court may, at the request of either party or on its own motion, take judicial notice of any relevant fact, if it is reasonably satisfied that the fact in question is generally known or can be easily ascertained.

Article 169

Use of Reference Material in taking Judicial Notice

1. In all cases where the Court must or may take judicial notice of any fact, the Court may resort to appropriate books or documents of reference for assistance.
2. In the cases referred to in Article 168, the Court may refuse to take judicial notice of any fact, unless and until the party concerned produces in time any book or document as the Court for the purpose may consider necessary.

CHAPTER III

Presumptions

Article 170

Presumptions as to Genuineness or Correctness

1. Unless there is evidence to the contrary, the Court shall presume:
 - a) that a document is genuine and properly executed if issued by:

- i) any organ of the State or any organ existing in the different parts of the territory of the State prior to its constitution;
 - ii) a person exercising public functions in the State or in different parts of the territory of the State prior to its constitution;
 - iii) an organ of a foreign country or a person exercising public functions therein if authenticated in accordance with the law of that country;
- b) that every officer by whom any such document purports to be issued, signed or certified, held, when he issued, signed or certified it, the official position which he claims in such document.

2. For the purposes of this Article a document shall mean any written communication.

Article 171

Court may presume the Existence of certain Facts

The Court may presume, in relation to the particular circumstances of the case, the existence of any fact which it thinks likely to have happened, when:

- a) the common course of natural events;
- b) the common course of human nature and conduct; or
- c) the common course of public and private business,

reasonably lead to such inference.

CHAPTER IV

Production of material Objects and other Matters

Article 172

Material Objects and other Matters which can be produced in Court

1. There may be produced before the Court:
 - a) material objects which were the means or the subject of an offence;
 - b) records of confessions taken in accordance with Article 68;
 - c) any other thing material to the offence, which the Court may allow to be produced.

2. Any party may make use of things produced in Court:
 - a) by examining witnesses about such things;
 - b) by referring to such things when making any statement before, or request to, the Court.

CHAPTER V

Evidence which may not or need not be given

Article 173

One Spouse as Witness against the other

No person who is married or has been married may give evidence as against the other spouse, in regard to anything that has taken place during the existence of such marriage, even though the marriage has been dissolved for any reason, except:

- a) with the express consent of the spouse; or
- b) in relation to any offence alleged to have been committed by the spouse against
 - i) the person giving the evidence;
 - ii) the ascendant or descendant of either of the spouses.

Article 174

State Secrets

1. Evidence may not be given:
 - a) of any political or military secret of the State; or
 - b) of any other matter which, if disclosed, might prejudice:
 - i) the security of the State;
 - ii) the political interests, either internal or external, of the State.
2. If the accused has asked for evidence to be given in regard to some facts falling within the category indicated in the preceding paragraph, the Court, having considered in chambers the nature of such evidence and having heard the opinion of the Attorney General may, whenever it considers that failure to admit such evidence would gravely prejudice the defence, order that the proceedings be terminated and take any other measures provided for in Article 76.

Such order to terminate the proceedings shall have the same effect as a judgment for the purpose of paragraph 3 of Article 13.

Article 175

Judges as Witnesses

1. No Judge shall, except upon the special order of the Supreme Court, be compelled to answer any questions as to:
 - a) his own conduct in the exercise of his judicial functions; or
 - b) anything which came to his knowledge by reason of his office.
2. The provisions of the preceding paragraph shall also apply to Assessors.

Article 176

Information as to Commission of Offences

A Court shall not:

- a) compel the Attorney General or a Police Officer to reveal the name of any person who has given them information;
- b) receive from the Attorney General or a Police Officer information obtained from persons whose names such officers do not deem it proper to reveal.

Article 177

Professional Secrets

1. No legal practitioner shall at any time be permitted, unless with the express consent of his client, to disclose:
 - a) any matter which was communicated to him in confidence; or
 - b) any matter which came to his knowledge in the course of his duties as a legal practitioner.
2. The provisions of the preceding paragraph shall also apply to clerks, interpreters and other employees of legal practitioners.

Article 178

Evidence Null and Void

Failure to observe any of the provisions of this Chapter shall render the evidence null and void, and the Court may so determine also on its own motion at any stage of the proceedings.

PART III

EXAMINATION OF WITNESSES

CHAPTER I

General Provisions

Article 179

Examination of Witnesses

Except as otherwise provided by law, a witness shall be examined:

- a) orally in open Court,
- b) in the presence of the accused,
- c) under oath or affirmation.

Article 180

Persons who may Testify

1. All persons shall be competent to testify, unless the Court considers that any person is prevented from understanding the questions put to him or from giving rational answers to them because of:

- a) tender years,
- b) extreme old age,
- c) disease, whether of body or mind.

2. The duty to testify shall be mandatory.

Article 181

Oath and Affirmation

Except as provided for in paragraph 4 of Article 182, every witness, before giving evidence, shall:

- a) take an oath in accordance with his religion; or
- b) make an affirmation, which shall be equivalent for all purposes to an oath, if:
 - i) he does not profess any religion, or
 - ii) the taking of an oath is forbidden by the religion professed by the person concerned.

Article 182

Administration of Oath or Affirmation

1. An oath or affirmation shall be made before the presiding Judge.

2. The oath shall be made in the following terms: «I swear in the name of God to tell the truth, the whole truth and nothing but the truth».

3. An affirmation shall be made in the following terms: «I solemnly declare that I will tell the truth, the whole truth and nothing but the truth».

4. Any person who has not reached the age of fourteen years at the time of taking an oath or making an affirmation shall be permitted to take an oath or make an affirmation, provided that the presiding Judge shall clearly warn him of the duty to tell the truth, the whole truth and nothing but the truth.

Article 183

Deaf and Dumb Witnesses

1. In order to question, examine or administer an oath or affirmation to a person who is deaf or dumb or deaf and dumb, the following procedure shall be followed:

- a) deaf persons shall be given the oath or affirmation and questions in writing; they shall take the oath or make the affirmation, and reply to the questions orally;

- b) dumb persons shall be questioned orally and persons shall reply in writing; the oath or affirmation shall be read to them by the presiding Judge, and then given to them in writing and they shall sign it;
 - c) deaf and dumb persons shall be given questions in writing and shall reply in writing; the oath or affirmation shall be given in writing and they shall sign it.
2. If a deaf, dumb or deaf and dumb person does not know how to read or write, the Judge shall appoint one or more interpreters, preferably chosen from among persons who are accustomed to communicate with such person.

Article 184

Proof of Facts by oral Evidence

1. Oral evidence shall, in all cases, be direct, that is to say:
- a) if it refers to a fact which could be seen, it shall be the evidence of a witness who says he saw it;
 - b) if it refers to a fact which could be heard, it shall be the evidence of a witness who says he heard it;
 - c) if it refers to a fact which could be perceived by any other sense or in any other manner, it shall be the evidence of a witness who says he perceived it by that sense or in that manner;
 - d) if it refers to an opinion or to the grounds on which that opinion is held, it shall be the evidence of the person who holds that opinion on those grounds.
2. If the oral evidence refers to the existence or condition of any material thing, the Court may, if it thinks fit, require the production of such material thing or its inspection.
3. Notwithstanding anything contained in this Article, opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author:
- a) is dead,
 - b) cannot be found,
 - c) has become incapable of giving evidence, or
 - d) cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable in the circumstances.

Article 185

Examination of the Accused

Except as otherwise provided by law, the provisions regarding the examination of witnesses shall apply, in so far as applicable, to the questioning, examination and taking of the oath or making an affirmation of or by the accused.

Article 186

**Cases in which Evidence may be taken in a Place
other than the Court**

1. Except as otherwise provided by law, if:
 - a) the President of the Republic,
 - b) the President of the National Assembly,
 - c) the Prime Minister,

are required to be called as a witness, the presiding Judge shall go to the place agreed upon with such witness in order to receive his evidence.

2. The presiding Judge shall hear the evidence referred to in the preceding paragraph without the presence of the public. The Attorney General and the accused or his Counsel shall have the right to be present and they must be informed of the date, time and place when such evidence will be heard.

3. The provision of the preceding paragraph shall also apply in the cases in which a witness is unable to appear due to reasons of serious ill-health.

4. International conventions and custom shall apply in cases in which diplomats of a foreign State accredited to the Somali Republic and representatives of International Organizations who have diplomatic status are called as witnesses.

CHAPTER II

Examination of Witnesses

Section I

GENERAL PROVISIONS

Article 187

Definitions

For the purposes of this Code, unless the context provides otherwise:

- a) the term «examination-in-chief» shall mean the examination of a witness by the party that calls him;
- b) the term «cross-examination» shall mean the examination of a witness by the party other than the party which calls him;
- c) the term «re-examination» shall mean the examination of a witness by the party who called him subsequent to the cross-examination;
- d) the term «leading question» shall mean any question put to a witness in such a way as to suggest a reply that the party putting the question wishes or expects to receive.

Article 188

Order of Examination

1. A witness shall first be examined-in-chief; then, if the other party so desires, the witness may be cross-examined; then, if the party calling the witness so desires, the witness may be re-examined.

2. The examination-in-chief and the cross-examination shall relate to relevant facts but the cross-examination need not be confined to the facts which the witness testified to in his examination-in-chief.

3. The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if new matter is introduced, with the permission of the Court, in re-examination, the other party may further cross-examine upon that matter.

Article 189

Refreshing Memory

1. A witness may, while under examination and with the permission of the Court, refresh his memory regarding matters about which he is being examined, by referring to:

- a) any writing made by himself:
 - i) at the time of occurrence of the event concerning which he is questioned;
 - ii) so soon after the occurrence of the event that the Court considers likely that the transaction was at that time fresh in his memory;
- b) any such writing made by another person and read by the witness within the time aforesaid, if, when the witness read it, he knew it to be correct;
- c) professional treatises, if the witness is an expert or a technical consultant.

2. Whenever a witness is permitted to refresh his memory by referring to any document or writing, he may, with the permission of the Court, refer to a copy of such document or writing if the non-production of the original is satisfactorily accounted for.

3. A witness may also testify to facts mentioned in any such document or writing as is mentioned in this Article, even though he has no specific recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document.

4. Any document or writing referred to under the provisions of this Article shall be produced before the Court and shall be shown to the other party, if such party so desires.

Article 190

Production of Documents

A witness summoned to produce a document or writing shall, if it is in his possession or power, produce it before the Court, notwithstanding any objection there may be to its production or admissibility. The validity of any such objection shall be decided by the Court, and for this purpose the Court may:

- a) inspect such document in chambers;
- b) take other evidence to enable the Court to determine its admissibility;
- c) order the translation of the document, and in such case may order the translator to keep the contents secret.

Section II

EXAMINATION OF A WITNESS BY THE PARTY
CALLING HIM

Article 191

Prohibition on leading Questions

1. Leading questions shall not be asked in an examination-in-chief or in a re-examination except with the permission of the Court.

2. The Court may permit leading questions in examination-in-chief and re-examination only as to matters which are introductory or undisputed or which have, in its opinion, been already sufficiently proved.

Article 192

Examination of a hostile or unwilling Witness

The Court, when it is satisfied that a witness is hostile to, or is unwilling to answer the questions of, the party which called him, may at its discretion permit the party which called the witness to put any questions to the witness which might be put in cross-examination by the other party, in accordance with the provisions of the following Section.

Section III

EXAMINATION OF A WITNESS BY THE OTHER PARTY

Article 193

Admissibility of leading Questions

Leading questions may be asked in cross-examination.

Article 194

Cross-Examination on a written Statement

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, without such writing being shown to him or being proved.

But if it is intended to contradict him by the writing, his attention shall, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

Article 195

Questions lawful in Cross-Examination

1. When a witness is cross-examined, he may be asked any question which tends:

- a) to test his veracity,
- b) to discover who he is and what is his position in life,
- c) to shake his credit,

although the answer to such question might tend directly or indirectly to expose him to penal proceedings or to civil action for damages.

2. If any such question as asked in accordance with the preceding paragraph relates to a matter relevant to the proceedings, or if the Court orders the witness to answer in accordance with the provisions of the following paragraph, the provisions of Article 200 shall apply.

3. If any such question relates to a matter not relevant to the proceedings and tends only to affect the credit of the witness, the Court shall decide whether or not the witness shall be compelled to answer it. In exercising its discretion, the Court shall have regard to the following considerations:

- a) such questions are proper if they are of such nature that the truth of the imputation conveyed by them would seriously affect the opinion of the Court as to the credibility of the witness on the matter to which he testifies;
- b) such questions are improper if:
 - i) the imputation which they convey relates to matters so remote in time or of such a character that the truth of the imputation would not affect, or would affect in a slight degree, the opinion of the Court as to the credibility of the witness on the matter to which he testifies;
 - ii) there is a great disproportion between the importance of the imputation made against the witness's character and the importance of his evidence.

The Court may, if it deems fit, warn the witness that he is not obliged to answer a question.

4. No such question as is referred to in the preceding paragraph ought to be asked, unless the person asking it has reasonable grounds for thinking that the imputation which is conveyed is well-founded.

5. A Court:

- a) may forbid any questions or inquiries which it regards as indecent or scandalous, although such questions or inquiries may have some bearing on the questions before the Court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed,
- b) shall forbid any questions or inquiries which appear to it to be intended solely to insult or to annoy or which, though proper in themselves, appear to the Court needlessly offensive in form.

Article 196

Evidence to contradict Answers to Questions testing Veracity

1. No evidence shall be given to contradict any answer given by a witness to questions put to him with the sole intention of shaking his credit, except:

- a) if the Court permits, or
- b) if:
 - i) the questions refer to any previous convictions of the witness for any offence, or
 - ii) the questions tend to impeach his impartiality.

2. In the cases referred to in sub-paragraphs a) and b) of the preceding paragraph evidence to contradict him may be given.

Article 197

Impeaching the Credit of a Witness

The credit of a witness may be impeached by the party other than the party calling him or, with the consent of the Court, by the party who has called him:

- a) by the evidence of persons who testify that they from their personal knowledge of the witness believe him to be unworthy of credit;

- b) by proof that the witness, in order to give his evidence:
 - i) has caused or induced another person to give, or offer to give, to him or to a third person any bribe or other corrupt inducement, or
 - ii) has accepted the offer of such bribe or other corrupt inducement;
- c) by proof of former statements, inconsistent with any part of his evidence which is liable to be contradicted;
- d) when a man is prosecuted for:
 - i) a crime or attempted crime of sexual violence, or
 - ii) a crime or attempted crime against modesty or sexual honour;

on a woman over 16 years of age, evidence may be given to show that the woman was of generally immoral character.

Section IV

EXAMINATION OF WITNESS BY COURT

Article 198

Discretion and Powers of the Court

1. The Court may, in order to discover or obtain proper proof of relevant facts:

- a) ask any questions it pleases, in any form, at any time, except for the matters provided for in Articles 173, 174, 175, 176, 177, 188 and 200, of any witness or of the parties about any fact relevant or irrelevant;
- b) order the production, or inspection, of documents, things or places, and the taking of any measures which it deems fit and proper to discover or obtain proper proof.

CORRIGENDUM

Article 199. Accomplices

The persons who have participated in an offence may be witnesses in the proceedings.

However, the Court shall not convict an accused person on the basis of the testimony of an accomplice unless such testimony is corroborated by other evidence.

Section V

CORROBORATION

Article 199

Accomplices

An accomplice shall be a competent witness against an accused, provided that a Court shall not convict an accused person, unless there is some other evidence or circumstances corroborating in material particulars the evidence of the accomplice.

Article 200

Questions tending to corroborate Evidence of Relevant Fact

When it is necessary or desirable to corroborate the evidence of any witness and that witness gives evidence of any relevant fact, he may be questioned as to any other circumstances which he observed at or near the time or place at which such relevant fact occurred, if the Court is of the opinion that such circumstances, if proved, would corroborate the testimony of the witness as to the relevant fact concerning which he testifies.

Article 201

Former Statement of Witness as Corroboration

In order to corroborate the evidence of a witness, any former statement relating to the same fact made by such witness:

- a) at or about the time when the fact took place, or
- b) before any authority legally competent to investigate the fact,

may be proved.

Section VI

EVALUATION OF EVIDENCE AND DECISIONS ON
ADMISSIBILITY OF EVIDENCE

Article 202

Court to decide on Weight of Evidence

The Court shall determine the weight to be given to the evidence admitted.

Article 203

Admissibility of Evidence

1. The Court may only allow evidence to be given concerning facts which are allowed by law to be proved in the trial.
2. If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Court may, at its discretion, either permit evidence of the first fact to be given before the second is proved, or require evidence to be given of the second fact before evidence is given of the first fact.

Article 204

Improper Admission or Rejection of Evidence

The improper admission or rejection of evidence shall not of itself be grounds for a new trial or the reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that:

- a) independently of the evidence objected to and admitted, there was sufficient other evidence to justify the decision, or
- b) if the rejected evidence had been received, it ought not to have varied the decision.

Section VII

GENERAL PROVISIONS

Article 205

Incriminating Answers

1. A witness is obliged to answer questions put to him by a party on any relevant matter and to questions which the Court has ordered him to answer, even if such answer might expose him to criminal proceedings or, directly or indirectly, to a civil action for damages.

2. No answer, which a witness shall be compelled to give in accordance with the preceding paragraph, shall subject him to arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

Article 206

Rules relating to Cross-Examination of an Accused

An accused:

- a) shall not be cross-examined on an unsworn statement taken in accordance with subparagraph b) (ii) of paragraph 1 of Article 116;
- b) shall be cross-examined on a sworn statement taken in accordance with subparagraph b) (i) of paragraph 1 of Article 116, for the sole purpose of testing the veracity of the statement.

Article 207

Interpreters

1. The Court shall appoint an interpreter, selecting him, if possible, from among persons jointly agreed by the parties:

- a) when a document written in a foreign language has to be translated;

- b) when the person wishing or required to make a statement or give evidence does not know the language used by the Court;
- c) in any other case when it is deemed necessary or desirable by the Court.

2. The performance of the duties of interpreter shall be mandatory and the cost therefor shall be borne by the State Treasury.

3. Before commencing the performance of his duties the interpreter shall take an oath or make a solemn affirmation, as provided in Article 182, that he shall carry out his task for the purpose only of contributing to the ascertainment of the truth.

4. Where the translation of a written document requires work of a lengthy duration, the Court may establish the time-limit by which the interpreter must submit the written translation, and may extend such time-limit where there are reasonable grounds to do so.

5. The provision of Article 161 shall be observed, insofar as applicable.